

Staff Summary Report



Council Meeting Date: 05/28/2009

Agenda Item Number: 42

SUBJECT: Request approval to amend the Job Order Construction contracts with SDB, Inc., Foresite Design & Construction, Inc. and Caliente Construction.

DOCUMENT NAME: 20090528PWTG02 CONSTRUCTION-ENGINEERING ADMINISTRATION (0803)

COMMENTS: These amendments will increase the maximum allowable dollar amount for individual Job Orders from \$600,000 to \$1,000,000, consistent with Arizona Revised Statutes.

PREPARED BY: Theresa Galindo, Acting Engineering Contracts Administrator (x8518)

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

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

DEPARTMENT REVIEW BY: Glenn Kephart, Public Works Manager

FISCAL NOTE: N/A

RECOMMENDATION: Approve amendment to the Job Order Construction master contracts

ADDITIONAL INFO: Job Order Contracting (JOC) is one of several project delivery methods approved under Arizona Revised Statute (ARS) Title 34. The JOC project delivery method significantly enhances the ability to provide quality construction services through an expedited process. In essence, this process entails competitively pre-selecting contractors for unspecified quantities of specific work tasks. Then, when specific construction needs arise that fall within the preselected tasks, a job order is written to perform the work. The ARS limits individual job order contracts to a maximum of one million dollars. This action will increase our allowable amount from a current \$600,000 up to the ARS allowable amount. This action has no fiscal impact and increases flexibility to utilize this method for larger scope projects. All requests for specific job orders under this contract that exceed \$50,000 will be brought to council for consideration.

The City of Tempe utilizes several methods for project delivery including JOC's, Construction Manager at Risk (CMAR), and the traditional design, bid, build. Staff considers factors such as cost, quality, schedule, and magnitude/complexity of work before determining which method to recommend for each project.

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

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AMENDMENT NO. 1

JOB ORDER CONTRACT
FOR
GENERAL CONSTRUCTION SERVICES
CONTRACT C2008-136

This Amendment No. 1 made and entered into on the 28th day of May, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and SDB, Inc., an Arizona corporation (“JOC”), amends the original Contract made and entered into by and between the same parties on July 22, 2008 (C2008-136) (“Contract”).

W H E R E A S:

- A. The parties hereto entered into that Contract for General Construction Services; and,
- B. The parties desire to further define their respective rights and obligations with respect to the Job Order Price, and compliance with applicable employment laws, as contained in this Amendment; and,
- C. The parties intend that the following Section 1 Job Order Price, shall be integrated into the Contract in place of the former similarly identified section; and,
- D. The parties intend to amend the Contract by adding the following: (1) Section 2 Specially Designated Nationals and Blocked Persons List; (2) Section 3 Employment Laws; and (3) Section 4 Equal Opportunity to the Contract, and that this Amendment No. 1 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 as follows:

1. Job Order Price. Each Job Order under this Contract shall not exceed One Million Dollars (\$1,000,000) in construction costs, in the City's discretion. In no event will any Job Order exceed One Million Dollars (\$1,000,000).

2. Specially Designated Nationals and Blocked Persons List. JOC represents and warrants to City that neither JOC 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, JOC certifies that it does not have a scrutinized business operation in either Iran or Sudan.

3. Employment Laws. JOC 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, and all amendments thereto, along with all attendant laws, rules and regulations. JOC acknowledges that a breach of this warranty is a material breach of this Contract and JOC 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. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

4. Equal Opportunity. City is an equal opportunity, affirmative action employer. JOC 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, sex or veteran status. JOC 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.

5. JOC further agrees to include the provisions of these Sections 2, 3 and 4 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

6. All other provisions of the original Contract where not inconsistent with this Amendment shall remain binding on the parties hereto and in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

DATED 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

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

JOB ORDER CONTRACTOR
SDB, 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

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AMENDMENT NO. 1

JOB ORDER CONTRACT
FOR
GENERAL CONSTRUCTION SERVICES
CONTRACT C2008-138

This Amendment No. 1 made and entered into on the 28th day of May, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and ForeSite Design & Construction, Inc., an Arizona corporation (“JOC”), amends the original Contract made and entered into by and between the same parties on July 22, 2008 (C2008-138) (“Contract”).

W H E R E A S:

- A. The parties hereto entered into that Contract for General Construction Services; and,
- B. The parties desire to further define their respective rights and obligations with respect to the Job Order Price, and compliance with applicable employment laws, as contained in this Amendment; and,
- C. The parties intend that the following Section 1 Job Order Price, shall be integrated into the Contract in place of the former similarly identified section; and,
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3. Employment Laws. JOC 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, and all amendments thereto, along with all attendant laws, rules and regulations. JOC acknowledges that a breach of this warranty is a material breach of this Contract and JOC 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. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

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Mayor

By: _____
Public Works Manager

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Recommended By:

City Clerk

A Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

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JOB ORDER CONTRACTOR
ForeSite Design & Construction, 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

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Public Works Manager

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Caliente Construction, Inc.

Name

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Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist