

Staff Summary Report



Council Meeting Date: 06/11/2009

Agenda Item Number: 25

SUBJECT: Request award of a construction manager at risk (CMAR) contract with Okland Construction Company, Inc. for construction services, award a construction management contract with Bosak Architectural Companies, Inc., and approve a project contingency for renovations of the Tempe Public Library.

DOCUMENT NAME: 20090611PWTG07 LIBRARY - 3500 S RURAL RD (0902-12) PROJECT NO. 6702491

COMMENTS: Total cost for the construction services contract (CMAR) is \$6,483,419. Total cost for the construction management contract is \$150,000, and the amount of the project contingency is \$340,000.

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

REVIEWED BY: Tom Canasi, Community Services Manager (x5305)
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 (x8205)

FISCAL NOTE: Approximately 50% of the funds are currently available in Capital Improvement Fund No. 6702491. The balance will be available in fiscal year 2009/2010.

RECOMMENDATION: Award construction services and construction management contracts, and approve a project contingency.

ADDITIONAL INFO: This is a voter-approved bond-funded project. The scope of work for the CMAR construction services contract consists of renovations to the Tempe Public Library that will include remodeling of public areas, new children's area, teen area, computer lab, large meeting room, study rooms and various electrical and mechanical upgrades, and installation of new carpet throughout the facility, and main stair renovations.

The project contingency has been established at \$340,000, which is approximately five percent (5%) of the construction services contract amount, to cover possible unforeseen conditions during construction.

Staff has negotiated the CMAR construction services fee with Okland Construction Company, Inc. and considers it reasonable for the scope of services. Okland Construction Company, Inc. was selected by a review committee as the most qualified firm for these services using a process pursuant to A.R.S. § 34-603.

Bosak Architectural Companies, Inc. will provide construction management services, which includes monitoring and inspection of construction activities, logging and tracking project correspondence, chairing weekly construction meetings, and assisting the City with other construction management duties.

Staff has negotiated the fee and considers it reasonable for the scope of services. Bosak Architectural Companies, Inc. was selected from our consultant on-call list based on a process pursuant to A.R.S. § 34-103.



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 11th day of June, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and **Bosak Architectural Companies, L.L.C.**, an Arizona limited liability company (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Tempe Public Library Renovation**, Project No. **6702491** (“Project”).

1. SERVICES OF CONSULTANT

Consultant shall perform the following professional services to City in conformance with applicable professional standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- 1.1. Consultant shall provide construction management services, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Dave Bosak as the project manager for this Contract. Prior written approval by City is required in the event Consultant needs to change the project manager. Consultant shall submit the qualifications of the proposed substituted personnel to City for approval prior to any substitution or change.
- 1.3. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.
- 1.4. Consultant shall perform the work in a manner and at times which do not impede or delay City’s operations and/or functions.
- 1.5. Consultant shall be solely responsible for any repair, replacement, remediation and/or clean-up of any damage done by Consultant including any impairment of access to City or other lawful invitees, by such work performed on this Project.

2. TERM OF CONTRACT

Consultant shall complete all services within three hundred ninety-six (396) calendar days of the date appearing on the “Notice to Proceed” issued by City. In the event delays are experienced beyond the control of Consultant, the schedule may be revised as determined by City in its sole discretion.

3. CONSULTANT'S COMPENSATION

- 3.1. Payment for this Contract shall be based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference. Total compensation for the services performed shall not exceed \$150,000.00, unless otherwise authorized by City in its sole discretion. This fee includes an allowance of \$9,360.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- 3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by Consultant. If detailed invoice(s) and progress report(s) are approved by City, installment payments will be made within thirty (30) days after City's approval.

4. CITY'S RESPONSIBILITIES

- 4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by City on any aspect of the work shall be directed to the project manager.
- 4.2. City shall review requests for information related to the Project by Consultant and will endeavor to provide a prompt response to minimize delay in the progress of Consultant's work. City will also endeavor to keep Consultant advised concerning the progress of City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its subconsultant(s).
- 4.3. Unless included in Consultant's services as identified in Section 1, City may furnish with or without charge, upon Consultant's reasonable request, the following information to the extent it is within City's possession or control:
 - 4.3.1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, Consultant shall be solely responsible for searching the records and requesting specific drawings or information and independently verifying said information.
 - 4.3.2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.
 - 4.3.3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments.

5. TERMINATION AND DEFAULT

- 5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 7414 W. Louise Drive, Glendale, Arizona 85310. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.
- 5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.
- 5.3. In the event of Consultant's default, non-performance or breach, City agrees to, before exercising any right or remedy available to it, give Consultant written notice of the default, non-performance or breach. For the thirty (30) days following such notice, Consultant shall have the right to cure such default, non-performance or breach.
- 5.4. If Consultant fails to cure, immediately after receiving notice of termination from City, Consultant shall discontinue performance under this Contract and proceed to close said operations under this Contract. Consultant shall submit a detailed breakdown of completed work to City for evaluation. City shall have the right to inspect Consultant's work to analyze the services completed. Payment to Consultant shall be determined by City upon approval or disapproval of the services completed as of the date of delivery of notice of termination, and pursuant to Section 5.9.
- 5.5. Within ten (10) days of receipt of notice of termination as set forth herein, Consultant shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.
- 5.6. In the event of such termination or abandonment, Consultant shall be paid only for those services performed in a good and workmanlike manner, in accordance with all plans, specifications and governmental requirements completed prior to receipt of said notice of termination, subject to approval by City. To the extent permitted by this Contract, such payment may include reimbursable expenses then incurred by Consultant, in City's sole discretion.

- 5.7. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by Consultant as determined and approved by City based upon the scope of work set forth in Exhibit "A." However, in no event shall the fee exceed that set forth in Section 3 of this Contract.
- 5.8. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after Consultant has delivered the last of the completed items and the final appraisal has been submitted to City.
- 5.9. The parties agree that in the event of any damages suffered by City as a result of any delay, default, non-performance or breach by Consultant, Consultant agrees to reimburse City ten percent (10%) of the Contract amount per Section 3.1 for damages caused by its delay. This sum may be deducted from Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to Consultant for delivery and/or performance within the Contract term. Waiver by City of any of the provisions contained in this Section 5.9, or by way of the extension of the Contract term, shall in no way be deemed to waive or diminish City's rights available by law or in equity under the Contract.

6. INSURANCE

Without limiting any obligations or liabilities, Consultant, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from City.

6.1. General Clauses

- 6.1.1. Additional Insured. The insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall be excess coverage, and not contributory coverage to that provided by Consultant.
- 6.1.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so shall constitute a material breach of this Contract.

- 6.1.3. Primary Coverage. Consultant's insurance shall be primary insurance as respects City, and any insurance or self insurance maintained by City shall be in excess of Consultant's insurance and shall not contribute to it.
- 6.1.4. Claim Reporting. Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.
- 6.1.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of Consultant.
- 6.1.6. Deductible/Retention. The policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and City may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 6.1.7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.
- 6.1.8. Certificates of Insurance. Prior to commencing services under this Contract, Consultant shall furnish City with certificates of insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract by referencing the Project number and/or Project name and shall provide for not less than thirty (30) days advance written notice by certified mail to City of cancellation or termination of insurance.
- 6.1.9. Subconsultants/Contractors. Consultant shall include all subconsultants and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and subcontractor.
- 6.2. Workers' Compensation. Consultant shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case services under this Contract are subcontracted, Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by Consultant.

- 6.3. Automobile Liability. Consultant shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of Consultant services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.
- 6.4. Commercial General Liability. Consultant shall carry commercial general liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.
- In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.
- Such policy shall contain a "severability of interests" provision (also known as "cross liability" and "separation of insured").
- 6.5. Professional Liability. Consultant retained by City to provide the engineering services required by the Contract will maintain professional liability insurance covering errors and omissions arising out of the services performed by Consultant or any person employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims, or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of services as evidenced by annual certificates of insurance.
- 6.6. Property Coverage – Valuable Papers. Consultant shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of Consultant used in the completion of this Contract.

7. HEALTH INSURANCE REQUIREMENTS

- 7.1. Consultant must certify that it has or will offer health insurance to all eligible employees working on services set forth in this Contract prior to the performance of any work or services. An affidavit certifying such offering must be signed in a form approved by City. All required health insurance must be maintained during the entire time of the Contract with City. Health insurance pursuant to this Section 7 is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.
- 7.2. The health insurance requirements herein shall apply to all of Consultant's eligible employees directly involved with the services set forth in this Contract, including support and administrative personnel.
- 7.3. Any and all complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City's Public Works Department, within thirty (30) days from discovery of a potential violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
- 7.4. Penalties for failing to comply with this Section 7 include, but are not limited to the following: Consultant may be barred from bidding on, or entering into any Public Works contract with City for a period of three (3) years from the execution of the Contract.
- 7.5. All Consultants subject to the health insurance requirements shall post in English, notice of the health insurance requirements at their office and at the job site.

8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES

- 8.1. Consultant shall ensure that all the results and proceeds of Consultant's and any and all work on the Project and any related projects, including that of all agents, employees, officers, and contractors, shall be owned by City, including the copyright thereto, as work for hire. In the event, for any reason, such results and proceeds are not deemed work for hire, Consultant shall be deemed hereby to have assigned to City all of its right, title and interest in such results and proceeds and content to City, without limitation.
- 8.2. All work products (electronically or manually generated), including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file

diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of City and are to be delivered to City on the particular type of storage media on which they are stored (e.g. CD, thumb drive, etc.) before the final payment is made to Consultant. City shall retain ownership of these original works. If approved in writing by City, Consultant may retain the originals and supply City with reproducible copies of the work.

9. CONFLICT OF INTEREST

- 9.1. Consultant agrees to promptly disclose any and all financial and/or economic interest in the property, or any property affected by the work, or the Project itself other than as set forth herein, existing prior to the execution of this Contract. Further, Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if Consultant gains such interest during the course of this Contract.
- 9.2. If Consultant gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of City.
- 9.3. Consultant shall not engage the services on this Contract of any present or former City employee who was involved as a decision-maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.
- 9.4. Consultant agrees that it shall not perform services on this Project for any other contractor, subcontractor, or any supplier, other than City. In addition, Consultant shall not negotiate, contract, or make any agreement with a contractor, subcontractor, or any supplier with regard to any of the work under this Contract, or any services, equipment or facilities to be used on this Project other than with City.

10. COVENANT AGAINST CONTINGENT FEES

Consultant affirms that it has not employed or retained any company or person, other than a bona fide employee working for Consultant to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

11. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty herein shall arise in connection with any and all claims for damage, loss, liability and/or expenses attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of any person or property including loss of use resulting therefrom. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. DISPUTE RESOLUTION

In the event of a dispute concerning or in any way connected to the Contract or subject Project, the parties agree that the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by City in enforcing Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

13. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by Consultant without prior written authorization from City, at City's sole discretion. Additional services, when authorized by an executed contract or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between City and Consultant.

14. PROHIBITION ON ASSIGNMENT

This Contract and all duties and obligations of Consultant set forth in this Contract shall not be assignable except by prior written consent of City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of Consultant.

15. MISCELLANEOUS PROVISIONS

- 15.1. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination. Consultant agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this clause.
- 15.2. Legal Compliance. Consultant 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. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the legal right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants 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 Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
- 15.3. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (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.

Consultant further agrees to include the provisions set forth in Sections 15.1 through 15.3 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.4. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of Consultant.
- 15.5. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.6. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.
- 15.7. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.7, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees, assigns, contractors or subcontractors.
- 15.8. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.
- 15.9. Consultant's Good Standing. Consultant hereby warrants and represents that it is an Arizona limited liability company, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.
- 15.10. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.

- 15.11. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.12. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by City.
- 15.13. No Waiver. No breach or default hereunder shall be deemed to have been waived City, except by a writing to that effect signed on behalf of City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of City.
- 15.14. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.
- 15.15. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.
- 15.16. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, Consultant assigns to City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to City.
- 15.17. Headings. The heading use in this Contract is for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 15.18. No Construction Against Drafting Party. Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

15.19. Notices to Parties:

All notices pursuant to this Contract shall be made in writing and delivered or mailed by certified mail to the parties at the following addresses:

CITY:

Andy Goh, City Engineer
City of Tempe
Public Works/Engineering Dept.
P.O. Box 5002
Tempe, AZ 85280

CONSULTANT:

Dave Bosak
Bosak Architectural Companies, L.L.C.
7414 W. Louise Drive
Glendale, AZ 85310

- 15.20. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work becomes unavailable for payment by City under this Contract, City may delay the work for a period up to six (6) months, after which date if no funds are legally available, City may terminate the Contract at City's sole option. In case of any such delay by City, Consultant may suspend performance of work or services as applicable. However, nothing herein shall be construed to allow termination of the Contract by Consultant for such delay.

[SIGNATURE PAGE TO FOLLOW]

**Tempe Public Library Renovation
Project No. 6702491**

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

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

CONSULTANT
Bosak Architectural Companies, L.L.C.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A

BOSAK
ARCHITECTURAL
COMPANIES

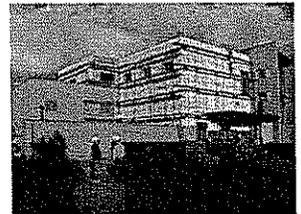
ARCHITECTURE

INTERIOR DESIGN

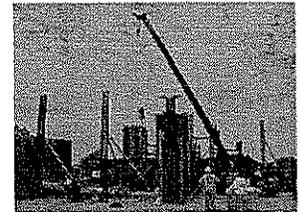
CONSTRUCTION
MANAGEMENT

DAVID A. BOSAK SR., AIA, LEED AP
PRESIDENT, PRINCIPAL ARCHITECT

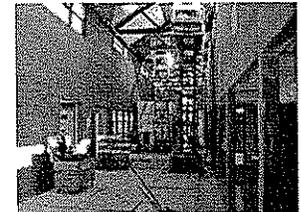
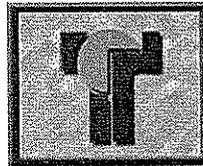
PATRICE C. BOSAK
MANAGING PARTNER



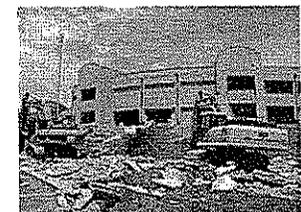
REQUEST FOR PROPOSAL



THE CITY OF TEMPE

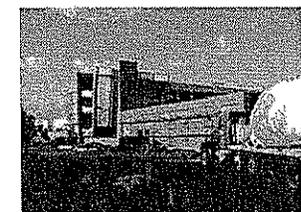


TEMPE PUBLIC LIBRARY RENOVATIONS PROJECT NO. 6702491

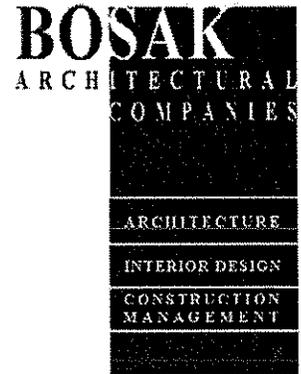


Email: DBosak@Bosak.biz
Phone: 602-909-0901
FAX: 623-561-0592

7414 W. LOUISE DRIVE GLENDALE, AZ 85310



CPB



March 19, 2009

Scott Balck
CIP Construction Manager
City of Tempe
31 E. 5th Street
Tempe, AZ 85281

RE: Proposal of Services
Tempe Public Library Renovation
City of Tempe Project No. 6702491

Mr. Balck:

We appreciate the recent opportunity to meet with you and tour the facility with Steve Phelps. We are pleased to present our proposal of professional services for construction management on the Tempe Public Library Renovation. We understand the significance this undertaking represents to you and the City of Tempe and the sensitivity necessary while managing the renovations at this operating Library.

The firm's construction management division: Bosak CPM, will be providing the necessary services for the above mentioned project. Bosak CPM has a proven track record in providing complete, comprehensive, Agency Program/Construction Management services on multi-million dollar quality and claims-free municipal capital improvement projects by providing comprehensive program/construction management, cost management and estimating, scheduling, dispute resolution and avoidance. Our expertise lies in successfully managing a variety of integrated project delivery methods, managing the owners risk while providing oversight of the contractor and architect and providing cost efficient solutions to achieve the best overall value for this project. Bosak CPM has established a proven record of accomplishment with our clients by delivering claims free projects with long-term value that are true to the program, on-schedule and within budget.

Our proposal, as detailed in the following pages, is based on our understanding of the project and scope of services that follows. In summary we have estimated thirteen (13) months of construction at 4 hours per day, 4 days per week, minimal Preconstruction services and a minor role during project Close-out. We are prepared to offer our professional services on an hourly, not-to-exceed fee in the amount of \$150,000.00 inclusive of reimbursable expenses, with a fully executed City of Tempe contract. Your expectation of a quality project will be obtained through our dedication to the City of Tempe, our professional expertise and our sensitivity to the Public Library's operating requirements. SDB

We are confident that Bosak LLC can render all required services in their entirety to your satisfaction. We look forward to the successful completion of this project and thank you for the consideration of this proposal.

Sincerely,
BOSAK ARCHITECTURAL COMPANIES L. L. C.

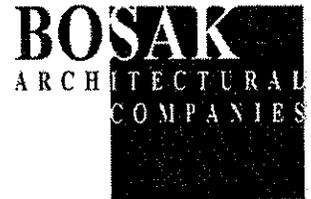
David A Bosak Sr., AIA, LEED AP
President/Principal Architect

AZ State Board of Technical Registration No. 33610

ARCHITECTURE INTERIORS MANAGEMENT

dbosak@bosak.biz
P 602 909 0901
F 623 561 0592

7414 W. Louise Dr
Glendale, AZ
85310



PROJECT UNDERSTANDING

The City of Tempe, Community Services Department is undertaking an approximately \$8.2 million dollar renovation project to the public Library. The renovation will occur while the Library remains operational. A significant remodel of the interior includes partitions, Ceiling, Mechanical systems, Electrical systems, Low Voltage Systems, FF&E, and Finishes.

The City has selected Bosak CPM to propose on Construction Management services on this Renovation Project. The CMAR is Okland Construction. Preliminary construction costs are \$8.2 million. The Architect is Engberg Anderson. Project Drawing are over 60% complete. A permit is anticipated on June 1, 2009. A NTP is anticipated by 7/1/09. Occupancy anticipated by late July 2010. Final Completion anticipated 45 days thereafter.

From our review of the drawings and tour of the facility we see the logistics of this renovation being our major challenge. The sequencing of activities coupled with a phasing and implementation plan must be such that the activities of the Library and public have minimal impact and we create a safe environment for staff and public. Staging, construction access and dust partitions must be carefully coordinated and enforced. Coordination of the Life Safety issues, Fire Alarm, Fire Sprinklers, Exiting, fumes from construction activities must be monitored closely. Daily communication is imperative.

■ PROJECT STAKEHOLDERS

The following entities are considered stakeholders, as identified to date, with the understanding that others may be added as the project proceeds.

- Library Staff
- City of Tempe
- Community Service Department
- Okland Construction
- Tempe Engineering Division
- Engberg Anderson
- Facility Services Department
- Library Facilities personnel

■ APPROACH SUMMARY

Bosak will provide a professional standard of care, as detailed in the Approach section of this document as follows:

- Care exercised while working in Operating Library
- Representation of the City of Tempe to all Stakeholders
- Support Engineering Project Manager's responsibilities
- Facilitate coordination with CMAR and City vendors
- Provide monthly updates to Stakeholders
- Maintain relationship with Operators, End-Users, and Maintenance Personnel

■ SCOPE OF SERVICES SUMMARY

Bosak will provide the general services as requested by the City of Tempe, as detailed in the Scope of Services section of this document as follows:

- Chair Weekly Project Progress Meetings
- Proactive with the timely flow of information
- Monitor overall Construction Quality
- Monitor Construction Schedule/Sequencing
- Review Contractors Application of Payments
- Review and Negotiate Construction Costs
- Monitor Operations of Library for Minimal Impact

APPROACH TO CONSTRUCTION MANAGEMENT

■ CONSTRUCTION ADMINISTRATION EXPERIENCE

Bosak LLC is qualified to offer our unparalleled Construction Administration expertise including, overall comprehensive project coordination, construction management, claims avoidance, inspections and on-site quality control. We are also capable of providing risk management, cost estimating, value engineering, constructability reviews and facilitate team communication, as we promote team collaboration. We have provided our services successfully to multiple municipalities on several multi-million dollar projects for various departments including Parks and Recreation, Police/Courts, Community Services, Community Development, Public Works and Water Utility Department. Our Proactive Approach enables us the ability to maintain budgets, meet scheduled deadlines, and provide quality projects all with zero claims to our clients.

■ **MANAGEMENT AND ORGANIZATIONAL CAPABILITIES** - Our approach is more proactive than reactive, thus allowing us the ability to remain in control of the Project offering a sequential approach to project completion resulting in less change orders and timely resolution of issues.

- **Organizational Skills** – Possess skills necessary to prioritize and identify critical path issues and manage multiple projects at varying stages while providing follow-thru for completion.
- **User Group coordination** – Understand the need for maintaining open communication with users thru weekly meetings, timely updates, and coordination of desired contract changes.
- **Submittal Review coordination** – Ability to coordinate and integrate various City user group comments during the shop drawing review process and address their concerns.
- **City Groups coordination** – Experience in providing the necessary coordination with the various City groups in regards to identifying and meeting their needs.
- **Timely Project Updates** – Our Executive summary, prepared and submitted monthly, identifies accomplishments, overall project status, areas of concern and future achievements.
- **Field Reports** – Sufficient construction knowledge to be able to identify deficiencies during construction and issue notices to responsible parties for immediate corrective action.
- **Overall Team Coordination** – Capable of coordinating efforts of all team members including the expediting of critical path issues while documenting in weekly meeting minutes.
- **Project Documentation** – Achieved thru detailed field reports and monthly project summaries, job photographs, emails and detailed meeting minutes for claims mitigation.
- **Close-out** – Starts with an awareness of City close-out procedures and documents required.
- **Submittals** – Understand sequencing of construction activities and relationship of submittal review to material deliveries to be able identify long lead items and avoid delays.
- **Project Accountability** - Our system maintains a permanent record for project history and tracking. The City will be informed of the project status at all times.

■ INSPECTIONS AND QUALITY CONTROL PROCEDURES

Construction is observed daily, we observe the installation of building components as well as underground water mains, sewer mains manholes, storm water piping, drywells, irrigation, and other site amenities. Bosak LLC provides weekly Field Reports distributed to the core team that identify areas of non-conformance, items requiring attention or potential problem areas. Bosak LLC's in depth Quality Control Plan starts with weekly QA reports from the Contractor. QA items are discussed weekly at each progress meeting. Knowledge of material testing requirements and the Geo-technical report affords us an understanding of the required monitoring and scheduling of the testing agency. Special Inspection agencies supplement our services.

APPROACH (CONTINUED)

■ COST MANAGEMENT

We adhere to established owner budgets through our approach to change orders which starts with prevention. A clear understanding of the contract documents, combined with the needs of the end users and goals of the City allows us the ability to monitor and prioritize owner-initiated changes in scope for timely and cost effective implementation. Potential contractor requested change orders are discussed at each weekly progress meeting to validate as well as explore options to mitigate exposure. Change Orders are scrutinized by evaluating scope and quantities. Labor rates and material costs are compared against current market values or MEANS cost estimating to determine fair and reasonable compensation. Timely processing in order to prevent unnecessary delays and general condition costs is vital. A Cost Impact Log is maintained and monitored closely. Known costs as well as probable costs are tracked to provide a real time worst-case assessment of the project costs. Our approach allows Bosak LLC and the City the ability to stay in touch with project circumstances resulting in minimizing unexpected and unforeseen costs associated with construction. Value Engineering is ongoing and potential owner initiated changes are addressed timely so as not to impact the schedule or incur additional costs. Bosak LLC has never exceeded a clients Budget.

■ TECHNICAL PERFORMANCE (QUALITY OF PRODUCT/SERVICES)

Bosak LLC commands a knowledge of Construction Administration. We have successfully provided analysis of procurement methods for the most favorable results, conducted comprehensive preconstruction conferences, Facilitated weekly construction meetings to discuss, RFIs, Submittals, Cost Requests, Payment applications and mitigated schedule impacts. In addition, we have coordinated the timely receipt of permits, coordinated utility providers, last minute owner changes; all seamlessly into the contractors work. We have endeavored to provide quality services resulting in a quality product at all times for all of our previous clients.

■ TIME MANAGEMENT

Bosak LLC's sensitivity to scheduling needs and proactive approach to foresee potential hindrances have helped mitigate owner delays, thus enabling the project team the ability to maintain sequential operations and continuity throughout the project. Delays are verified using the Critical Path Method before granting approval. Bosak LLC has a history of meeting completion dates by adhering to scheduled milestones and requesting remedial action when baseline activities lag by more than an acceptable level based on the complexity of project. Bosak LLC has never missed an opening date.

■ BUSINESS RELATIONS (PROFESSIONALISM, FOCUS ON SATISFACTION)

As a local Arizona company, our personable approach, ethical behavior and dedication to our past clients has built us a reputation of being fair, knowledgeable and beneficial to our clients. We have endeavored to meet or exceed client expectations by working closely with the Staff thru being responsive to their needs to ensure that project goals are met and by performing specific duties on their behalf thus minimizing project challenges. We have acted as the interface between all vendors, stakeholders and utility providers for prompt resolution of issues. All of our decisions are always made in the sole interest of the client. We maintain open communication in an effort to resolve any outstanding issues in a timely manner. We promptly return phone calls and emails. Our history of satisfied clients is a direct result of our attention to detail and desire to perform on their behalf, resulting in successful projects thru our proactive management process.

■ RESOLUTION OR AVOIDANCE OF DISPUTES

Bosak LLC practices claims avoidance through timely resolution of issues and proper project documentation. Bosak LLC provides a level and fair playing field for the entire team. Bosak LLC at all times will act in the interest of the owner while being fair so that the outcome is a win-win situation for all parties, as we promote partnering in an effort to reduce claims. Bosak LLC currently has not had claims come back on any of our Clients on projects that we have managed.



CUSTOMARY SCOPE OF SERVICES

Owner's Representative services provided by Bosak are performed in conjunction with our proactive Project Approach to achieve successful project completion for our Client.

■ PRE-CONSTRUCTION SERVICES

Arrival of GMP

Assist City with Guaranteed Maximum Price through attendance at meetings, review of cost model, performing value engineering, or providing cost estimating as requested.

Owner Coordination

Provide assistance with coordination of Owner furnished equipment for proper rough-in and coordination. Coordinate Information Technology requirements with Engineer and Architect.

Establish Budget

Prepare realistic project Budget identifying Funds available. Appropriate Funds to Professional Services, General Construction, Owner Costs and Owner Provided Items. Monitor encumbrances and expenses to date throughout construction.

Master Schedule

Develop overall schedule identifying responsibilities of Architect and Contractor. Integrate City permit review times. Identify Owner reviews. Establish work plan with deliverables and establish schedule with milestone dates.

Constructability Reviews

Review the Drawings and Specifications with the Design Consultant to minimize areas of conflict and overlapping in the Work to be performed by the various subs. Perform Buildings Systems analysis and Product reviews

Cost Controls

Perform Value Engineering to help operate within parameters of the Budget. Assist in the performance of Cost Estimates at key project development stages. Perform analysis of systems and components for any potential cost saving measures. Develop alternates.

Design Meetings

Participate in and perform Design review at intervals appropriate to phases of completion. Provide analysis of team approach and logistics to construction, ie phasing, vendor coordination, staging, etc.

Utility Coordination

Involve Utility Companies early in Design to help facilitate demolition, relocation and new utility requirements. Establish work plan with deliverables and establish schedule with milestone dates.

Procurement Options

Explore and discuss options for alternate delivery methods to yield most favorable result in cost saving or minimal exposure to the City. Assist with preparation of bid documents, advertisements, distribution of plans and addenda. Pursue contact of potential bidders. Assist with review of prior approvals. Coordinate bid opening and evaluate bids. Make recommendation to City based on acceptance or rejection of bids based on lowest responsible and responsive bidder and conformance to instructions.

SCOPE OF SERVICES (CONTINUED)

■ CONSTRUCTION SERVICES

Conduct Pre-Construction Conference

Bosak CPM will facilitate a comprehensive Pre-Construction Conference and discuss City's goals and objectives, schedule requirements, time and cost control requirements, access requirements, administration requirements. A comprehensive agenda will establish procedures, expectations, responsibilities, lines of communication and roles. Act as the single point of contact for all project-related communication and correspondence and distribute minutes to all stakeholders, verify receipt of building permits, GC bonds and insurance.

City Liaison

Serve as the interface between all project-related stakeholders and serve as liaison between agencies having jurisdiction. Assist GC with contacting Municipal personnel regarding water testing, installation of meters and sewer taps. Assist with Building Safety final inspection and issuance of the Certificate of Occupancy by Development Services. Assist in obtaining Fire Marshall Certificate.

Project Familiarity

Develop a working understanding of the Contract Documents, including specifications, General Conditions, Special Provisions, Special Inspection and Material Testing. Be familiar with MAG specification and OSHA Safety requirements.

On site Owner's Representation

Provide onsite construction management on a part-time basis for the monitoring of the GC's work to verify compliance with the contract documents, assist in resolution of conflicts, monitor construction sequencing, perform quality assurance checks and provide overall owner's representation on the City's behalf.

Chair Project Progress Meetings

Chair weekly project meetings with the stakeholders to discuss project progress and resolve any outstanding issues. Assure each team member provides logs and reports substantiating the applicable topics discussed. Identify user group critical dates and GC milestones and track weekly. Document pertinent weekly activities. Minutes will be detailed and comprehensive, with priorities established and action items outlining responsible parties and dates for compliance. Communicate priority issues. Minutes become project history with the ability to be used for reference in future discussions relating to questions raised, decisions made and direction given. Document the proceedings and distribute minutes to all stakeholders. Act in a time-sensitive, responsive manner, forwarding data and written communications and following up to assure prompt response and implementation of direction given.

Operational Library

Work closely with Library staff to minimize impact of construction on day to day operations of Library. Assist with coordination of phased construction activities for timely completion in order to maintain sequential operations during construction. Assist in maintaining a safe environment for the public while visiting Library. Assist in the coordination of Life safety issues and hazards to minimize their impact during construction process. At no time does Bosak Architectural Companies take responsibility of any of the aforementioned activities but instead provide only our assistance in creating a safe environment by bringing items to the attention of the responsible party.

SCOPE OF SERVICES (CONTINUED)

Submittals and Shop Drawing Reviews

Assist GC in establishing a procedure of processing and review of submittals and shop drawings to assure that required submittals have been provided, that they conform with the design intent, and are generally complete and have been reviewed simultaneously by the appropriate Stakeholders in a timely manner. The detailed review of the submittals will be provided by the architect. Submittals issued during the course of the week will be discussed at each progress meeting. Clarifications answered and prioritization of critical Submittals will be identified.

Field Issues

Research issues raised by the GC and make recommendations to the Architect. Provide ongoing value engineering. Document discussions not identified in RFIs in weekly minutes. Issue weekly field reports identifying overall progress, work in non-conformance and include items requiring attention by Architect or GC

Request for Information/Architects Supplemental Instructions

Establish an orderly exchange of information between the GC and architect. Insure logs are kept current by GC and Architect and brought to each progress meeting. RFIs and ASIs issued during the course of the week will be discussed at each progress meeting. Clarifications answered and prioritization of critical RFIs will be identified.

Changes in Scope/Change Orders

Confirm validity of GC change order requests in addition to providing an analysis of technical content and justification letter to the City. Perform negotiations on behalf of City. Revisions required by changed conditions, additions or deletions of scope will require a modification to the contract. Prepare Change Order with City cover sheet and supporting documentation.

Claims

Evaluate and respond to all GC claims including claims for time extensions and make recommendations to the City. Promote dispute resolution and claims avoidance.

Quality Assurance

Provide verification the GC's work is complying with the general intent of the contract documents. Issue letters of non-conformance to the GC for work in non-compliance. Request discussion of Quality Control topics from GC at each project meeting.

Safety

Assist in the review of the GC's Safety Manual. Monitor job site safety and bring all concerns to the attention of the GC. Safety is the responsibility of the GC.

Engineering Inspections

Assist with coordination of engineering inspections with municipality having jurisdiction associated with, but not limited to: sewer taps, water lines, fire lines and work within the Right-of-Way.

Special Inspections and Material Testing

Scheduling of special inspections and materials testing will be coordinated by the GC. Insure performance by City testing agency and compliance by GC, document in project meetings any areas of concern.

Utility coordination

Assist GC with the coordinate and installation of all utility services required for the project through a kick-off meeting with the utility providers.

SCOPE OF SERVICES (CONTINUED)

Schedule Review

Review monthly CPM construction schedule in conjunction with monthly pay application to verify compliance with baseline project schedule. Potential variances between monthly schedule and probable completion dates will be identified. Make recommendations to the GC and/or City for remedial action if necessary to mitigate schedule variances.

Application for Payment Review

Evaluate GC's monthly pay applications for actual work either completed or stored in place. Insure accuracy, proper notarization, appropriate lien releases and City cover sheet is included.

Monthly Executive Summary

Update monthly executive summary and distribute to City's Stakeholders informing them of the status, accomplishments and overall progress of the project.

Monthly City Stakeholders Meeting

Chair monthly Stakeholders meeting with Operators, End Users, Facility Personnel for coordination of owner requested design changes, shop drawing review, GC claims, Special Systems, Furniture delivery, Signage and Keying. The objective will be to control costs, implement the goals of the City, coordinate and meet schedule milestones as well as identify issues and provide the City with the information necessary to make informed project decisions in a timely manner.

Cost Tracking Log

Monitor City's contingency and keep a log of current PRs, CRs as well as potential costs to convey a clear understanding of overall contingency status to the City. Include any significant changes to the contract associated with ASIs and RFIs.

City Vendors

Coordinate City keying, signage, special systems and FF&E vendors with the GC to help mitigate scheduling and installation issues.

Architect responsibilities

Involve the architect in the project to the extent expected by the basic services contract requirements, including responding to RFIs, timely Shop drawing review, generating ASIs, attending project meetings and performing site observations.

■ CLOSE-OUT

Bosak CPM will work with the End Users to identify move-in dates early in the project in order to ensure proper planning and coordination for timely beneficial occupancy.

Commissioning Reviews and Activities

Observe the start up and operation of building systems with City Facilities Personnel.

Substantial Completion

Confirm Facility is complete satisfactory for it's intended purpose so that Owner may commence move in operations.

SCOPE OF SERVICES (CONTINUED)

Punch List

Prepare in conjunction with the architect and GC a punch list of deficiencies to be addressed in order to obtain substantial completion. The City, end user, facilities personnel and plant operator will be in attendance to offer their input.

Record Drawings

Review the progress of GC's set of as-built drawings monthly for accuracy and completeness.

Training

Coordinate equipment training with applicable City personnel

■ POST-CONSTRUCTION SERVICES

Staff and Furniture Move-in

Assist with occupancy by coordinating FF&E delivery dates with any GC activities. Move-in dates will be coordinated and planned early in the project in order to ensure proper planning and coordination for the move-in.

Final Completion

Assist the City in the close-out of the project including:

- General review and acceptance of GC as-builts
- Issuance of Certificate of Occupancy
- Receive completed affidavit of settlement of claims from GC
- Transmit Operating and Maintenance manuals to maintenance personnel
- Proper execution of all GC warranties and guarantees
- Process final pay application, labeled as such and release of final retention
- Verify completion of utility hook-ups
- Completion of all punch list items to the satisfaction of the City
- Submittal of Commissioning and HVAC T&B Reports
- Receive keying for all GC furnished equipment
- Receive warranty form and establish procedures
- Verification of attic stock received by facilities personnel

Document Control

Maintain project records as necessary to document the activities throughout construction. At the completion of the project, submit all project documentation; meeting minutes, schedules, pay applications, RFIs, ASI, PRs, CRs, Change Orders, observation reports, record photographs and correspondence to the City for permanent storage.

Post Occupancy

Perform one year warranty punch with the City, plant operator, maintenance personnel and staff to document any warranty items prior to warranty expiration. These warranty punch lists will be forwarded to the GC for their immediate resolution.



David A Bosak Sr., AIA, LEED AP

Project Manager

■ **EDUCATION**

Arizona State University, School of Architecture and Environmental Design
Bachelor of Science in Design, 1988, with a Major in Architectural Studies

■ **ASSOCIATIONS**

AIA - American Institute of Architects
CMAA – Construction Management Association of America
USGBC - US Green Building Council
ACE – Alliance for Construction Excellence
AAED - Arizona Association for Economic Development
APWA - American Public Works Association
AASBO – Arizona Association of School Business Officials

■ **REGISTRATION**

Registered Architect, License No. 33610, State of Arizona, State Board of Technical Registration
LEED 2.0 Accredited Professional, US Green Building Council

■ **BACKGROUND**

Mr. Bosak is responsible for the successful completion of medium to large-scale projects by maintaining direct contact with all stakeholders to ensure that goals are met and objectives are understood and relayed directly to the project team. Mr. Bosak brings strong management and leadership to the team through exceptional organizational skills, a firm understanding of the design and construction process and sensitivity to the client's scheduling, programming and budget requirements. Managerial responsibilities include coordinating all aspects of multiple projects including providing accounting of clients funding, schedule remediation recommendations and project updates. Mr. Bosak has proven experience with a multitude of delivery approaches including CM@Risk as well as fast-track schedules and tight budgets, endeavoring always to exceed the client's expectations.

■ **UNIQUE QUALIFICATIONS**

Over 20 years of Architectural, Construction Management and Contract Administration experience, professional degree from Arizona State University, Licensed Architect in the State of Arizona, member of the American Institute of Architects. LEED 2.0 AP. His knowledge and hands-on, practical, field expertise compliments his management skills in communication, accountability, coordination, effectiveness and commitment making him a valuable asset on any project.

■ **RELEVANT ARCHITECTURAL TECHNICAL EXPERIENCE**

Mr. Bosak received his early Architectural experience designing Custom Homes. He has over 20-years of Architectural experience on both Municipal and Private sector projects that include Libraries, Airports, High-rise-Hotels, Class-A Office Buildings, Retail Centers, Casinos, Fire Stations, Parking Garages, Educational Facilities, Industrial buildings, T.I.s and Residential Projects. Most recently he was the design architect on a \$200 million mixed use high-rise project in downtown Phoenix.

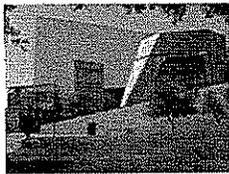
■ **RELEVANT CA/CM TECHNICAL EXPERIENCE**

Mr. Bosak received his early Contract Administration experience on Terminal 4 Airport in 1990. He has 18-years of CA/CM experience on several Multi-million dollar projects that include Libraries, Water Facilities, Community Centers, Baseball Stadiums, Court Rooms, Parking Garages, Educational Facilities, T.I.s, Offices and Warehouses. In the past 9 years, he has personally been the responsible lead in performing Construction/Program Management-CA work on nearly \$200 million in both horizontal and vertical government projects.

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■ **PREVIOUS FIRM EXPERIENCE** – Between the years of 1990-2004, while employed at various Architectural and Construction Management Firms, Mr. Bosak performed the various roles identified below as keyed in the projects that follow. This early and varied experience afforded Mr. Bosak with a comprehensive background in the Design and Construction Industry.

- **Contract Administrator (CA)** – Submittal, RFIs, Field Reports, PRs, ASIs, Certified pay apps
- **Construction Manger (CM)** – Managed, Costs, Schedule, Claims, Time, Owner Vendors, Utilities
- **Project Architect (PA)** – Responsible for projects success, managed team, answered to PIC
- **Job Captain (JC)** – Responsible for Architectural detailing and drafting on particular components
- **Program Manager (PM)** – Developed initial Scope, Programming, Budgets, Schedules



Arizona Science Center (CA), Phoenix, AZ
Phoenix Central Library (JC), 269,000 SF, Phoenix, AZ

Phoenix Sky Harbor International Airport, T-4, Phoenix AZ
2nd Level Fueling/Car Wash Facility (JC/CA) \$700,000, 13,000 SF,
Rental Car Parking Structure, \$12 million, (JC/CA), 75,000 SF

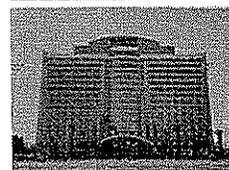


JET Residence Tower (PA), \$200M Mixed-Use High-rise Apartment Towers- Retail, Office, Parking Structure, Hotel, Phoenix, AZ
150,000 SF Bank of America Data Center, (PA), Phoenix, AZ

Mohave County Municipal Complex (PM), 13,000 SF, Kingman, AZ



3131 Camelback (PA), 300,000 SF Class A Office, Phoenix, AZ,
3-level 400,000 SF, Parking Structure
America West Airlines Corporate Headquarters (CA), 225,000 SF,
9-story, 5-level 400,000 SF, Parking Structure, Tempe AZ,
Marriott Suites Hotel (PA/CA), 16-story, 280 key, Las Vegas



Florence Unified School District -High School Addition, 75,812 SF,
Distance Learning Lab, \$100,000, TV Studio (CM), \$325,000



J. O. Combs Elementary School District - Jack W. Harmon Elementary (PM/CM), 93,850 SF, Simonton Elementary, 92,630 SF

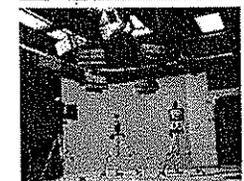
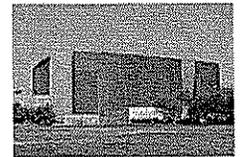
Fountain Hills Unified School District, \$25 million CIP
Fountain Hills Middle School (PM/CM) \$14 million, High School Renovation, Administration Renovation, \$443,000 Field House, \$2 million Four Peaks Elementary School Addition



Higley Unified School District, \$50 million Capital Improvement Plan
Higley High School (PM/CM), 227,800 SF, Roadway/Utility Improvements, \$750,000, Santan Elementary, 110,880 SF Coronado Elementary School, 85,000 SF, Higley Elementary Addition, \$4 million



Motorola University (CA), 75,000 SF, Tempe, AZ
North High School (PA), \$16 million Addition, Campus Renovation, Phoenix Unified School District
Rock Point High School (PA/CA), 125,000 SF, Rock Point, AZ



SDB

FEE SCHEDULE



Year	Month	Construction Management Architect	Administrative Support	Field Engineer	Subtotal Hours	Reimbursement	Monthly Invoice	
2009	April	15Hrs	Hrs	Hrs	15Hrs	\$0.00	\$2,025.00	
	May	35Hrs	Hrs	Hrs	35Hrs	\$250.00	\$4,975.00	
	June	35Hrs	Hrs	Hrs	35Hrs	\$250.00	\$4,975.00	
	July	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	August	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	September	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	October	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	November	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	December	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
	2010	January	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00
		February	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00
		March	70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00
April		70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
May		70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
June		70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
July		70Hrs	6Hrs	Hrs	76Hrs	\$675.00	\$10,455.00	
August		15Hrs	Hrs	Hrs	15Hrs	\$85.00	\$2,110.00	
September		Hrs	Hrs	Hrs	Hrs	\$0.00	\$0.00	
Total Hours		1,010Hrs	78Hrs	Hrs				
Rate		\$135/Hr	\$55/Hr	\$115/Hr	Prof Svcs	Reimb	Total Fee	
Sub Totals		\$136,350.00	\$4,290.00	\$0.00	\$140,640.00	\$9,360.00	\$150,000.00	

- We have shown 3 months for preconstruction services 13 months for construction and 2 months for final completion
- See (Exhibit A) Rate Schedule for billable rates, Reimbursables and premium charges



EXHIBIT A

RATE SCHEDULE

The following Personnel Rates are effective June 6, 2009 thru June 5, 2010.

■ PERSONNEL RATES

<u>CLASSIFICATION</u>	<u>RATE</u>
Senior Project Manager	\$160/Hour
Project Manager	\$135/Hour
Field Engineer	\$115/Hour
Administrative Personnel	\$55/Hour

■ REIMBURSEMENTS

Project Reimbursements may include:

- Laptop
- Cell Phone/long distance
- Broadband
- Printing/Reproductions
- Postage/shipping
- Ground Travel or Mileage at \$0.485/Mile
- Reasonable lodging
- Travel-related meals
- Public Meetings

■ FIELD OFFICE

On-site Field office is customarily provided by General Contractor, Complete with furnishings, fax and internet capabilities.

■ PREMIUM CHARGE

Premium Charge: Overtime work, Saturday, Sunday, etc:

Hourly Rate times a multiplier of 1.50.

Work required on Holidays, Depositions or court appearances:

Hourly Rate times a multiplier of 2.0.

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

**Tempe Public Library Renovation
Project No. 6702491**

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of \$30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company: _____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2009.

General Contractor/Prime Consultant

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2009.

Notary Public

My commission expires:

City of Tempe

Guidelines for Implementation of Health Insurance

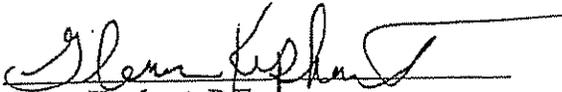
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of \$30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of \$30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.
2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.
3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.
8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.


Glenn Kephart, P.E.
Public Works Manager