

City of Bethel Action Memorandum

Action memorandum No.	19-03		
Date action introduced:	January 8, 2019	Introduced by:	Peter Williams, City Manager
Date action taken:	January 8, 2019	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied
Confirmed by:	KM		

Action Title: Authorizing the City Manager to negotiate and execute a contract with the lowest bidder for the public works boiler installation

Attachment(s): Proposed Contract for Services

Department/Individual:	Initials:	Remarks:
Bill Arnold, Public Works director	<i>BA</i>	
Pete Williams, City Manager	<i>PW</i>	
Patty Burley, City Attorney	<i>PB</i>	Procurement process complied with as well as both the BMC & AK law

Amount of fiscal impact:		Account information:
	No fiscal impact at this time.	
\$652,726	Funds in City Budget.	51-80-777
	Funds not in City Budget.	

Summary Statement:

For this project, the City of Bethel submitted an Invitation for Bids on two (2) separate occasions. The first occurred approximately in June of 2018 and the second occurred in August of 2018.

In the 1st RFP, the bids that came in all exceeded the City's budget causing the City to deny all bids and re-evaluate their strategy. The City split the procurement up and purchased the boilers in a separate procurement. The 2nd RFP, the one now before the Council, focused solely on installation costs.

The 2nd RFP received two responses. However, both responses were also above the City's budgeted amount for the work. As a result, the City (a) requested more funding from the City Council and (b) did some value engineering negotiations to bring the costs down as much as possible. Ultimately, the lowest bidder is the one being offered the contract.

Initially, Inlet (the proposed contract) bid approximately \$714,000 while Premier Electric bid approximately \$750,000.

SECTION 00 52 13

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Bethel P.O. Box 1388 Bethel, AK 99559 (“Owner”) and
Inlet Mechanical, PO Box 240727 Anchorage, AK 99524 (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:
Remove the two existing boilers in the Utility and Maintenance Facility, and replace them with two owner-procured “MPC High Efficiency Cast Iron Multi-Pass Commercial Water Boilers” by Burnham Commercial Boilers.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by DOWL - 4041 B Street, Anchorage, AK 99503

3.02 The Owner has retained DOWL (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before July 31, 2019, and completed and ready for final payment in accordance with Paragraph 15.06 of the Standard General Conditions on or before August 15, 2019.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$ 500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$ 500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 4. ~~Milestones: Contractor shall pay Owner \$ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.~~
- ~~B. Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$.~~

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid **and in accordance with the 11/15/2018 Value Engineering Letter (excluding the \$10,416 deduction for the removal of the demolition deduction)**, attached hereto as an exhibit.
 - B. Final price paid by Owner to Contractor shall not exceed **Six Hundred Fifty-Two Thousand, Seven Hundred Twenty-Six (\$652,726) Dollars.**

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 *Submittal and Processing of Payments*
- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the Standard General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 *Progress Payments; Retainage*
- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st (first) day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have

been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. Ninety (90) percent of Work completed (with the balance being retainage), and
 - b. Ninety (90) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion of the entire Work to be provided under the Contract Documents, Owner shall pay an amount sufficient to increase total payments to Contractor to **Ninety-eight (98)** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the Standard General Conditions, and less **Two (2)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the Standard General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of **Eight (8%)** percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has **made himself aware of existing conditions** visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been

identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (EJCDC C-520 pages 1 to 7, inclusive).
 - 2. Performance bond (EJCDC C-610 pages 1 to 3, inclusive).
 - 3. Payment bond (EJCDC C-615 pages 1 to 3, inclusive).
 - 4. Other bonds.
 - a. (pages to , inclusive).
 - 5. Standard General Conditions (EJCDC C-700 pages 1 to 68, inclusive).
 - 6. Supplementary Conditions (EJCDC C-800 pages 1 to 6, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of 14 sheets with each sheet bearing the following general title: Public Works Boiler Replacement.
 - 9. Addenda (numbers to , inclusive).

10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages █ to █, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 1/14/2019 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Bethel

By: Peter A. Williams

By: Jeffrey E. Byrne

Title: City Manager

Title: Vice President

(If Contractor is a corporation, a partnership, or a joint venture, attaches evidence of authority to sign.)

Attest: _____

Attest: _____

Title: City Clerk

Title: _____

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Address for giving notices:

City of Bethel Legal Department

PO Box 1388

Bethel, AK 99559-1388

Address for giving notices:

License or
Registration

No.: MECM738 (State of Alaska)
(where applicable)