

RESOLUTION 31-2011

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN AGREEMENT WITH B & D AIR CONDITIONING, INC. FOR ENERGY EFFICIENCY HVAC RETROFIT PROJECT AZBS-EECBG #RO16-10-02

WHEREAS, the City of Benson was previously awarded a grant by the Energy Efficiency and Conservation Block Grant (EECBG) under the American Recovery and Reinvestment Act, funded directly through the Arizona Department of Commerce Energy Office, supporting projects to improve energy efficiency and reduce energy use in Arizona cities, towns and counties; and

WHEREAS, the Public Works Department has published a request for sealed bids for the well upgrades and the proposal received from B& D Air Conditioning, Inc. in the amount of \$ \$25,585.00 is recommended for selection as the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, as follows:

The construction contract with B & D Air Conditioning, Inc. attached hereto as Exhibit "A" and incorporated herein by this reference, in the amount of \$25,585.00 is hereby approved and the Mayor is authorized to execute said agreement on behalf of the City; Brad Hamilton, City Engineer and Public Works Director, is hereby designated as Project Manager of the above described project on behalf of the City.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 11th day of April, 2011.


MARK M. FENN, Mayor

ATTEST:


VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

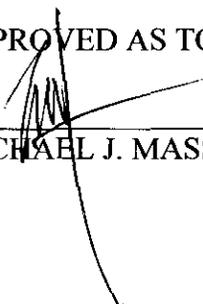

MICHAEL J. MASSEE, City Attorney

EXHIBIT A
CONSTRUCTION AGREEMENT

CITY OF BENSON
ENERGY EFFICIENCY HVAC RETROFIT PROJECT,
AZBS-EECBG #RO16-10-02

CONSTRUCTION AGREEMENT

CITY OF BENSON ENERGY EFFICIENCY HVAC RETROFIT PROJECT AZBS-EECBG R016-10-02

THIS AGREEMENT, made and entered into as of the date last signed, by and between the City of Benson, Arizona, organized and existing under the laws of the State of Arizona, hereinafter designated as the "Owner" and B & D Air Conditioning, Inc., hereinafter designated the "Contractor".

WITNESSETH: That the Contractor and the City of Benson, in consideration of the mutual covenants herein contained, agree as follows:

SCOPE OF WORK

The removal and proper waste stream disposal of the existing three (3) HVAC units and three (3) thermostats.

- The removal and proper waste stream disposal of the existing HVAC unit, retrofit of one (1) CARRIER 48TCED08A1A5-0A0A0A High Efficiency Commercial 7.5 ton single gas package rooftop unit. Inspect and repair ductwork as necessary and balance the system airflow when completed. Replace old thermometer with one (1) CARRIER programmable and lockable set-back thermostat on the City's 9,652 square foot Police Complex located at 360 S. Gila Street. The price will include condensate, electrical, economizer, gas, roof curb, duct hook-ups, removal of the old equipment, crane, equipment start-up, complete installation, check duct work and balance system.
- The removal and proper waste stream disposal of the existing HVAC unit, retrofit of one (1) CARRIER 48TCDA06A2A5-0A0A0 High Efficiency Commercial 5 ton single gas package rooftop unit. Inspect and repair ductwork as necessary and balance the system airflow when completed. Replace old thermometer with one (1) CARRIER programmable and lockable set-back thermostat on the City's 9,652 square foot Fire Complex located at 360 S. Gila Street. The price will include condensate, electrical, economizer, gas, roof curb, duct hook-ups, removal of the old equipment, crane, equipment start-up, complete installation, check duct work and balance system.
- The removal and proper waste stream disposal of the existing HVAC unit, retrofit of one (1) CARRIER 48TCED12A1A5-0A0A0 High Efficiency Commercial 10 ton single gas package rooftop unit. Inspect and repair ductwork as necessary and balance the system airflow when completed. Replace old thermometer one (1) CARRIER programmable and lockable set-back thermostat on the City's 8,175 square foot Benson Public Library, 300 S. Huachuca, Benson, Arizona. The price will include condensate, electrical, economizer, gas, roof curb, duct hook-ups, removal of the old equipment, crane, equipment start-up, complete installation, check duct work and balance system.

The Contractor shall provide all wire, fuses, conduit, boxes and other parts or hardware for the installation. The installation shall be in compliance with the 2005 National Electric Code and 2006 International Building Code.

The Contractor will be required to submit a "Made in America" certificate of origin for the HVAC units prior to bid award.

The Contractor will provide Waste Stream Management Plan and data for the disposal of HVAC units, thermostats and any other materials before the award of bid and final results after disposal.

The City of Benson retains the right to increase, reduce or eliminate portions of the work to coincide with the availability of Project funds. The Contractor shall furnish all materials, labor, equipment, services and transportation, and perform all of the work on this project.

This project is wholly or in part federally funded and the Contractor, accordingly will be required to comply with all applicable federal laws, including but not limited to the Federal Labor Standards Provisions, Davis-Bacon Act (29 CFR Parts 1, 3, 5, 6, and 7), Contract Work Hours and Safety Standards Act, Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by the Department of Labor regulations (29 CFR Part 3), and the Fair Labor Standards Act.

The Contractor agrees to comply with the Federal Labor Standards Provisions (HUD 4010 (2-83)), which is incorporated by reference herein. The Contractor shall supply information to the Owner as necessary for monitoring of compliance to include, but not limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the Owner. The Contractor agrees to comply with the current **Wage Rate Determination General Decision Numbers: AZ 100001 12/24/2010 AZ5**, which are included in the bid package and incorporated by reference.

CONTRACT PRICE

Basic Price. The City of Benson shall pay the Contractor the base bid sum of Twenty-five thousand five hundred eighty-five Dollars and 00 Cents (\$25,585.00), subject to adjustment as actual units are determined.

CONTRACT DOCUMENTS

The following listed documents constitute the Contract Documents and they are all as fully a part of the Contract as if herein repeated.

1. Invitation to Bid
2. Bid Proposal
4. Non-Collusion Affidavit
5. List of Subcontractors
6. 10% Bid Bond

7. 100% Statutory Labor and Materials Payment Bond
8. 100% Statutory Performance Bond
9. Construction Agreement
10. Labor Standards Certification
11. Checklist for Sub-Grantees
12. SF 1413 Statement of Prime Contractor and Sub Contractors
13. Energy Efficiency and Conservation Block Grant (EECBG) Guidelines

BONDS

Performance Bond and Labor And Material Payment Bond. The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising, thereunder, in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

TIMETABLE

Starting Time. Notice to Proceed shall be issued not later than 30 days after execution of this agreement.

Completion Time.

The work shall be completed within 60 consecutive calendar days for construction after the date of the Notice to Proceed. The Contractor agrees that said work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the area.

PROGRESS PAYMENT

After the Owner has approved an Application for Payment, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State to the Owner, or sooner, at the OWNER'S discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month. Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents.

LIQUIDATED DAMAGES

Liquidated Damages. If the work is not completed when agreed, the Contractor shall pay to the City of Benson \$300.00/day as liquidated damages for each consecutive calendar day the work remains incomplete after the scheduled completion date for construction.

INSURANCE

The CONTRACTOR shall procure and shall maintain during the life of this Contract: Statutory Workmen's Compensation Insurance, Contractor's Public Liability Insurance, Contractor's Property Damage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and Vehicular Liability of \$1,000,000 for any one person or \$2,000,000 for each occurrence. The OWNER/GRANTEE shall be named as co-issued on the policy.

The CONTRACTOR shall either (1) require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the amounts specified above; or (2) insure the activities of his/her subcontractor's in his/her policy specified above.

"All Risk" type Builder's Risk Insurance will not be required for this Project.

Property Insurance. The OWNER/GRANTEE shall not be required to maintain property insurance policy upon the work.

SUSPENSION OF WORK AND TERMINATION

Termination of Contract for Cause:

If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of the Contract, the OWNER/GRANTEE shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONTRACTOR under this Contract shall, at the option of the OWNER/GRANTEE, become its property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the OWNER/GRANTEE for damages sustained by the OWNER/GRANTEE by virtue of any breach of the Contract by the CONTRACTOR, and the OWNER/GRANTEE may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the OWNER/GRANTEE from the CONTRACTOR is determined.

Termination for Convenience of the OWNER/GRANTEE. The OWNER/GRANTEE may terminate this Contract at any time by giving at least (10) days notice in writing to the CONTRACTOR. If the Contract is terminated by the OWNER/GRANTEE as provided herein, the CONTRACTOR will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONTRACTOR, the aforementioned clause relative to termination shall apply.

RECORDS DOCUMENTATION

Records Retention. The CONTRACTOR shall maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the OWNER/GRANTEE to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the OWNER/GRANTEE.

Access to Records. Legible copies of all records maintained by the CONTRACTOR shall be made available, upon request, to the OWNER/GRANTEE, the Arizona Department of Commerce and any other body authorized by the OWNER/GRANTEE.

LEGAL WORKER REQUIREMENTS

As mandated by Arizona Revised Statutes § 41-4401, the City is prohibited after September 30, 2008, from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). The City must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). Therefore, in signing or performing any contract for the City, the Contractor fully understands that:

- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A);
- B. A breach of the warranty described in subsection A, shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and
- C. The City or its designee retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under subsection A.

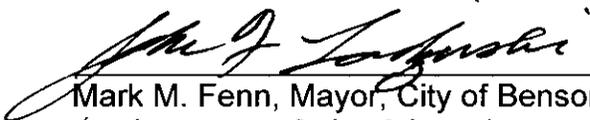
MISCELLANEOUS

Guarantee. The Contractor shall guarantee all work under this Contract against defects of material and workmanship for a period of one (1) year from the completion date. Material and workmanship made good through compliance with such guarantee shall be subject to the same guarantee for a period of one (1) year from the date on which the material and/or workmanship was made good.

Assignment. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the City of Benson.

CITY OF BENSON

SIGNED this 12 day of April, 2011.



Mark M. Fenn, Mayor, City of Benson ("OWNER")
(John F. Lodzinski, Vice Mayor for Mayor Fenn)

ATTEST:



Vicki L. Vivian, City Clerk

APPROVED AS TO FORM this _____ day of _____, 2011.

Michael Masee, City Attorney

B & D Air Conditioning, Inc.

SIGNED this 7 day of April, 2011.

By: Boyce T. McBride
Signature

By: Boyce T. McBride
Printed

Its: President