
Agreement Between Owner and Contractor For the Purchase and Installation of a Pre-Engineered 53,000 Gallon Water Storage Tank Las Palomas, VFD

THIS AGREEMENT is made and entered into by and between the County of Sierra, hereinafter referred to as the "County" and **SMITHCO.**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Chief Procurement Officer and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

PART 1: WORK OF THIS CONTRACT

The Owner hereby engages the Contractor under the terms and conditions of this Agreement and the other Contract Documents (defined below) to perform on-demand flood control construction services in accordance with the terms of this Agreement.

The form of agreement shall be:

- *This Agreement*
- *Compensation based on Appendix B- Bid Signatory Form- not to exceed offer*
- Invitation To Bid Form
- AIA DOCUMENT A201-2007, General Conditions of the Contract for Construction (*As Amended 2-30-15*)
- State of New Mexico, Department of Workforce Solutions, Minimum Wage Rate Determination
- All applicable bonds

The following General Terms and Conditions are an equal and integral part of this Agreement. The terms, conditions and specifications contained in **Sierra County ITB#2015-04-003, Design/Build – 53,000 Gallon Pre-Engineered Water Storage for Las Palomas, VFD**, along with any attachments and the Contractors' response are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then

3. the Invitation To Bid; then
4. the Contractors Bid Submittal; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's bid.

Contractor shall provide licensed construction services, geotechnical report, insurance, including labor, equipment and materials to perform work as generally described below with the Scope of Work.

COMPENSATION:

A. The County shall pay to the Contractor in full payment for services satisfactorily performed One-Hundred-Seventeen Thousand, Seven-Hundred Dollars, and Forty-Four Cents (**\$117,700.44**) on project completion and close out approval, to be invoiced in after performance of the services. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (**\$8,165.44**) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (**\$125,865.44**). In no event will the Contractor be paid any amount in excess of the specified total amount payable without this Agreement being amended in writing.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. Contractor must submit a detailed statement accounting for all services performed, specified on a minimum of a quarter hour basis, and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

PART 2: SCOPE OF WORK

2.5 The work consists of Design/Build Construction services. The contractor must be licensed by the New Mexico Construction Industries Division as a: **NFPA** or **GF-98**. Construct Pre-engineered water storage tank, cement slab and hydrant for the Las Palomas Volunteer Fire Department.

2.6 The duties and responsibilities of the successful contractors include, but may not be limited to performing the following services. Generally, the work is designing, constructing and installing a 53,000 gallon pre-engineered water storage the work is to be performed at within the Las Palomas Fire District

Wage Rates # SI-17-0548-H

2.11 *New Mexico Local Public Works* (Projects equal to or greater than \$60,000) are subject to the requirements of 13-4-13.1. Note, a separate wage rate determination will be provided for each project in excess of \$60,000.

PART 3: PERFORMANCE OF THE WORK

3.1 The Contractor shall execute the work awarded to Contractor in accordance with and as described in, or reasonably inferable from, the Contract Documents, including the Exhibit A, Invitation to Quotation Form and the exhibits and attachments thereto and the Purchase Order for each Project (the "Work").

3.2 If the Contract Documents require that the Contractor provide design services for any portion of the Work for a given project that is described as being provided on a design and construct basis (the "Design and Construct Work"). The Contractor, directly or through its qualified Subcontractor, shall provide the design services necessary to prepare the drawings, specifications and other design submittals required to obtain permits for, and construct the Design and Construct Work. Contractor shall submit the drawings and specifications for the Design and Construct Work to the Owner for approval prior to constructing the Design and Construct Work. The Design and Construct Work shall be designed and constructed in compliance with applicable codes, laws and regulations. To the extent required by the law of the state of New Mexico, the design services for the Design and Construct Work shall be provided by duly licensed design professionals. The Contractor assumes responsibility to the Owner for the performance of the Design and Construct Work, including any negligent errors and omissions in the design of the Design and Construct Work. Further, the liability insurance required of the Contractor and any Subcontractor performing Design and Construct Work pursuant to the Agreement shall specifically delete any design or design-build exclusions that could limit, compromise or exclude coverage in connection with the Design-Build Work.

3.3 If any Work is to be performed in an occupied building, the Contractor shall perform the Work in a manner that will not, to the greatest extent possible, interfere with the Owner's on-going operations at the Project site or disturb the occupants. Contractor shall use its best efforts to limit the impacts of noise and dust generated from the performance of the Work on the occupants, and shall comply with specific work rules provided by Owner. Contractor's use of a Project site for access, storage, staging and parking shall be limited to those areas designated by the Owner. The Contract Sum approved for each Project as stated in the Purchase Order issued to Contractor for that Project, includes all amounts required to comply with this Section.

PART 4: RELATIONSHIP OF THE PARTIES

4.1 The Contractor accepts a relationship of trust and confidence between itself and Sierra County. The Contractor agrees to furnish his/her/its' best skill and best judgment and to cooperate with County and all regulatory agencies, and any design professionals associated with the oversight and funding of the Project. The Contractor shall furnish efficient Contractor reviews, business administration, field supervision and shall use his/her/its' best efforts to perform the work in the best and most expeditious, economical manner consistent with the interests of the County, and in strict conformity with all funding requirements, State, Federal and local rules, laws and regulations.

4.2 Photographs

The contractor will take before, daily progress, and after digital photographs of the work assigned. The photographs will be identified by date, location, and a description of the work. Photographs will be provided to the contract administrator on a weekly basis.

PART 5: EQUAL OPPORTUNITY

5.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, recruitment or recruitment advertising, upgrading, layoff or termination, demotion, rates of pay or other forms of compensation, transfer, selection for training (including apprenticeship)

5.2 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

5.3 The Contractor, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

PART 6: MINIMUM WAGE RATES

6.1 The Contractor warrants and agrees that he will comply and will require all Subcontractors and Sub-subcontractors to comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than \$20,000. The Contractor and his Subcontractors shall deliver by mail copies of certified weekly payroll in accordance with the regulations under "Minimum Wage Rates" to the office of the State Labor Commission, Santa Fe, New Mexico 87503, and address as stated in the Determination and to the Owner.

PART 7: CONTRACT AUDIT

7.1 The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or

subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing (§13-1-16 NMSA 1978).

PART 8: DEBARRED OR SUSPENDED CONTRACTORS

8.1 A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17 NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

PART 9: BRIBES, GRATUITIES, AND KICKBACKS

9.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of contract for this ITB and for any person to bid or pay anything of value to any such public employee (§ 30-24-1 and 30-24-2 NMSA 1978).

9.2 Pursuant to Section 13-1-191 NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including §§ 30-24-1, 30-24-2, and 30-41-1 through 30-41-3 NMSA 1978), which prohibit bribes, kickbacks, and gratuities, and violation of which constitutes a felony. Further, the Procurement Code (§§ 13-1-28 through 13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

PART 10: NONRESIDENT CONTRACTOR'S REQUIREMENTS: GROSS RECEIPTS TAX SURETY BOND

10.1 Section 7-1-55A NMSA 1978 provides that any person (as defined in § 7-1-3 NMSA 1978) engaged in the construction business who does not have his principal place of business in this state and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the Contract. The person shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

10.2 If the total sum to be paid under the Contract is changed by ten percent (10%) or more after the date the surety bond or other acceptable security is furnished to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within 14 days after the change (§ 7-1-55B NMSA 1978).

10.3 In addition to the above requirements, the Contractor will be subject to all the requirements of Section 7-1-55 NMSA 1978.

PART 11: CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

11.1 Section 7-10-4 NMSA 1978 provides that any person (as defined in § 7-10-3 NMSA 1978) performing services for the State, as those terms are used in the Gross Receipts and Compensating Tax Act (§§ 7-10-1 through 7-10-5 NMSA 1978), must be registered and be

issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

11.2 The identification number is needed to properly complete the approval process of the Contract; therefore, so as to cause no delay in the processing, the Contractor must register with the Division. For information, contact: Revenue Division, Taxation and Revenue Department, Manuel Lujan Sr., Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87503, Telephone: (505) 988-2290.

11.3 If any person who performs services for the State is not registered to pay the gross receipt tax, the State shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the gross receipts tax.

PART12: ASSIGNMENT OF ANTITRUST CLAIMS

12.1 The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. The Contractor further agrees to require each of its Suppliers, Subcontractors, and Sub-subcontractors to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed form (see Section 00600) shall be submitted prior to the commencement of the Work or the supplying of any materials by the Supplier, Subcontractor, or Sub-subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Contractor to obtain agreement in writing from his Supplier, Subcontractor, or Sub-subcontractor. Waiver by the Owner may not unreasonably be denied.

12.2 It is agreed that the Contractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the State, including the right to any treble damages attributable thereto.

PART13: CONTRACTS WITH NONRESIDENT PERSONS OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

13.1 Special attention of Bidder is called to requirements of Sections 13-4-21 through 13-4-24 NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

PART 14: ADDENDA AND MODIFICATIONS

14.1 All Addenda and Modifications issued in writing during the Bidding period will become part of the Contract Documents.

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Invitation To Bid; then
4. the Contractors Bid Submittal; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's bid.

OWNER

CONTRACTOR

BY: _____

BY: SMITHCO CONSTRUCTION Inc

NAME: _____

NAME: Kenneth P. Clark

TITLE: _____

TITLE: Pres

DATE: _____

DATE: 6-5-17

PART 15: INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE:

The Contractor shall furnish the Owner one copy each of Certificates of insurance herein required for each copy of the Purchase Order/Agreement showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Contractor. The Contractor shall furnish to the Owner copies of limits. The Certificate of Insurance shall be in the form of AIA Document G-705 or similar format acceptable to the Owner. Such certificates shall be filed with the Owner and shall also contain the following statements:

“Sierra County Commissioners, Sierra County its agents, servants and employee are held as additional insured.”

“The insurance coverage certified herein shall not be canceled or materially changed except after forty five (45) days written notice has been provided to the owner.”

COMPENSATION INSURANCE:

The Contractor shall procure and shall maintain during the life of this contract Worker’s Compensation as required by applicable State law for all Contractor’s employees to be engaged at the site of the project under this project and in case of any such work sublet the Contractor shall require the subcontractor or sub subcontractor similarly to provide Worker’s Compensation Insurance for all the subcontractor’s or sub subcontractor’s Workers which are covered under the Contractor’s Worker’s Compensation Insurance. In case any class of employee engaged in work on the project under this contract is not protected under a Worker’s Compensation Status, the Contractor shall provide and shall cause each subcontractor or sub subcontractor to provide Employer’s insurance in any amount of not less than \$500,000.

CONTRACTOR’S PUBLIC LIABILITY INSURANCE

The contractor shall procure and shall maintain during the life of this contract Public Liability Insurance as required by applicable State law. In case of any work being sublet, the Contractor shall require the subcontractor or sub-subcontractor similarly to provide Public Liability Insurance for all the subcontractor’s or sub-subcontractor (s) work being performed under this Purchase Order/Agreement. In any case, whereby the Contractor’s sub-contractor or sub-subcontractor services are not covered under separate policy, the Contractor shall provide and shall cause each subcontractor or Sub-subcontractor to be covered under the contractor’s policy. The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective June 8, 2012 are:

\$1,000,000 per occurrence; \$1,000,000 annual aggregate.

CONTRACTOR'S VEHICLE LIABILITY INSURANCE:

The Contractor shall procure and shall maintain during the life of this contract Vehicle Liability Insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 et.seq. NMSA 1978." The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective July 1, 1992 are:

| | |
|-----------------|---------------------------|
| Bodily Injury | \$750,000 Each Occurrence |
| Property Damage | \$100,000 Each Occurrence |

SUBCONTRACTOR'S AND SUB CONTRACTOR'S PUBLIC AND VEHICLE LIABILITY INSURANCE:

The Contractor shall either:

1. Require each subcontractor or sub-contractor to procure and maintain during the life of the subcontract or sub subcontract public Liability Insurance of the types and amounts specified above or,
2. Insure the activities of the subcontractors of sub subcontractors in the Contractor's Policy as required under this Article.

GENERAL:

All Insurance policies are to be issued by companies authorized to do business under the laws of the state in which work is to be done and acceptable to owner.

The Contractor shall not violate, permit to be violated, any conditions of any said policies, and shall at all times satisfy the requirements for the insurance companies writing said policies.

PROFESSIONAL LIABILITY:

Minimum limits: \$1,000,000 per occurrence and \$3,000,000 aggregate.

The Vendor shall procure and shall maintain during the life of this contract Professional Liability insurance as required by applicable State law. In case of any work being sublet, the Vendor shall require the subcontractor or sub-subcontractor similarly to provide professional liability Insurance for all the subcontractor's or sub-subcontractor's work being performed under this agreement. In any case whereby the Vendor's sub-contractors or sub-subcontractors services are not covered under separate policy, the Vendor shall provide and shall cause each subcontractor or sub-subcontractor to be covered under the Vendor's policy.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SIERRA

Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To: County of Sierra

Jocelyn Holguin, Chief Procurement Officer
855 Van Patten
Truth or Consequences, NM 87901

To the Contractor: SMITHCO

Printed Name: Kenneth P Smith, Jr. President

Address: 6 King Canyon Loop
Caballo, NM 87931

Contractor Signature: *Kenneth P Smith Pres.* Date: 6-5-17
Name and Title

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the County Chief Procurement Officer below:

By: *Bruce Swingle* Date: 06/13/17
Bruce Swingle, County Manager

BOARD OF COUNTY COMMISSIONERS:

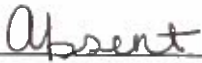
APPROVED, ADOPTED AND PASSED on this 13th day of June, 2017.



Ken Lyon, Chair

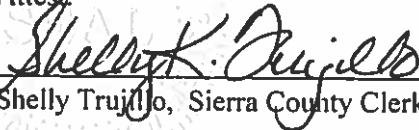


Frances Luna, Vice- Chair



Sherry Fletcher, Commissioner

Attest:



Shelly Trujillo, Sierra County Clerk

Sierra County Chief Procurement Officer:

By:

Jocelyn Holguin, CPO
Sierra County

Date:

6/13/17

SCOPE OF WORK:

AS PER ITB#2017-04-004 DESIGN BUILD WATER STORAGE TANK FOR LAS PALOMAS VFD