



DATE: April 6, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT FOR LIGHTING RETROFIT PROGRAM**

SYNOPSIS

Staff recommends that the City Council approve a Professional Services Agreement with Sylvania Lighting Services of Poway, California, in the amount of \$428,652.64 to replace existing lamps, ballasts, incandescent lamps, and high bay fixtures with more cost-effective lamps, ballast, and fixtures in various City buildings; and authorization for the City Manager to execute the agreement.

BACKGROUND

On December 16, 2009, the City Council accepted funds in the amount of \$1,517,100 from the U.S. Department of Energy (DOE) awarded to the City of Oceanside for Phase I energy-efficiency planning, retrofits, and the Transportation Monitoring Center project. This grant has allowed the City to fund the replacement program for the essential components of the Civic Center HVAC system, the installation of the Metasys Building Automation Control System, and the purchase and installation of HVAC package units to replace those that have reached the end of their productive life cycle.

An Investment Grade Audit (IGA) of City buildings was completed as part of the Phase I energy-efficiency planning. The IGA created a benchmark portfolio of City buildings to support and create a long-range plan for energy conservation. The major recommendation of the IGA was the replacement of inefficient lighting fixtures, lamps, and ballast with high-efficiency lighting fixtures, lamps, and ballast in various City buildings. The lighting retrofit is the final major energy conservation project the DOE grant is funding.

Plans and specifications for the Lighting Retrofit were completed in September 2010 and staff prepared and distributed a request for proposals (RFP) for the project in October 2010. Design changes necessitated a minor redesign that primarily affected the total number of light fixtures to be replaced. Staff felt the City would be best served by incorporating the redesign into the project plans and specifications and re-bidding the project. This would also ensure all the project bidders had an equal opportunity to consider the revised plans, and rebidding would not place any potential new bidders at a competitive disadvantage. The project was rebid in February 2011.

ANALYSIS

A notice inviting sealed bids for the Professional Services Agreement was advertised in local newspapers and trade journals in accordance with the City's standard bidding procedure. The bids were opened on February 25, 2011. Seven (7) qualified bids were received and are summarized in Exhibit A.

Sylvania Lighting of Poway, California, was the low bidder with a bid of \$428,652.64. Staff considered their overall qualifications, including the qualifications of key personnel, prior experience, availability and ability to complete the project in the prescribed timeframe, and checked their references. Staff feels the City would be best served by awarding the agreement to Sylvania Lighting.

The final negotiated purchase agreement meets the requirements of City Code Chapter 28.

FISCAL IMPACT

Funding for the \$428,652.64 agreement plus contingency is included in the \$1,517,100 in grant funds from the United States Department of Energy (DOE) awarded to the City of Oceanside for Phase I energy efficiency planning, retrofits and the Transportation Monitoring Center project. The funds are in account number 999115900274.5320.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

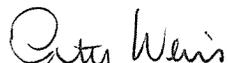
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PREPARED BY:



Gary P. Gurley
General Services Manager

SUBMITTED BY:



Peter Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director

Joseph Arranaga, Deputy Public Works Director



Exhibit A

Exhibit A

<u>BIDDER</u>	<u>BID PRICE</u>
Sylvania Lighting, Poway CA	\$428,652.64
Matrix Energy Services, Sacramento, CA	\$447,745.91
Global Power, Lakeside, CA	\$457,104.00
Servidyne, Atlanta, GA	\$527,335.70
Sun Industries, Santa Ana, CA	\$594,730.08
Advanced Energy Design, Orange CA	\$684,800.68
McMaster Electrical, Oceanside, CA	\$855,693.76

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: LIGHTING RETROFIT

THIS AGREEMENT dated _____, 2011 for identification purposes is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Sylvania Lighting Services, hereinafter designated as "CONTRACTOR."

Contents of AGREEMENT Documents. The AGREEMENT Documents for this project shall consist of the Request for Proposals, Bid Documents, and all permits from other agencies as may be required by law. All AGREEMENT Documents not attached hereto are incorporated herein by reference.

The AGREEMENT Documents may be amended in writing from time to time in accordance with Section 11 to clarify or modify the work contemplated in order to ensure the completion of the work in an acceptable manner. These amendments shall be incorporated into the AGREEMENT Documents.

If there is a conflict between AGREEMENT Documents, the document highest in precedence shall control. The precedence shall be:

- a. Requirements set by Local, State and Federal law, including permits required thereby.
- b. Amendments approved pursuant to Section 11.
- c. Instructions to Bidders, Notice of Award, Award Documents, and Notice to Proceed.
- d. General Provisions.
- e. Special Provisions.
- f. Bid Documents and Exhibits.

LIGHTING RETROFIT

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described in Exhibit "A" attached hereto and by this reference made a part of this Agreement.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Director, Public Works. The CONTRACTOR shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the Director, Public Works. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.
 - 4.2. CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(Bodily injury and property damage)

Combined Single Limit per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(Bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

Automobile Liability Insurance

\$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.
- 4.4** All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6** All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7** CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8** CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9** Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Intentionally omitted.

6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement is contained in Exhibit "B" attached hereto and by this reference made a part of this Agreement.

7.1 No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the Director, Public Works. CONTRACTOR shall obtain approval by the Director, Public Works prior to performing any work, which results in incidental expenses to CITY.

7.2 **PREVAILING WAGE.** This is a prevailing wage job and is subject the Davis Beacon Act reporting requirements.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Project Manger within **sixty (60) calendar days**. First day is the day following City Council agreement approval and all work through completion of punch list items must be completed by the sixtieth day.

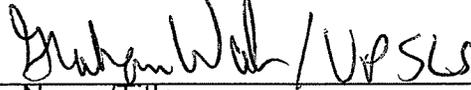
8.1 **Liquidated Damages:** Failure of the contractor to complete the work within the agreement time set forth above shall be the sum of two hundred fifty dollars (\$250) per consecutive day in excess of the agreement time.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.
- The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.
- Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.
11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set below.

SYLVANIA LIGHTING SERVICES

CITY OF OCEANSIDE

By: 
Name/Title

By: _____
Peter A. Weiss, City Manager

By: 
Name/Title

APPROVED AS TO FORM:

City Attorney

13-2642452
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

Exhibit A

LIGHTING RETROFIT

SCOPE OF WORK

GENERAL.

The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to complete the Lighting Retrofit as set forth in this specification.

The CONTRACTOR shall replace existing lamps, ballasts, incandescent lamps, HID fixtures, high bay fixtures, etc. with the recommended replacement item as shown in the Bid document's Detailed Lighting Audit.

Specific tasks include but are not limited to:

1. Removal and disposal of old material.
2. Rehook electrical to new unit(s)
3. All labor and any materials not specifically called for but normally required for each type unit replacement.
4. Provide a walk thru with designated City employees
5. Conduct unit manufacture's recommended testing of the unit after installation has been completed.
6. Correction of any punch list items is a CONTRACTOR responsibility and should not be included in the bid.

LOCATION OF WORK.

Civic Center
(Includes Library, Parking,
and Housing)
300 North Coast Hwy
Oceanside, CA 92054

Police Department/Mission Branch Library
3855 Mission Ave.
Oceanside, CA 92056

Beach Recreation Center
300 North, The Strand
Oceanside, CA. 92054

City Operation Center
4927 Oceanside Boulevard
Oceanside, CA 92056

Senior Center
455 Country Club Lane
Oceanside, CA 92054

Melba Bishop Community Center
5306 North River Road
Oceanside, CA 92057

Joe Balderama Center
709 San Diego St.
Oceanside, CA. 92054

Fire Station 1
714 Pier View Way
Oceanside, CA 92054

Fire Station 2
1740 South Ditmar
Oceanside, CA. 92054

Fire Station 3
3101 Oceanside Boulevard
Oceanside, CA 92056

Fire Station 4
3990 Lake Boulevard
Oceanside, CA. 92057

Fire Station 5
4841 North River Road
Oceanside, CA 92057

Fire Station 6
895 North Santa Fe
Oceanside, CA. 92057

Fire Station 8
4927 Oceanside Boulevard
Oceanside, CA 92056

San Luis Rey Water Treatment Plant
3950 North River Road
Oceanside, CA. 92057

La Salina Water Treatment Plant
1330 South Tait St.
Oceanside, CA 92054

2.5 SPECIAL PROVISIONS

CONSTRUCTION STANDARDS. All construction shall conform to the current edition of the Standard Specifications for Public Works Construction except as specifically amended by these AGREEMENT Documents. The quantities listed in the Bid Schedule will not govern final payment. Payment to the CONTRACTOR will be made only for actual quantities of AGREEMENT items constructed in accordance with the Plans and Specifications.

MOBILIZATION/DEMobilIZATION. Full compensation for any and all work, time, fees, charges, or related costs associated with, but not limited to, preparatory work and operations; for the movement of personnel, equipment, and supplies and incidentals to and from the project site; for establishment of facilities necessary for the work on this project and for all other work and operations which must be performed or costs incurred prior to beginning and completing work on the various AGREEMENT items, shall be considered as included in the Bid and no additional compensation shall be allowed thereafter.

MATERIAL SUBMITTALS. CONTRACTOR shall at his own expense, furnish for review by the Project Manager, three (3) copies of each detailed submittal for materials.

CONTRACTOR shall not deviate from the approved material submittals unless authorized by the Project Manager. Deviations, without prior written approval from the Project Manager will subject non-compliance to items constructed, and are subject to removal.

In addition, the Project Manager may, at his discretion, require shop drawings and submittals on other equipment or construction activities proposed by the CONTRACTOR.

<u>LOCATION</u>	<u>COST</u>
Civic Center (Includes Library, Parking, and Housing)	\$143,025.71
City Operations Center	\$75,178.85
Police Department/ Branch Library	\$42,690.78
Melba Bishop Community Center	\$24,901.57
Beach Rec Center	\$7,709.96
Balderama Rec Center	\$7,841.74
Senior Center	\$16,498.83
Fire Station 1	\$5,607.32
Fire Station 2	\$4,965.66
Fire Station 3	\$6,522.50
Fire Station 4	\$5,202.29
Fire Station 5	\$2,793.61
Fire Station 6	\$7,921.58
Fire Station 8	\$842.22
San Luis Rey WTP	\$54,664.88
La Salina WTP	\$22,285.14
Total Compensation	\$428,652.64