



Council Meeting: June 15, 2010

SUBJECT: Award of Sunnyvale Works! Contract for Coating Inspection Services on an “As-Needed” Basis (F0905-99)

BACKGROUND

Approval is requested for the award of a one year contract (Blanket Purchase Order or BPO) in an amount not to exceed \$150,000 to West Coast Coating Consultants, of Berkeley, for coating inspection services on an “as-needed” basis as required by the Public Works Engineering Division. The scope of services for this contract will include daily inspection of and reporting on interior and exterior coating applications for water and wastewater tank rehabilitation projects.

DISCUSSION

West Coast Coating Consultants is a pre-qualified consulting firm in the Testing and Special Inspections service category associated with the **Sunnyvale Works!** Pre-qualification program, and is the only firm on the City’s pre-qualified list which specializes in tank coating inspections.

The City has an existing \$50,000 BPO with West Coast Consultants, awarded under the City Manager’s signature authority, but the contract expires June 30, 2010. Given the number of tank coating projects recently awarded by Council in conjunction with the **Sunnyvale Works!** program, it is essential that a licensed specialist be available to conduct daily inspection/reporting. Examples of these projects include Wright Avenue (RTC No. 09-198), Hamilton Water Plant (RTC No. 10-139) and the Water Pollution Control Plant (WPCP) Digester No. 4 (RTC No. 09-171).

FISCAL IMPACT

Total cost for the one year contract will not exceed \$150,000. Available funds are budgeted in various capital projects associated with tank coatings, including Refurbishment of Water Tanks at Wright Avenue (824311), Rehabilitation of Digesters and Replacement of Digester Lids (824301), Interior Coating of Water Tanks (825461) and Exterior Painting of Water Tanks (825491).

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior

Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council award a contract, in substantially the same form as the attached draft purchase order and in an amount not to exceed \$150,000, to West Coast Coating Consultants for inspection services on an "as-needed" basis.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Marvin Rose, Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

A. Draft Blanket Purchase Order



BUYER:

Gakle, David

PHONE (408) 730-7403

FAX (408) 730-7710

Greg A. Whiting
WEST COAST COATING CONSULTANTS, LLC
N.A.C.E. CERTIFIED COATING INSPECTOR #9264

CONSULTING/INSPECTION 2010 FEE SCHEDULE

The following is a listing of West Coast Coating Consultants, LLC's current rates for consulting, inspection and testing services:

Hourly rate - \$53.50 per hour

Overtime rate - \$75.00 per hour

Detailed Daily reports and Digital photos sent electronically on a daily basis to client to keep them apprised of daily progress.

Respectfully,



Greg A. Whiting
N.A.C.E. Certified Coating Inspector No. 9264
Owner of West Coast Coating Consultants, LLC

Blanket Purchase Order
Standard Terms and Conditions for the Purchase of Consulting Services

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, THE PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **Offer and Acceptance:** The Purchase Order is an offer by the City of Sunnyvale ("City") to enter into a term contract and does not, of itself, constitute authority to perform services. That authority shall be established by individual requests for services made, as required, throughout the contract term. Any of the following acts constitute Consultant's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Consultant's commencement of work in response to City's first request for services during the contract term or (b) Consultant's acceptance of any payment from City.
2. **Prices:** All fees shall be as stated in the Purchase Order and are firm and not subject to escalation unless so stated on the face of the Purchase Order. Consultant represents and warrants that the fees set forth in the Purchase Order are at least as low as those currently being quoted by Consultant to commercial or government users for the same services of similar scope under similar circumstances.
3. **Taxes:** This purchase is subject to all applicable California sales and use taxes.
4. **Terms of Payment:** Full payment for each request for services shall be made within thirty (30) days from the date of receipt of invoice or acceptance of services, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of services by City, whichever occurs last. Partial payments may be made with City's concurrence. City shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Consultant for additional charges, interest or penalties due to failure to pay within that period.
5. **Time for Performance:** Time is of the essence in the performance of the Purchase Order. If the services required by an individual service request cannot be performed at the specified time, Consultant shall promptly notify City of the earliest possible date for performance of the services. Notwithstanding such notice, if Consultant, for any reason whatsoever, fails to perform the services within the time specified, City may terminate the service request or any part thereof without liability except for services previously performed and accepted.
6. **Independent Contractor Status:** Consultant is acting as an independent contractor in performing the services required by the Purchase Order and is not an agent or employee of City. Nothing in the Purchase Order shall be interpreted or construed as creating or establishing the relationship of employer and employee between City and Consultant. Consultant is responsible for paying all required state and federal taxes.
7. **Use of Subcontractors:** Consultant shall perform the services with its own employees under its immediate supervision and shall not subcontract any portion of the services unless approved in advance by City.
8. **Discrimination:** Consultant shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
9. **Compliance with Laws:** Consultant shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans, and orders in the performance of services under the Purchase Order.
10. **Services of Consultant:** Consultant shall determine the method, details and means of performing the services. City shall have no right to, and shall not, control the manner or determine the method of accomplishing Consultant's services. Consultant shall perform the services at such times and places as Consultant shall determine with the exception of attendance at meetings required in conjunction with the services rendered.
11. **Duties of City:** City shall supply any documents or information available to City required by Consultant for performance of the services. Any materials provided shall be returned to City upon completion of the work.
12. **Ownership of Documents:** City shall have full and complete access to Consultant's working papers, drawings and other documents during progress of requested services. All documents of any description prepared by Consultant shall become the property of City at the completion of each service request and upon payment in full to Consultant. Consultant may retain a copy of all materials produced pursuant to the Purchase Order.
13. **Extra or Additional Work and Changes:** Consultant shall perform no extra or additional work or alter or deviate from the services required by each service request unless otherwise agreed in writing by City. Extra work to which City has not agreed in advance will not be compensated by City.
14. **Change Orders:** City shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on City. Consultant's receipt of City's written Change Order without response received by City within ten (10) days or Consultant's performance of services reflecting the change, whichever occurs first, shall constitute Consultant's acceptance of the change without any price or other adjustment.

Blanket Purchase Order
Standard Terms and Conditions for the Purchase of Consulting Services

15. Indemnification: Consultant shall indemnify and hold harmless the City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

16. Insurance: (a) Consultant shall take out and maintain throughout the life of the Purchase Order, at its own expense and from an admitted insurer authorized to operate in California, Workers' Compensation and Employer's Liability Insurance for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

(b) Consultant shall take out and maintain throughout the life of the Purchase Order, at its own expense and from an admitted insurer authorized to operate in California, such Commercial General Liability Insurance as shall protect Consultant, City, its officials, officers, directors, employees, and agents from claims which may arise from work performed under the Purchase Order, whether such work is performed by Consultant, by City, its officials, officers, directors, employees, or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single limit coverage applying to bodily and personal injury liability and property damage - \$1,000,000.

(c) The liability insurance shall include, but shall not be limited to:

(1) Protection against claims arising from bodily and personal injury and damage to property, resulting from Consultant's or City's operations, and use of owned or non-owned automobiles.

(2) Coverage on an "occurrence" basis.

(3) Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of the City.

(4) Notice of cancellation to City at least thirty (30) days prior to the cancellation effective date.

(d) The following endorsements shall be attached to the liability insurance policy:

(1) The policy shall cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage shall be eliminated.

(2) City shall be named as additional named insured with respect to the work to be performed under the Purchase Order.

(3) The coverage shall be primary insurance so that no other insurance effected by City will be called upon to contribute to a loss under this coverage.

17. Assignment: Consultant shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.

18. Termination: The Purchase Order may be terminated by mutual consent of both parties or by City at its discretion. City may cancel the Purchase Order at any time with written notice to Consultant, stating the extent and effective date of termination. Upon receipt of this written notice, Consultant shall stop performance under the Purchase Order as directed by City. If the Purchase Order is so terminated, Consultant shall be paid in accordance with the terms of the Purchase Order for services performed and accepted.

19. Breach of Contract: Should Consultant breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Consultant. Consultant shall be liable for any and all damages incidental and consequential suffered by City as the result of Consultant's breach of contract.

20. Governing Law; Public Records: The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.

21. Force Majeure: Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.

22. Form of Agreement: The Purchase Order, which includes any and all additional documents incorporated therein by reference, sets forth the entire agreement between Consultant and City with respect to terms and conditions. Consultant and service requestors shall develop and agree upon a scope of work and compensation for each service request prior to Consultant's commencement of work.