

Should this item be pulled from the Consent Agenda the following motion is suggested:

POSSIBLE MOTION

I MOVE TO approve a professional services agreement between TS&H Automation and the City and Borough of Sitka for On-Call Industrial Automation Systems Development.



City & Borough of Sitka
Electric Department
105 Jarvis Street, Sitka AK. 99835
Telephone: 907-747-4000 Fax: 907-747-3208



Memorandum

February 2, 2016

To: Mark Gorman, Municipal Administrator
From: Bryan Bertacchi, Utility Director
Subject: **Professional Services Agreement – TS&H Automation**

Request

This is to request Assembly approval to authorize the Municipal Administrator to approve a Professional Services Agreement (PSA) between TS&H Automation (Contractor) and the City and Borough of Sitka (CBS) for technical services for the Blue Lake Hydroelectric Expansion Project, the Jarvis Street Diesel Projects, the Green Lake Hydroelectric Project and other Supervisory Control and Data Acquisition (SCADA) support in an amount not to exceed \$150,000. The proposed PSA is attached.

Analysis:

SCADA is the backbone system used to safely and reliably operate, on a real time basis, our electric generation, transmission, and distribution system. Functional control of our high voltage system ensures the service reliability for our customers, protects the millions of dollars of system infrastructure and most importantly provides absolute control of system elements protecting our employees and the public.

A dependable SCADA system allows remote control of system switches, circuit breakers, reclosers, and generation resources to manage normal operations as well as emergencies and outages. Our electric system is monitored and controlled 24-7 by the operator on duty at the Blue Lake powerhouse.

TS&H Automation has provided support for our SCADA systems for many years and is completely versed in all aspects of the complex and dynamic skills required to ensure proper operation of the system. With the addition of the Blue Lake Expansion Project, Green Lake SCADA Projects and Jarvis Street Diesel Projects, integrating these assets into our SCADA system is of paramount importance.

Fiscal Note:

Funding for this work will be from the Blue Lake Expansion Project, CIP No. 90594, and the Jarvis Street Diesel Capacity Increase Project, CIP No. 90646 and other existing capital projects. Adequate funds are available in each account to fund this PSA. Estimated costs to complete the SCADA integration are approximately \$150,000, including contingency funds for additional work if required.

Recommendation:

The expertise and professional knowledge offered by TS&H Automation will be invaluable to the successful commissioning and operation of the new Blue Lake and Jarvis Street generation projects. I recommend approval of the Professional Services Agreement with TS&H Automation.

CC: Robin Koutchak, Municipal Attorney
Jay Sweeney, Finance Director
Ali Clayton, Grants Accountant

CONTRACT TO PROVIDE PROFESSIONAL SERVICES TO CITY AND BOROUGH OF SITKA BY TS&H AUTOMATION FOR ON-CALL INDUSTRIAL AUTOMATION SYSTEMS DEVELOPMENT

City and Borough of Sitka ("Owner") desires the firm TS&H Automation ("Contractor") to Provide Professional Services for On-Call Industrial Automation Systems Development. This Contract to Provide Professional Services to City and Borough of Sitka for On-Call Industrial Automation Systems Development ("Contract") is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Contract.

SECTION 1. DEFINITIONS

For the purpose of this Contract, the terms used in this Contract shall have the following meaning:

- A. "Owner" shall mean the "City and Borough of Sitka, Alaska."
- B. "Contractor" shall mean "TS&H Automation."
- C. "Owner's authorized representative" shall mean the person set forth in Section 21(B)(2) of this Contract.
- D. "Days" shall mean calendar days.

SECTION 2. CONTRACT TIME

- A. This Contract becomes effective when signed and dated by both Parties.
- B. Contractor shall commence performance of the work identified in Section 4 immediately following receipt of the Notice to Proceed.
- C. Except as expressly allowed under this Contract, Owner need not grant Contractor any extension in the time provided to complete the work under this Contract. If Contractor's progress falls behind the project schedule, Contractor shall commit additional resources to the prosecution of the work, or take such other additional steps as are reasonably necessary to assure the completion of the work on schedule, all at no additional cost to Owner.

SECTION 3. RESPONSIBILITY OF CONTRACTOR

At all times during Contractor's performance of professional services under this Contract, Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

SECTION 4. SCOPE OF SERVICE

The services to be performed by Contractor shall include all services required to complete the tasks set forth in the Appendix, and shall be in accordance with all applicable statutes, Sitka General Code provisions, ordinances, rules, and regulations. Completion date is December 31, 2017.

SECTION 5. OWNERSHIP OF DOCUMENTS

All plans, drawings, software, calculations, supporting data and specifications, originals and tracings, shall become the property of Owner. Such documents shall be transmitted to Owner prior to the time of final payment for the work under this Contract. Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

SECTION 6. TERMINATION

This Contract may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Owner, provided that Owner notifies Contractor of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Contract; provided, however, that as a condition of the exercise of its right of termination under this subsection the terminating Party shall notify the other Party of its intent to terminate this Contract and state with reasonable specificity the grounds, and the defaulting Party shall have failed, within 30 days of receiving the notice, to cure the default.
- D. Termination pursuant to this section shall not affect the Parties' continuing obligations under this Contract.

SECTION 7. DUTIES UPON TERMINATION

- A. If Owner terminates this Contract for convenience, Owner shall pay Contractor the reasonable value of any services satisfactorily rendered prior to termination. Payment under this section shall never exceed the total compensation possible under Section 9. All finished and unfinished reports and materials prepared by Contractor shall become the property of Owner.
- B. If this Contract is terminated for cause, Owner shall pay Contractor reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Owner because of Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials shall become the property of Owner at its option. Under no circumstances shall payment under this section exceed the percentage value of work completed as defined by Contractors Fee Proposal and under Section 9. Under no circumstances shall payment under this section exceed the total compensation possible under Section 9.
- C. If Contractor has received payments prior to termination in excess of the amount to which it is entitled under Subsection A or B of this section, Contractor shall remit such excess to Owner within 30 days after receipt of notice to that effect.

- D. Contractor shall not be entitled to compensation under this section until Contractor has delivered to Owner all documents, records, work products, materials, and equipment owned by City and Borough of Sitka, related to this Contract and requested by Owner.
- E. If Contractor's services are terminated, for whatever reason, Contractor may not claim any compensation under this Contract other than allowed under this section.
- F. The Owner need not recognize any claim by Contractor for reimbursable expenses or costs incurred after the time which Contractor receives notice of termination under this section.

SECTION 8. INDEMNIFICATION

- A. Contractor shall indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of Contractor occurring during the course of or as a result of Contractor's performance pursuant to this Contract.
- B. Contractor shall not indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising in wrongful or negligent acts, errors or omissions solely of Owner occurring during the course of or as a result of the performance of this Contract.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both Parties, Contractor shall indemnify, defend, save and hold Owner harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from Contractor's wrongful or negligent acts occurring during the course of or as a result of Contractor's performance pursuant to this Contract.

SECTION 9. PAYMENT

- A. For Contractor's Design, Bidding, Contract Services and Expenses, as described in Section 4 of this Contract, compensation will be paid on a time and expense basis, subject to Contractor's satisfactory performance, in a total amount Not to Exceed (NTE) **\$150,000.00** unless mutually agreed upon by both Parties prior to commencing additional work

Contractor shall **not** begin any phase of the work without written authorization by Owner. The Owner has the option of omitting any phase of the Contract as it deems necessary.

- B. Contractor shall present an invoice(s) to Owner's authorized representative. Such invoice(s) shall describe the work for which it seeks payment and shall document expenses and fees to the satisfaction of Owner's authorized representative. Invoices shall not be submitted more frequently than once every 30 days.
- C. Owner shall make payment on invoices within 30 days of the invoices' receipt and approval by Owner's authorized representative.
- D. Contractor shall be entitled to no compensation under this Contract beyond the amount of

Owner's express obligation under subsection A above. Compensation for preliminary drawings, specifications and reports shall not exceed 50% of the total Contract amount.

- E. The amount to be paid for additional services, at the option of Owner, shall be negotiated at the hourly fees submitted in the attached Appendix , by the Parties prior to the execution of amendments to this Contract for this work.

SECTION 10. AUDIT: ACCESS TO RECORDS

- A. Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Contract. The Owner's authorized representatives shall have the right to examine such records and accounting procedures and practices.
- B. The Owner's authorized representative shall have the right to examine all books, records, documents and other data of Contractor related to the negotiation, pricing and performance Contract, and any change or modification for the purpose of evaluating the accuracy, completeness, and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations, and projections used.
- C. The materials described in this section shall be made available at the business office of Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of three (3) years from the date of final payment under this Contract and for such longer period, if any, as may be required by applicable statute or other provisions of this Contract.
- D. If this Contract is completely or partially terminated, records relating to the services terminated shall be made available to Owner by Contractor for a minimum of three (3) years from the date of any resulting final settlement.
- E. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Contract shall be made available to Owner by Contractor until such claims or litigation have been concluded.

SECTION 11. RELATIONSHIP OF PARTIES

Contractor shall perform its obligations under this Contract as an independent Contractor of Owner. Owner may administer the Contract and monitor Contractor's compliance with its obligations. Owner shall not supervise or direct Contractor other than as provided in this section.

SECTION 12. ASSIGNMENTS

Unless otherwise allowed by this Contract or in writing by Owner, any assignment by Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and any attempt by Contractor to assign any part of its interest or delegate duties under this Contract shall give Owner the right immediately to terminate this Contract without any liability for work performed.

The Owner reserves the right to approve all subcontractor contracts.

SECTION 13. NONDISCRIMINATION

- A. Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.
- B. Contractor shall state, in all solicitations or advertisements for employees to work on jobs relating to this Contract, that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood.
- C. Contractor shall include the provisions of Subsection A in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of Contractor under this Contract.
- D. Contractor shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

SECTION 14. COPYRIGHTS AND RIGHTS IN DATA

All documents produced under this Contract are the property of Owner, including notes, drawings, reports and other technical information referred to as work products, except items which have pre-existing copyrights. Payments to Contractor for services include full compensation for all work products produced by Contractor and its subcontractors.

All such subject data furnished by Contractor pursuant to this Contract are instruments of its services in respect to this particular project. It is understood that Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If Owner reuses the subject data without Contractor's specific written verification of adaption, such reuse will be at the risk of Owner, without liability to Contractor. Any such verification of adaption requested in writing by Owner at Owner's sole option will entitle Contractor to further compensation at rates agreed upon by the Parties.

SECTION 15. NOTICES

Any notice required pertaining to the subject matter of this Contract shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

OWNER:

City and Borough of Sitka
Electric Department
105 Jarvis Street
Sitka, AK 99835

CONTRACTOR:

TS&H Automation
Attn: Tal Honadel
2728 255th Avenue
Montrose, IA 52639

SECTION 16. CLAIMS AND DISPUTES

If Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, Contractor shall immediately notify in writing Owner's authorized representative. If the matter cannot be resolved within seven (7) days, Contractor shall, within the next fourteen (14) days, submit a written notice of the claim. Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Contract under which the claim is made. This procedure covers all claims by Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Contract. Contractor agrees that unless these written notices are provided, Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

SECTION 17. SUCCESSORS AND ASSIGNS

The Parties bind themselves, partners, successors, assigns and legal representatives to the other Party to this Contract and to partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Contract.

SECTION 18. INSURANCE

- A. Contractor shall at all times during the term of this Contract, maintain in good standing the insurance described in Subsection B. Before rendering any services under this Contract, Contractor shall furnish Owner with proof of insurance in accordance with Subsection B in a form acceptable to the Risk Manager for Owner; such proof of insurance shall be incorporated into this Contract.
- B. Type of coverage:
- | | |
|--|---|
| 1. <u>Commercial General Liability</u> | |
| Occurrence Limit | \$1,000,000 |
| General Aggregate | \$1,000,000 |
| 2. <u>Workman's Compensation</u> | Alaska Statutory
Employers Liability |
| 3. <u>Comprehensive Automobile Liability</u> | Exempt |
| 4. <u>Professional Errors and Omissions</u> | Exempt |
- C. Insurance Notes
1. Owner shall be named as an additional named insured on the required general liability and automobile insurance policies. The Owner shall also be granted a full waiver of any rights of subrogation by endorsement under all required policies including Workmen's

Compensation policy. These requirements extend to all subcontractors.

2. Contractor is required to notify Owner if any policy is to be canceled, materially changed, or renewed, at least thirty days prior, by written notice sent by certified mail.

SECTION 19. PERMITS, LAWS AND TAXES

Contractor shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Contract. All actions taken by Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. Contractor shall pay all taxes pertaining to its performance under this Contract.

SECTION 20. NON-WAIVER

The failure of either Party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part, or the right of such Party to enforce each and every provision.

SECTION 21. AMENDMENT

- A. This Contract shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Contract as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Contract, the only authorized representatives of the Parties are:
 1. Tal Honadel, TS&H Automation – For Contractor
 2. Mark Gorman, CBS Municipal Administrator – For Owner
- C. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means, shall be void.

SECTION 22. SEVERABILITY

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

SECTION 23. JURISDICTION – CHOICE OF LAW

Any civil action rising from this Contract shall be brought in the First Judicial District at Sitka, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the Parties under this Contract.

SECTION 24. INTEGRATION

This instrument and all appendices and amendments embody the entire Contract of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Contract. This Contract shall supersede all previous communications, representations, or Contracts, either oral or written, between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Contract on the date shown below, and by their signatures, confirm they are authorized to sign this Contract.

CITY AND BOROUGH OF SITKA

TS&H AUTOMATION

Mark Gorman
Municipal Administrator

Tal Honadel
Owner

Date

Date

ATTEST:

LEGAL REVIEW:

Sara Peterson, CMC
Municipal Clerk

Robin Koutchak
Municipal Attorney

Date

Date

FINANCE REVIEW/CERTIFICATION OF AVAILABLE FUNDING:

Not to Exceed: \$150,000.00

Contract Amount

Jay Sweeney
Chief Finance & Administrative Officer

Contract Number

Date

TS&H Automation
Appendix to Professional Services Contract for
On-Call Industrial Automation Systems Development
February 1, 2016

Appendix A – Scope of Work

The City intends to install, upgrade and maintain Electric Department SCADA systems. In that the Principal of TS&H Automation is familiar with Sitka's automation systems and has extensive demonstrated experience in the design and programming control systems, the City is contracting the services of TS&H Automation for Automation Engineering.

TS&H Automation's scope for consulting is to assist and advise the city in:

Blue Lake & Green Lake Fiber Terminations & Installation
Update/Install Relays
Programming

Appendix B – Compensation

Compensation for TS&H Automation will be based on actual hours, expenses and the cost of third party services.

- 1) Hourly rates for Tal Honadel are **\$140.00 per hour** for consulting, which is expressed in US dollars. Rates will be adjusted to include an annual 2.5% increase effective each year, with the first increase occurring on **January 1, 2017**.
- 2) Overtime will be billed at straight time rate.
- 3) Internal expenses, such as IT (computer, standard software, etc.) are included in the hourly rate and will not be charged separately.
- 4) External expenses (express mail, travel, meals, etc.) billed at cost plus 5% mark-up.
- 5) Sub-consultants' invoices will be marked up 5%.
- 6) Compensation for field services during construction involves housing, subsistence and other assignment costs, which will be negotiated at the time that services are required.

Appendix C – Direction of Work

Contractor's work shall be directed and requested by the City's Electric Department Utility Director or his staff including Erin Clay, Andy Eggen and Tony Bird in the form of a "Task". Requests and direction will be submitted to the contractor in writing usually by e-mail. The contractor shall acknowledge the receipt of each Task and provide a short proposal to perform the work and timetable to complete it. POs will be issued by the city in the form of a general retainer for the work performed on each Task.

Appendix D – Work Products/Deliverables

Work Products / Deliverables

Work performed under this contract need not be stamped by a professional engineer.

All deliverables must be submitted in the electronic format that it was generated (i.e. Microsoft Word, Excel, ACAD, Wonderware), so that it may be modified, a pdf format for publication, and paper copies when and as requested by the City.

Progress submittals shall also be submitted in Adobe Acrobat .pdf format. As needed, the underlying documents shall be edited as needed to provide easily readable .pdf format documents.

Contractor shall provide a monthly report summarizing work performed during the month, and status of the work in progress only if explicitly requested by the Utility Manager for a specific month.

Use of Deliverables

The City retains the right to use all work products paid for by the City. The work products may be released to third parties to continue the work if necessary.