



CITY MANAGER'S REPORT

AGENDA ITEM REQUEST

FINANCE DEPARTMENT

TO: Ed Lavallee, City Manager

THROUGH: Jeff Snyder, Finance Director 

FROM: Jon Mayes, Procurement Specialist 

DATE: April 3, 2014

**SUBJECT: Strategic Purchasing Agreement for Water, Sewer & Related Materials
(RFP # 2980-14)**

Background:

At the request of the Utilities Department, Procurement solicited sealed bids for a "Strategic Purchasing Agreement for Water, Sewer & Related Materials". On March 7, 2014 Procurement received and subsequently opened the sealed bids from two firms: HD Supply Waterworks, LTD and Ferguson Enterprises dba Ferguson Waterworks. Both of these firms have branches located in Sarasota and can be considered local firms. There was a third firm, Consolidated Pipe, which submitted a "no bid".

On March 20th, a selection committee met to discuss, score and rank these two firms. Being a "request for proposal" bid- price was one of the scoring factors and carried a weighted score of 10 points out of a possible total of 30 points overall. An items list of the "top 113" most used by the Utilities Department from the last year was developed and included in the bid document. Proposing firms were required to submit this "pricing sheet" and was used as part of the scoring criteria. HD Supply Waterworks quoted \$98,477.42 and Ferguson Enterprises dba Ferguson Waterworks quoted \$93,359.75.

The selection committee recommends award of the contract to Ferguson Enterprises dba Ferguson Waterworks of Sarasota, FL.

This request is made in concurrence with Len Bramble, P.E., Utilities Director and Tim Hochuli, P.E., Assistant Utilities Director.

Requested Action:

We request Council's approval of the attached contract with Ferguson Enterprises dba Ferguson Waterworks and grant authorization for the Mayor to execute the contract.

City Attorney Review:

The City Attorney has reviewed this document and finds no legal objections.

Risk Management Review:

The Risk Manager has reviewed this document and finds no risk management objections.

Funds Availability (account number):

Funds appropriated in department account for budget year 2013-2014

COPY

AGREEMENT

FOR

STRATEGIC PURCHASE OF WATER, SEWER, AND RELATED MATERIALS

THIS AGREEMENT, made and entered into on this _____ day of _____ 2014, by and between **Ferguson Enterprises, Inc dba Ferguson Waterworks as the Primary Supplier**, authorized to do business in the State of Florida, whose business address is 1601 Sarasota Center Blvd., Sarasota, FL 34240, (the "Supplier") and the City of Venice, a political subdivision of the State of Florida, (the "City"):

WITNESSETH:

1. **COMMENCEMENT:** The Supplier shall commence the work upon City Council award. The Finance Director, or his designee, may, at his discretion, extend the Agreement under all of the terms and conditions contained in this Agreement for up to one hundred eighty (180) days. The Finance Director, or his designee, shall give the Supplier written notice of the City's intention to extend the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect.
2. **CONTRACT TERM:** The contract shall be for a three (3) year period, commencing on Date of Council award, and terminating three (3) years from that date. The City may, at its discretion and with the consent of the Supplier, renew the Agreement under all of the terms and conditions contained in this Agreement for two (2) additional one (1) year periods. The City shall give the Supplier written notice of the City's intention to extend the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect. Requests for consideration of a price adjustment must be made on the contract anniversary date, in writing, to the Finance Director. Price adjustments are dependent upon the consumer price index (CPI) over the past twelve months, budget availability and program manager approval.
3. **STATEMENT OF WORK:** The Supplier shall provide various categories of utility materials as may be needed to support the City's Utilities departments in accordance with the terms and conditions of **Bid # 2980-14** and the Supplier's proposal referred to herein and made an integral part of this agreement. This Agreement contains the entire understanding between the parties and any modifications to this Agreement shall be mutually agreed upon in writing by the Supplier and the Contract Manager or his designee, in compliance with the City of Venice's Purchasing Policy and Administrative Procedures in effect at the time such services are authorized.

The award of this contract was made on a Primary/Secondary basis based on the Bid. If the Primary cannot perform the work in the timeframe specified by the City's Project Manager, then the Secondary Supplier may be utilized.

4. **COMPENSATION:** The City shall pay the Supplier for the performance of this Agreement the aggregate of the units actually ordered and furnished at the unit prices (per Exhibit A – Bid Schedule), together with the cost of any other charges/fees submitted in the proposal.

Any City agency may purchase products and services under this contract, provided sufficient funds are included in their budget(s). Payment will be made upon receipt of a proper invoice and upon approval by the Project Manager or his designee, and in compliance with Chapter 218, Fla. Stats., otherwise known as the "Local Government Prompt Payment Act".

4.1 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this agreement.

5. **SALES TAX.** Supplier shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.
6. **NOTICES.** All notices from the City to the Supplier shall be deemed duly served if mailed or faxed to the Supplier at the following Address:

Firm name and address: Tegunda Enterprises dba Tegunda
Waterworks
1601 Seaboard Center Blvd. Seaboard, FL
34240
ATTN: Craig Relfice
Telephone: (941) 379-8589
Facsimile: (941) 379-3797

All Notices from the Supplier to the County shall be deemed duly served if mailed or faxed to the County to:

City of Venice
401 West Venice Avenue
Venice, Florida 34285
Phone: 941-486-2626
Fax: 941-496-2790

The Supplier and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

7. **NO PARTNERSHIP:** Nothing herein contained shall create or be construed as creating a partnership between the City and the Supplier or to constitute the Supplier as an agent of the City.
8. **PERMITS: LICENSES: TAXES:** In compliance with Section 218.80, F.S., all permits necessary for the prosecution of the Work shall be obtained by the Supplier. Payment for all such permits issued by the City shall be processed internally by the City. All non- City permits necessary for the prosecution of the Work shall be procured and paid for by the Supplier. The Supplier shall also be solely responsible for payment of any and all taxes levied on the Supplier. In addition, the Supplier shall comply with all rules, regulations and laws of City of Venice, Sarasota County, the State of Florida, or the U. S. Government now in force or hereafter adopted. The Supplier agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by the Supplier.
9. **NO IMPROPER USE:** The Supplier will not use, nor suffer or permit any person to use in any manner whatsoever, City facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Supplier or if the City or its authorized representative shall deem any conduct on the part of the Supplier to be objectionable or improper, the City shall have the right to suspend the contract of the Supplier. Should the Supplier fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension to continue until the violation is cured. The Supplier further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the City.
10. **TERMINATION:** Should the Supplier be found to have failed to perform his services in a manner satisfactory to the City as per this Agreement, the City may terminate said agreement for cause; further the City may terminate this Agreement for convenience with a thirty (30) day written notice. The City shall be sole judge of non-performance.

In the event that the City terminates this Agreement, Supplier's recovery against the City shall be limited to that portion of the Contract Amount earned through the date of termination. The Supplier shall not be entitled to any other or further recovery against the City, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.
11. **NO DISCRIMINATION:** The Supplier agrees that there shall be no discrimination as to race, sex, color, creed or national origin.

12. **INSURANCE:** The Supplier shall provide insurance as follows:

A. **Workers Compensation:** Company will provide Workers Compensation Insurance on behalf of all employees, including sub-contractors who are to provide a service under this Contract, as required under Florida Law, Chapter 440, and Employers Liability with limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 per employee per disease.

B. **Business Auto Liability:** Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.

C. **Commercial General Liability** including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate covering all work performed under this Contract, to include broad form property damage.

Special Requirements: City of Venice shall be listed as the Certificate Holder and included as an **Additional Insured** on the Comprehensive General Liability Policy.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Supplier during the duration of this Agreement. The Supplier shall provide City with certificates of insurance meeting the required insurance provisions. Renewal certificates shall be sent to the City ten (10) days prior to any expiration date. Coverage afforded under the policies will not be canceled or allowed to expire until the greater of: ten (10) days prior written notice, or in accordance with policy provisions. Supplier shall also notify City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Supplier from its insurer, and nothing contained herein shall relieve Supplier of this requirement to provide notice.

Supplier shall ensure that all subcontractors/Consultants comply with the same insurance requirements that he is required to meet.

13. **INDEMNIFICATION:** To the maximum extent permitted by Florida law, the Supplier shall indemnify and hold harmless City of Venice, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Supplier, any statutory or regulatory violations, or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Supplier or anyone employed or utilized by the Supplier in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph.

This section does not pertain to any incident arising from the sole negligence of the City of Venice.

13.1 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Supplier, City and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Supplier. Supplier's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

14. **CONTRACT ADMINISTRATION:** This Agreement shall be administered on behalf of the City by the Project Manager.
15. **CONFLICT OF INTEREST:** Supplier represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Supplier further represents that no persons having any such interest shall be employed to perform those services.
16. **COMPONENT PARTS OF THIS CONTRACT:** This Contract consists of the following component parts, all of which are as fully a part of the contract as if herein set out verbatim: Supplier's Proposal, Insurance Certificate, Bid # 2980-14 Specifications/ Scope of Services and written response to questions in the form of addendum(s), Exhibit A Bid Schedule.
17. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this agreement is subject to appropriation by the City of Venice Council.
18. **PROHIBITION OF GIFTS TO CITY EMPLOYEES:** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any City employee, as set forth in Chapter 112, Part III, Florida Statutes, City of Venice Ethics Ordinance Section 2-173, and "General Conditions & Instructions to Offerors"- Section 22 of Bid# 2980-14. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with City staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the City for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.
19. **IMMIGRATION LAW COMPLIANCE:** By executing and entering into this agreement, the Supplier is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Supplier to comply with the laws referenced herein shall constitute a breach of this agreement and the City shall have the discretion to unilaterally terminate this agreement immediately.

20. **OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES:** The City of Venice encourages and agrees to the successful proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful proposer.
21. **AGREEMENT TERMS:** If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portion of this Agreement shall remain in effect.
22. **ADDITIONAL ITEMS/SERVICES:** Additional items and/or services may be added to this contract in compliance with the Purchasing Policy.
23. **DISPUTE RESOLUTION:** Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Supplier with full decision-making authority and by City's staff person who would make the presentation of any settlement reached during negotiations to City for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Supplier with full decision-making authority and by City's staff person who would make the presentation of any settlement reached at mediation to City's Council for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.
24. **VENUE:** Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Sarasota County, Florida, which courts have sole and exclusive jurisdiction on all such matters.
25. **CONTRACT STAFFING:** The Supplier's personnel and management to be utilized for this contract shall be knowledgeable in their areas of expertise. The City reserves the right to perform investigations as may be deemed necessary to ensure that competent persons will be utilized in the performance of the contract. The Supplier shall assign as many people as necessary to complete the required services on a timely basis, and each person assigned shall be available for an amount of time adequate to meet the required service delivery dates.
26. **PROTECTION OF PROPERTY:** The Supplier shall ensure that the service is performed in such manner as to not damage any property. In the event damage occurs to any property as a direct result of the Supplier or their Sub-Contractor in the performance of the required service, the Supplier shall repair/replace, to the City's satisfaction, damaged property at no additional cost to the City. If the damage caused by the Supplier or their Sub-Contractor has to be repaired/replaced by the City, the cost of such work will be deducted from the monies due the Supplier.

27. **CLEAN UP:** If applicable, Supplier agrees to keep the project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the project, Supplier shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the project site clean and ready for occupancy by the City.
28. **SUBSTITUTE PERFORMANCE:** In the event the Supplier fails to perform any required service within the time schedule under the contract, the City reserves the right to obtain substitute performance. Further, the City reserves the right to deduct the cost of such substitute performance from the Supplier's payments. The Supplier may be exempt from this provision if such exemption is granted by the Project Manager or his designee, in writing, prior to any delays or as a result of an Act of Nature.
29. **WARRANTIES:** Supplier expressly warrants that the goods, materials and/or equipment covered by this Agreement will conform to the requirements as specified, and will be of satisfactory material and quality production, free from defects, and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. Any services provided under this Agreement shall be provided in accordance with generally accepted professional standards for the particular service. These warranties shall survive inspection, acceptance, passage of title and payment by the City.
30. **CHANGES IN THE WORK:** City shall have the right at any time during the progress of the work to increase or decrease the work. Promptly after being notified of a change, Supplier shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order by the City, and City shall not be liable to the Supplier for any increased compensation without such written order. No officer, employee or agent of the City is authorized to direct any extra or changed work orally. Any modifications to this contract shall be in compliance with the City Purchasing Policy and Administrative Procedures in effect at the time such modifications are authorized.
31. **ORDER OF PRECEDENCE:** In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents.
32. **ASSIGNMENT:** Supplier shall not assign this Agreement or any part thereof, without the prior consent in writing of the City. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the City's consent, shall be void. If Supplier does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Supplier all of the obligations and responsibilities that Supplier has assumed toward the City.

33. **RECORDS**: Supplier agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by the public agency in order to perform the service; by providing the public with access to public records on the same terms and conditions that City would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed excepts as authorized by law; and by meeting all requirements for retaining public records and transferring, at no cost, to City all public records in possession of Supplier upon termination of this contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

This contract and the contract documents constitute the entire agreement of the parties and may not be changed or modified, except by a written document signed by both parties hereto. This contract shall be binding upon the successors and assigns of the parties.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Supplier and the City, have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date and year first above written.

ATTEST:
Lori Stelzer
City Clerk

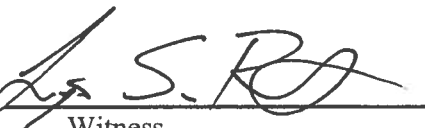
CITY OF VENICE, FLORIDA

By: _____

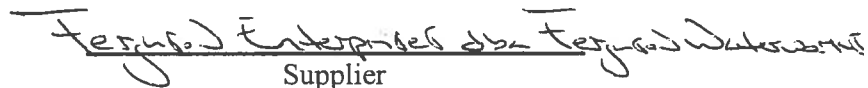
By: _____
John Holic, Mayor

Dated: _____

(SEAL)

By: 
Witness

Branch Manager Logan S. Roberts
Type/print witness name


Supplier


Signature

 - Outside Buyer
Type/print signature and title

Approved as to Form and Correctness

David Persson, City Attorney