
Agreement

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER) and _____ (hereinafter called VENDOR). OWNER and VENDOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

VENDOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Provision of and warranty assurance for 145 self-contained breathing apparatuses.

ARTICLE 2 - THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: Self-Contained Breathing Apparatus
Bid Number: 2017014
Project Address: Indian River County Emergency Services
4225 43rd Avenue
Vero Beach, Florida 32967

ARTICLE 3 - CONTRACT TIMES

3.01 Days to Achieve Substantial Completion, Final Completion and Final Payment

- A. Products to be provided under this contract will be delivered in full working order with all accessories within 60 days of execution.

ARTICLE 4 - CONTRACT PRICE

4.01 OWNER shall pay VENDOR for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A and summarized in paragraph 4.01.B, below:

- A. For all Work, at the prices stated in VENDOR's Bid, attached hereto as an exhibit.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$ _____

Written Amount: _____

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Method of Payment

Owner shall make only one payment for the entire amount of the contract when the work has been satisfactorily completed. Upon a determination of satisfactory completion, the Emergency Services Director will authorize payment to be made. All payments for services shall be made to the VENDOR by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

ARTICLE 6 - INDEMNIFICATION

6.01 VENDOR shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the VENDOR and persons employed or utilized by the VENDOR.

ARTICLE 7 - VENDOR'S REPRESENTATIONS

7.01 In order to induce OWNER to enter into this Agreement VENDOR makes the following representations:

- A. VENDOR has examined and carefully studied the Contract Documents and the other related data identified in the Invitation to Bid documents.
- B. VENDOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. VENDOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that VENDOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to VENDOR.
- D. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

A. The Contract Documents consist of the following:

- (1) This Agreement (pages 1 to 11, inclusive);
- (2) Certificate(s) of Liability Insurance
- (3) Invitation to Bid 2017014
- (4) VENDOR'S Bid Form (pages 11 to 19 of 33, inclusive);
- (5) Certified Cashier's Check 64478189 in the amount of \$50,000;
- (6) Drug Free Workplace Form (page 20 of 33)
- (7) Affidavit of Compliance (page 21 of 33);
- (8) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages 22 to 23 of 33, inclusive);
- (9) Certification Regarding Lobbying (page 24 of 33)
- (10) Warranty Information Form (page 25 of 33)
- (11) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;
 - b) Work Change Directives;
 - c) Change Order(s).

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the Invitation to Bid.

9.02 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and VENDOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.03 *Venue*

- A. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

9.04 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Vendor shall comply with Florida's Public Records Law. Specifically, the Vendor shall:
 - (1) Keep and maintain public records required by the County to perform the service.
 - (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
 - (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Vendor or keep and maintain public records required by the County to perform the service. If the Vendor transfers all public records to the County upon completion of the contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the vendor to comply with these requirements shall be a material breach of this Agreement.

ARTICLE 10 – FEDERAL CLAUSES

10.01 OWNER and VENDOR will adhere to the following, as applicable to this work

A. Clean Air Act:

(1) The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The vendor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Florida Department of Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The vendor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

B. Federal Water Pollution Control Act:

(1) The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The vendor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Florida Department of Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The vendor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

C. Energy Policy and Conservation Act

(1) The Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as applicable.

D. Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the vendor is required to verify that none of the vendor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Indian River County. If it is later determined that the vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Indian River County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

E. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))—Vendors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

F. Procurement of Recycled/Recovered Materials:

(1) In the performance of this contract, the Vendor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

- G. **Access to Records** The following access to records requirements apply to this contract:
- (1) The Vendor agrees to provide Indian River County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - (2) The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - (3) The Vendor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.
- H. **DHS Seal, Logo, and Flags:** The vendor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- I. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- J. **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- K. **Program Fraud and False or Fraudulent Statements or Related Acts:** The vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the vendor's actions pertaining to this contract.
- L. **Affirmative Steps:** VENDOR shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
 - (2) Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Article 11: TERMINATION OF CONTRACT

- A. The occurrence of any of the following shall constitute a default by VENDOR and shall provide the OWNER with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the OWNER may have under this Contract or under law:
- (1) if in the OWNER's opinion VENDOR is improperly performing work or violating any provision(s) of the Contract Documents;
 - (2) if VENDOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Owner pursuant to an inspection;
 - (3) if in the OWNER's opinion VENDOR's work is being unnecessarily delayed and will not be finished within the prescribed time;
 - (4) if VENDOR assigns this Contract or any money accruing thereon or approved thereon; or
 - (5) if VENDOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for VENDOR or for any of his property.
- B. OWNER shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide VENDOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the OWNER.
- C. If the VENDOR fails to correct or cure within the time provided in the preceding Sub-Article B, OWNER may terminate this Contract by notifying VENDOR in writing. Upon receiving such notification, VENDOR shall immediately cease all work hereunder.
- D. The VENDOR shall be liable for:
- (1) any new cost incurred by the OWNER in soliciting bids or proposals for and letting a new contract; and
 - (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
 - (3) any court costs and attorney's fees associated with any lawsuit undertaken by OWNER to enforce its rights herein.
- E. TERMINATION FOR CONVENIENCE: OWNER may at any time and for any reason terminate VENDOR's services and work for OWNER's convenience. Upon receipt of notice of such termination VENDOR shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:
- (1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,
 - (2) such other costs actually incurred by VENDOR as are permitted by the prime contract and approved by the OWNER.

Vendor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

IN WITNESS WHEREOF, OWNER and VENDOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and VENDOR. All portions of the Contract Documents have been signed or identified by OWNER and VENDOR or on their behalf.

This Agreement will be effective on _____, 20__ (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

INDIAN RIVER COUNTY _____

By: _____
Joseph E. Flescher, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk
(SEAL)

Designated Representative:

Name:
Title:
Address:
Phone
Email

VENDOR:

By: _____
(VENDOR)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

Designated Representative:

Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____

(If VENDOR is a corporation or a partnership, attach evidence of authority to sign.)