

RESOLUTION 11-048

A RESOLUTION OF THE CITY OF ROSLYN, WASHINGTON AWARDDING BID AND AUTHORIZING THE MAYOR PRO-TEM TO ENTER INTO A CONTRACT FOR PHASE 1b OF THE OLD CITY HALL/LIBRARY REMODEL PROJECT WITH REGENCY NW CONSTRUCTION, INC.

WHEREAS, on November 16, 2011 the City began publishing and soliciting bids for the Old City Hall/Library Remodel project, Phase 1b; and

WHEREAS, on December 9, 2011 the City opened the 6 bids received; and

WHEREAS, of the 6 bids received Regency NW Construction, Inc. placed the lowest responsive bid of \$362,700; and

WHEREAS, the architects estimate was \$362,245;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROSLYN,
WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council award the bid to Regency NW Construction, Inc., and authorized the Mayor Pro-Tem to enter into a Contract with Regency NW Construction, Inc. in an amount not to exceed \$362,700.00 (plus all applicable taxes) for Phase 1b of the Old City Hall Remodel Project.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROSLYN,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 20TH DAY OF
DECEMBER, 2011

CITY OF ROSLYN:



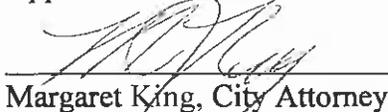
Cordy Cooke, Mayor Pro-Tem

Attest:



Amber Shallow, Clerk-Treasurer

Approved as to Form:



Margaret King, City Attorney

City of Roslyn – Regency NW Construction Inc.
Old City Hall/Library Remodel – Phase 1b
Construction Contract

THIS CONTRACT, made and entered into this 20th Day of December, 2011 by and between the **CITY OF ROSLYN**, a Washington municipal corporation (the “City”) and Regency NW Construction Inc. (the “Contractor”).

RECITALS

WHEREAS, the City desires to contract with the Contractor for the construction of Roslyn Old City Hall/Library Remodel Phase 1b, Ground Floor Build Out Package;

WHEREAS, pursuant to the invitation of the City, the Contractor did file with the City a proposal containing an offer; and

WHEREAS, the City has determined that the contractor’s offer was the lowest responsive and responsible quote submitted;

NOW THEREFORE, in consideration of the terms and conditions contained in this contract, the parties covenant and agree as follows:

1. Scope of Work to be Accomplished. The Contractor shall obtain all permits and/or licenses and provide all the necessary labor, materials, tools, equipment, transportation, supplies and any other services necessary for the construction and completion of the Roslyn Library and Community Hall Phase 1b Ground Floor Build Out Package (the “Project”), in accordance with and as described in the Contract Documents, and shall perform any alterations in or additions to the work as provided under this contract. The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for completing the work provided for in this contract, unless otherwise specified in the Contract Documents.

In performing the work, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such work. In addition, this work and all duties incidental or necessary therefore shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. Contract Documents. The term “Contract Documents” means and includes the following: Advertisement for Bids, Instructions to Bidders, Bid, Bid Bond, Payment Bond, Performance Bond, this Contract, General Conditions, Supplementary General Conditions (if any), General Requirements, Notice of Award, Notice to Proceed, Change Orders, Addenda, Drawings and Specifications. In resolving any conflicts among the Contract Documents, the following order of precedence shall apply:

- A. Special Provisions
- B. General Special Provisions
- C. Standard Specifications
- D. City General Conditions.

3. **Time of Performance.** The Contractor shall fully complete all Work required by the Contract Documents within **149 days** of the date set forth in the Notice to Proceed, unless the period for completion is extended otherwise in accordance with the Contract Documents.

4. **Time is of the Essence.** The City and Contractor recognize that time is of the essence for this Agreement and that the City will suffer financial loss and inconvenience if the Work is not completed within the time specified in Section 3 of this Agreement, plus any extensions allowed by the Contract Documents. They also recognize the delays, expense and the difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City **\$300.00** for each calendar day that expires after the date for full completion of the Work until full completion is obtained.

5. **City Responsibility/Payment.** The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the principal sum of sum of \$362,700.00 plus Washington State sale tax (8%) of \$29,016.00 for a total amount of \$391,716.00. The City agrees to pay the Contractor for the actual work completed in the manner and as such times as set forth in the Contract Documents. Payments may be adjusted in the event of any reduction in the level of work. Such payments will be negotiated between the city and contractor prior to payment.

6. **Warranties/Guaranty/Performance Bond.**

6.1 The Contractor warrants to the City that the work will conform with the requirements of the Contract Documents.

6.2 The Contractor for him/herself, and for his/her heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor. Contractor shall be responsible for, and shall indemnify and hold the City harmless from any damage or expense by reason of failure or improper performance as specified in the Contract Documents.

6.3 A Copy of the required Performance Bond shall be in place and included as **Exhibit "A"** to this Agreement.

7. **Changes.** Changes in the scope of work (supplemental services) to be performed, and/or in the amount of the fee schedule may be accomplished only by a written document, signed by the Contractor and the City in accordance with the Contract Documents.

8. **Insurance.** The Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall provide a Certificate of Insurance evidencing:

8.1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

8.2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$1,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

8.3. Worker's Compensation insurance at the limits established by the State of Washington.

Any payment of deductible or self insured retention shall be the sole responsibility of the Contractor. The City shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The Contractor's insurance shall be primary insurance as respect the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

9. Prevailing Wages. Pursuant to RCW Chapter 39.12.040, prior to payment by the City, the Contractor must submit -- on behalf of itself and each and every subcontractor -- a "Statement of Intent to Pay Prevailing Wages," which must be approved by the Department of Labor and Industries prior to its submission. Contractor shall also comply with all Federal prevailing wage and other Federal requirements in accordance with the Contract Documents and applicable Federal Law and Regulations.

10. City Business License, Taxes, and Permits Required.

10.1. The Contractor shall procure and maintain any required City Business License in accordance with the RMC Chapter 5.05, Business Licenses and Regulations, prior to beginning work under this agreement. The Contractor shall also require and be responsible for all contractors, sub-contractors, and suppliers making deliveries using their own trucks inside City limits to obtain a City Business License.

10.2. The Contractor acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, including RMC Chapter 5.05, and the Contractor agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the City does not receive, or is assessed, made liable, or responsible in any manner for such charges or taxes, the Contractor agrees to hold the City harmless from such costs, including attorney's fees. The Contractor shall also require all contractors, sub-contractors, and suppliers making deliveries using their own trucks inside City limits pay all charges and taxes in accordance with this section.

10.3. In the event the Contractor fails to pay any taxes, assessments, penalties, or fees imposed by the City or any other governmental body, including a court of law, then the Contractor authorizes the City to deduct and withhold and/or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the Contractor's total compensation.

11. Form of Documents. All documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be submitted in a form designated by the City. Additionally, all final documents, reports, or studies shall be provided to the City in a .pdf or Word format. All Complete Plan Set Drawings shall include all up-to-date Specifications and shall be submitted to the City in Auto Cad, if applicable.

12. Assignment/Delegation. The Contractor shall not assign this contract nor delegate any duties hereunder without prior written consent of the City, which consent may be withheld by the City in its sole subjective discretion for any cause whatsoever.

13. Applicable Law; Venue. This contract shall be subject to, and the Contractor shall at all times comply with, all applicable state and local laws, regulations, rules and provisions of the City of Roslyn Municipal Code and ordinances of the City of Roslyn. Venue for any action hereunder shall be exclusively in Kittitas County Superior Court.

14. Termination. This contract can be terminated by either party upon default in performance of the other party, if such default is not cured within 10 days of notice thereof, and upon notification of intent to terminate this contract in writing 30 days prior to the date of termination. In case of default, the non-defaulting party shall have any and all remedies available to it in law or equity.

15. Notices. Any notice required by this contract may be delivered personally or mailed, certified with return receipt requested. If mailed, notice shall be deemed given upon the first business day after the date of the postmark. Notices shall be delivered or mailed to the following:

IN COLUMNS: IF BY MISTAKE DELETED "UNDO"

TO CITY:

City of Roslyn
Attn: Clerk-Treasurer
P. O. PO Box 451
Roslyn, WA, 98941
Telephone: (509) 649-3105
Fax: (509) 649-3174

TO CONTRACTOR:

Regency NW Construction, Inc.
Attn: Brian Foote
PO Box 6429
Bellevue, WA 98008
Telephone: (425) 883-1301
Fax: (425) 883-1302

16. Indemnity and Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this contract is Subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this contract.

17. Independent Contractor. For all purposes, the Contractor shall be deemed an independent contractor and shall not be deemed an employee of the City.

18. Waiver. Waiver by the City of any breach of any term or condition of this contract shall not be construed as a waiver of any other breach.

19. Attorney's Fees. In the event any action is brought by either party to enforce the terms of this contract, or for breach of this contract by the other party, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney's fees and expert witness fees, and costs and disbursements incurred by such party.

20. Entire Contract. This contract, together with all Contract Documents referred to herein, constitutes the entire agreement between the parties hereto.

21. Binding Effect. This contract shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

22. Modification. No modification of this contract shall be of any force or effect, unless in writing signed by the parties.

23. Severability. If any provision of this contract is held invalid, the remainder shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in full force and effect.

24. Corporate Authority. Each individual executing this contract is duly authorized to execute and deliver this contract on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation, or in accordance with the By Laws of said corporation, and that this contract is binding upon the corporation in accordance with its terms. A certified copy of such resolution shall be furnished to the City within ten (10) days of the date of the execution of this contract.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the day and year first written above.

City of Roslyn

Regency NW Construction, Inc

C Cooke
Cordy Cooke, Mayor Pro-Tem

Brian Foote, President

Date: 12/21/2011

Date: _____

Attest:

Amber J. Shallow
Amber Shallow, City Clerk

Approved As To Form:

Margaret J. King
Margaret J. King, City Attorney

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City of Roslyn

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Cordy Cooke, Mayor Pro-Tem

Brian Foote, President

Date: 12/21/2011

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Margaret J. King
Margaret J. King, City Attorney