



City of Grand Island

Tuesday, July 14, 2015

Council Session

Item G-14

#2015-178 - Approving Award of Proposal for Asset Management Implementation Assistance for the Grand Island Wastewater Division

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Marvin Strong PE, Wastewater Treatment Plant Engineer

Meeting: July 14, 2015

Subject: Approving Award of Proposal for Asset Management Implementation Assistance for the Grand Island Wastewater Division

Presenter(s): John Collins PE, Public Works Director

Background

A Request for Qualifications (RFQ) for asset management implementation assistance for the Wastewater Division of the Public Works Department was advertised in the Grand Island Independent on February 24, 2015. The RFQ was also sent to eleven (11) potential proposers by the Wastewater Division of the Public Works Department.

The asset management implementation assistance will focus on asset identification, database design, data collection, data development, training, and subsequent integration of Wastewater Division assets into an enterprise geodatabase and Public Works Cartegraph OMS enterprise asset management system. Full implementation is anticipated to take approximately nine (9) months.

Discussion

One (1) firm responded to the RFQ, which was opened on March 24, 2015 and reviewed and scored.

Funds for the asset management implementation assistance are in the approved 2014/2015 budget.

The proposal submitted by Black & Veatch Corporation of Kansas City, Missouri was scored and felt to be a qualified firm. An agreement in an amount not to exceed \$367,700.00 has been reached for such work. Taking into account the assets the Wastewater Division has (Treatment Plant, Lift Stations, etc.) and using a conservative estimate of \$100,000,000 the assistance is greatly worth it to get all pieces documented and control all maintenance costs.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the award of the proposal to Black & Veatch Corporation of Kansas City, Missouri.

Sample Motion

Move to approve the award of the proposal.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR QUOTES
FOR
ASSET MANAGEMENT IMPLEMENTATION ASSISTANCE AT THE
GRAND ISLAND WASTEWATER TREATMENT PLANT**

RFP DUE DATE: March 24, 2015 at 4:00 p.m.
DEPARTMENT: Public Works
PUBLICATION DATE: February 24, 2015
NO. POTENTIAL BIDDERS: 11

SUMMARY OF PROPOSALS RECEIVED

Black & Veatch
Kansas City, MO

cc: John Collins, Public Works Director
Marlan Ferguson, City Administrator
Marvin Strong, WWTP Engineer

Catrina DeLosh, PW Admin. Assist.
William Clingman, Interim Finance Director
Stacy Nonhof, Purchasing Agent

P1802

**AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT (Agreement) is by and between The City of Grand Island, Nebraska (Owner) and Black & Veatch Corporation (Engineer);

WITNESSETH:

WHEREAS, Owner intends to develop an asset management program for the City's wastewater treatment plant and collection system pump stations (the Project);

WHEREAS, Owner requires certain engineering services in connection with the Project (the Services); and,

WHEREAS, Engineer is prepared to provide the Services.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, Owner and Engineer agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____, 2015.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska without giving effect to the principles thereof relating to conflicts of law.

ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER

Engineer shall perform the Services described in Attachment A, Scope of Services. Engineer shall have no liability for defects in the Services attributable to Engineer's reliance upon or use of data, design

criteria, drawings, specifications, or other information furnished by Owner or third parties retained by Owner.

ARTICLE 4 – COMPENSATION

4.1 Payment shall be due and payable upon receipt by Owner to Engineer in accordance with Attachment B, Compensation.

4.2 Method of Payment. Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer’s most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information.

4.3 In the event Owner disputes any invoice item, Owner shall give Engineer written notice of such disputed item within ten (10) days after receipt of such invoice and shall pay to Engineer the undisputed portion of the invoice according to the provisions hereof. If Owner fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of one and one-half percent (1 ½%) per month, or the maximum amount allowed by law, if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item finally resolved in Owner’s favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

Owner shall at such times as may be required by Engineer for the successful and expeditious completion of the Services:

5.1 Obtain all permits and licenses required to be taken out in the name of Owner which are necessary for the performance of the Services;

5.2 Provide Engineer with all specifications necessary for the completion of the Services;

5.3 Advise Engineer of the existence and undertake the abatement and disposal of all hazardous materials, including, but not limited to, asbestos, polychlorinated biphenyls (PCBs) and radioactive material and other toxic substances, encountered by Engineer in the performance of the Services; and

5.4 Appoint an individual who shall be authorized to act on behalf of Owner, with whom Engineer may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon Owner with concurrence of the City Council as to all matters pertaining to this Agreement and the performance of the parties hereunder.

ARTICLE 6 - STANDARD OF CARE

Engineer shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. ***NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT OR IN ANY DRAWING, SPECIFICATION, REPORT, OR OPINION PRODUCED PURSUANT TO THIS AGREEMENT.***

ARTICLE 7 - LIABILITY AND INDEMNIFICATION

7.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and the Engineer's fee for the Services, and in consideration of the promises contained in this Agreement, Owner and Engineer agree to allocate and limit such liabilities in accordance with this Article. Indemnities against, releases from, and limitations on liability expressed in this Agreement shall apply even in the event of the breach of contract or warranty, tort (including negligence), strict liability or other basis of legal liability of the party indemnified or released, or of the party whose liability is limited. Such indemnities, releases, and limitations shall extend to the partners, licensors, subcontractors, vendors and related entities of such party, and all such parties' directors, officers, shareholders, employees, and agents.

7.2 Indemnification. Engineer agrees to defend, indemnify, and hold harmless the Owner, from and against legal liability for all claims, losses, damages, and expenses resulting from death or bodily injury to any person, damage or destruction to third-party property to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event such claims, losses,

damages, or expenses are caused by the joint or concurrent negligence of Engineer and Owner, they shall be borne by each party in proportion to its own negligence.

7.3 Employee Claims. Engineer shall indemnify Owner against legal liability for damages arising out of claims by Engineer's employees. Owner shall indemnify Engineer against legal liability for damages arising out of claims by Owner's employees.

7.4 Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, Engineer (including any of its related or affiliated companies) shall not be liable to Owner and Owner expressly waives all claims for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; increased operating costs; and for any special, indirect, incidental, consequential, punitive, or exemplary damages resulting in any way from the performance or non-performance of the Services whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or other basis of legal liability.

7.5 Limitations of Liability. To the fullest extent permitted by law, Engineer's (including any of its related or affiliated companies) total liability to Owner for all claims, losses, damages, and expenses, whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or any other basis of legal liability, resulting in any way from the performance or non-performance of the Services shall not exceed the total compensation actually received by Engineer under this agreement.

7.6 Survival. Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason whatsoever, the terms and conditions of this Article shall survive.

ARTICLE 8 – INSURANCE

During the performance of the Services under this Agreement, Engineer shall maintain the following insurance:

- (1) General Liability Insurance, with a limit of \$1,000,000 for each occurrence and in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000.
- (3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with limits of \$500,000 for each occurrence and in the aggregate.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 per occurrence and in the aggregate.

Engineer shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. If Owner purchases, or causes a contractor to purchase, a builders' risk or other property insurance policy for the Project, Owner shall require that Engineer be included as a named insured on such policy without liability for the payment of premiums.

Owner assumes sole responsibility and waives all rights and claims against Engineer for all loss of or damage to property owned by or in the custody of Owner and any items at the job site or in transit thereto (including, but not limited to, construction work in progress), however such loss or damage shall occur, except damage when is the fault or negligence of Engineer. Owner shall require its insurers to waive all rights of subrogation against Engineer for claims covered under any property insurance the Owner may carry.

Owner shall require all Project contractors under contract with Owner to include Owner and Engineer as additional insureds on their general, automobile, excess, and umbrella liability

insurance policies. Further, Owner shall obtain and maintain for the benefit of Engineer the same indemnities, waivers of subrogation rights and insurance benefits obtained for the protection of the Owner from any construction contractor and subcontractor working on the Project and shall obtain from that contractor and subcontractor insurance certificates evidencing the required coverages.

ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

ARTICLE 10 - OPINIONS OF COST AND SCHEDULE

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others not under contract to Engineer, or over the resources provided by others not under contract to Engineer to meet Project schedules, Engineer's opinion of probable costs and of project schedules for construction shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project costs will not vary from Engineer's opinions of probable cost or that actual schedules will not vary from Engineer's projected schedules.

ARTICLE 11 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Owner shall defend, indemnify, and hold harmless Engineer against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle Engineer to additional compensation at rates to be agreed upon by Owner and Engineer.

Any files delivered in electronic media may not work on systems and software different than those with which they were originally produced. Engineer makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

ARTICLE 12 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Project specific engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the property of Owner when Engineer has been compensated for all Services rendered, provided, however, that Engineer shall have the unrestricted right to their use. Engineer shall, however, retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Engineer.

ARTICLE 13 - TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all the Services performed and termination or suspension expenses, including, but not limited to, demobilization, remobilization and cancellation charges approved by the Owner. Upon restart, an equitable adjustment shall be made to Engineer's compensation.

ARTICLE 14 - DELAY IN PERFORMANCE

Except for Owner's payment obligation, neither Owner nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to: unusually severe weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Engineer shall be entitled to an equitable adjustment in schedule and compensation in the event such circumstances occur.

ARTICLE 15 - PRE-EXISTING CONTAMINATION

Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility and liability for any and all pre-existing contamination shall at all times remain with Owner.

"Pre-existing contamination" is any hazardous or toxic substance, material, or condition present at the Project site or sites concerned which was not brought onto such site or sites by Engineer for the exclusive benefit of Engineer. Owner shall release, defend, indemnify, and hold Engineer

harmless from and against any and all liability which may in any manner arise from or be in any way directly or indirectly caused by such pre-existing contamination except if, and then only to the extent, such liability is caused by Engineer's sole negligence or willful misconduct.

ARTICLE 16 - COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer: Mr. Derek Cambridge
Black & Veatch Corporation
8400 Ward Parkway
Kansas City, MO 64114

Owner: Mr. Marvin Strong, P.E.
City of Grand Island
Wastewater Treatment Plant Engineer
100 E. First St.
Grand Island, NE 68802-1968

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Engineer and Owner.

ARTICLE 17 - WAIVER

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 19 - INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Engineer. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be modified by a written amendment executed by both parties.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

ARTICLE 21 - ASSIGNMENT

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party, except that Engineer may do so to any of its related, affiliated, or successor entities upon written notice to Owner of same. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

ARTICLE 23 – GRATUITIES AND KICKBACKS

City Code states that it is unethical for any person to offer, give or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

ARTICLE 24 – EXHIBITS INCORPORATED

All Attachments listed below and discussed in this AGREEMENT are hereby incorporated into the AGREEMENT by this reference.

- Attachment A; Scope of Services
- Attachment B; Compensation
- Attachment C; Schedule of Hourly Billing Rates and Charges

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ENGINEER:

CITY OF GRAND ISLAND,
NEBRASKA

BLACK & VEATCH CORPORATION

By: _____

By: _____

Title: Jeremy Jensen, Mayor

Title: Derek L. Cambridge
Associate Vice President

Date: _____

Date: _____

Attest: _____

Date: _____

RaNae Edwards, City Clerk

The Amendment is in due form according to law and is hereby approved.

Date: _____

Stacy R. Nonhof, Assistant City Attorney

RESOLUTION 2015-178

WHEREAS, the City Of Grand Island invited proposals for Asset Management Implementation Assistance for the Wastewater Division of the Public Works Department, according to the Request For Qualifications (RFQ) on file with the Wastewater Division of the Public Works Department; and

WHEREAS, on March 24, 2015 one (1) proposal was received, reviewed, and evaluated in accordance with established criteria in the RFQ; and

WHEREAS, Black & Veatch Corporation of Kansas City, Missouri submitted a proposal in accordance with the terms of the Request for Qualifications and all statutory requirements contained therein; and

WHEREAS, such services shall be provided at a cost not to exceed \$367,700.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Black & Veatch Corporation of Kansas City, Missouri is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 14, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
July 10, 2015	☒ City Attorney