

RESOLUTION

No. 13-384

Date of JUN 20 2013

Adoption _____

Factual content certified by _____

Approved as to Form and Legality

Cary M. Amara
City Attorney

Luis Mollinedo
Title: LUIS MOLLINEDO, DIRECTOR

Councilman /woman _____

presents the following Resolution:

RESOLUTION AWARDING A CONTRACT THROUGH FAIR & OPEN PROCESS IN ACCORDANCE WITH N.J.S.A. 19:44 A-20.4 ET SEQ TO HATCH MOTT MACDONALD, 27 BLEEKER STREET, MILLBURN, NEW JERSEY 07041 FOR PROFESSIONAL ENGINEERING SERVICES TO REVIEW, RECOMMEND, PREPARE SPECIFICATIONS AND CONSTRUCTION SERVICES FOR VARIOUS BUILDING IMPROVEMENTS, FOR THE CITY OF TRENTON, DEPARTMENT OF PUBLIC WORKS, DIVISION OF TRENTON WATER WORKS – RFP2013-11

WHEREAS, the City has a need for professional engineering services to review, recommend, prepare specifications and construction services for various building improvements for the City of Trenton; and

WHEREAS, a request for proposal was advertised, and two (2) proposals were received on April 9, 2013 and were evaluated by a committee based on criteria that included experience, references, understanding of requirements and cost; and

WHEREAS, the proposal of Hatch Mott MacDonald, 27 Bleeker Street, Millburn 07041 was deemed to include the necessary qualifications and expertise for the performance of the services at the rates listed in the proposal for a period of one year; and

WHEREAS, funds in an amount not to exceed \$339,503.00, have been certified to be available in the following capital account numbers C-06-12-55-020B-390 in the amount of \$100,000.00 and C-06-12-55-K20C-398 for \$239,503.00 contingent upon the adoption of the temporary or final budget for the year; and

NOW, THEREFORE IT IS RESOLVED, by the City Council of the City of Trenton, as follows:

1. The Mayor is hereby authorized to enter into a contract with Hatch Mott MacDonald, professional engineering services to review, recommend, prepare specifications and construction services for various building improvements for the City of Trenton
2. This contract is awarded pursuant to the authority set forth in the Local Public Contracts Law at N.J.S.A. 40A:11-4.1.
3. A notice of this action shall be printed once in the official newspaper for the City of Trenton and the Resolution and contract shall remain on file in the City Clerk's Office.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BETHEA	<input checked="" type="checkbox"/>				MCBRIDE	<input checked="" type="checkbox"/>				HOLLY WARD	<input checked="" type="checkbox"/>			
CALDWELL WILSON	<input checked="" type="checkbox"/>				MUSCHAL	<input checked="" type="checkbox"/>								
CHESTER	<input checked="" type="checkbox"/>				REYNOLDS JACKSON	<input checked="" type="checkbox"/>								

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on JUN 20 2013

Shirley Holcomb
President of Council

Lina Baylor
City Clerk

PROFESSIONAL SERVICES CONTRACT
RFP # 2013-11
RESOLUTION #13-384

THIS CONTRACT, made this 21st day of June 2013 by and between the City of Trenton, a municipal corporation of the State of New Jersey, hereinafter known as the "City" and **HATCH MOTT MCDONALD, 111 WOOD AVENUE SOUTH, ISELIN, NEW JERSEY 08830-4112 ("CONTRACTOR")**.

WHEREAS, the City has need for Professional Engineering Services to Review, Recommend, Prepare Specifications and Construction Services for Various Building Improvements for the City of Trenton Department of Public Works, Trenton Water Works.

WHEREAS, Contractor agrees to perform **PROFESSIONAL ENGINEERING SERVICES** in terms and conditions as set forth hereinafter, and the City being agreeable thereto;

NOW THEREFORE, the parties hereto mutually agree as follows:

1. **PROFESSIONAL SERVICES:** The City agrees to retain Hatch Mott McDonald, 27 Bleeker St., Millburn, NJ 07041 hereinafter set forth at the request of and under the general supervision of the City of Trenton, Department of Public Works, Trenton Water Works.

2. **SCOPE OF SERVICES:** The contractor warrants that the representations made by it regarding its ability and skill level to carry out these services are true. Contractor shall, in a good, professional and workmanlike manner, in conformity with the responsibilities, demands and ethics of their profession, perform all reasonable and necessary services as described as follows:
 - To perform Engineering Services to review, recommend, prepare specifications and construction services.

DURATION OF THE CONTRACT: This contract shall remain in full force effective beginning June 21, 2013 until June 20, 2014 in the amount not to exceed \$339,503.00

3. **COMPENSATION:**

(a) All work performed by Contractor according to the attached scope of services shall not exceed at the rates listed in the proposal.

(b) Contractor shall submit monthly bills complete with appropriate support documentation to justify said billing;

(c) In no event during the terms of this Contract, Contractor's billings shall hereunder exceed the amount set forth in Resolution No. 13-384 is incorporated herein by reference. In the event Contractor anticipates exceeding the aforesaid contract amount, the Independent Contractor, shall give prior written notice to the City of Trenton, Department of Public Works, Trenton Water Works approximately billing cycle in which the contract amount is expected to be exhausted.

4. **STATUS OF CONTRACTOR:** It is expressly understood by and between the parties hereto that the status of the Contractor retained to carry out the services set forth in this agreement is that of an Independent Contractor. It is further understood by and between the parties that is not intended nor shall it be construed, that the contractor is an agent, employee, or officer of the City of Trenton.

5. **NOTICES:** Any notices required to be delivered to either party pursuant to this Contract shall be in writing to their respective addresses. The parties shall be responsible for notifying each other of any change of address.

6. **INTEGRATION:** This contract constitutes the entire agreement between the parties and any representation that may have been made prior to the execution of this Contract are nonbonding, void, and of no effect and neither party has relied on any such prior representations in entering into this Contract.

7. **ENFORCEABILITY:** If any term or condition of this Contract or its application to any party or circumstances shall be deemed invalid or unenforceable, the remainder of the Contract and its application to other parties and circumstances shall be affected.

8. **GOVERNING LAW:** This Contract shall be governed by the laws of the State of New Jersey.

10. **MISCELLANEOUS PROVISIONS:**

Contractor, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality . Contractor will take affirmative action to ensure that such applicants are recruited and employed and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional, gender identity or expression, sexual orientation. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

Contractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation.

Contractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the American with Disabilities Act.

Contractor, where applicable, agrees to attempt to schedule minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, amended and supplemented from time to time.

Contractor, where applicable, agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional, sexual orientation, disability or nationality and that it will discontinue the use of

any recruitment agency which engages in direct or indirect discriminatory practices.

Contractor, where applicable, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are take without regard to age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional, sexual orientation, disability or nationality and conform the applicable employment goals, consistent with statutes and court decisions of the State of New Jersey, and applicable Federal law and Federal court decisions.

Contractor, where applicable, shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Contractor, shall submit along with the signed contract one of the following as evidence of compliance with N.J.A.C. 17-27:

1. Appropriate evidence that the Independent contractor is operating under an existing Federally approved or sanctioned affirmative action program.
2. A certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4.
3. An initial employee information report (Form AA#302) provided by the Affirmative Action Office and completed by the contractor in accordance with N.J.A.C. 17:27-4

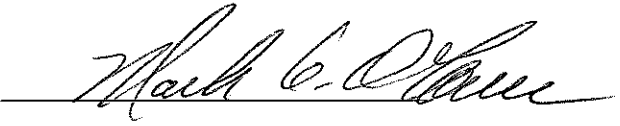
11. ADDITIONAL MISCELLANEOUS PROVISIONS

Contractor's General Terms and Conditions, a copy of which are attached, are incorporated into and made a part of this Professional Services Agreement.



Hatch Mott McDonald, LLC Albert J. Mellini, Executive Vice President
~~27 Bleeker St~~ 111 Wood Avenue South
~~Milltown, NJ 07041~~ Iselin, NJ 08830-4112

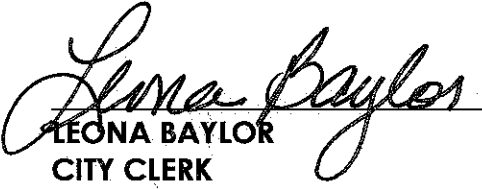
Seal

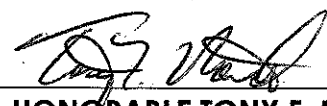
Attest: 

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year above written.

ATTEST:

CITY OF TRENTON


LEONA BAYLOR
CITY CLERK


HONORABLE TONY F. MACK
MAYOR

GENERAL TERMS AND CONDITIONS

Article 1 - Implementation of the Purchase Order: The City of Trenton ("Client") hereby engages Hatch Mott MacDonald ("Consultant") and Consultant agrees, in accordance with the terms of this Purchase Order including the specifications, if any, to perform professional consulting services ("Services") as specified herein and to same to completion in accordance with applicable laws, rules, and regulations. Upon the agreement of both parties, the Client and Consultant may negotiate and enter into a Professional Engineering Services Agreement if the level of Services or price increases beyond the scope of this Purchase Order. The Agreement shall include this Purchase Order.

Article 2 - Standard of Care Consultant shall perform its Services in accordance with that same standard of care practiced by reasonable and prudent professional engineers providing the same or similar services in the same geographic locality. Consultant does not guarantee the accuracy of any estimates of costs of construction that may be requested and shall not be responsible for any costs incurred exceeding any such estimates. Consultant shall not be responsible for site safety.

Article 3 - Payment

- 3.1 Consultant may invoice the Client in accordance with the Schedule of Rates, if any, attached. The Client shall pay Consultant for each invoice within the time specified therein, or if no time is specified, within thirty (30) days of the date of the invoice.
- 3.2 If any item or part of an item of an invoice of Consultant is disputed or subject to question by the Client, the payment by the Client of that part of the invoice which is not contested shall not be withheld on those grounds and the provisions of section 3.1 shall apply to such part and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to Consultant. The provisions of section 3.1 shall apply to all disputed amounts finally determined payable to Consultant.
- 3.3 In the event the Client fails to make any payments to Consultant when such payments are due pursuant to the provisions of this Agreement, interest shall accrue on such late payments from the date due to the date of payment at the then prime rate of Consultant's bank plus 1 1/2% per annum, or as otherwise agreed in writing, and Consultant may suspend the performance of the Services until such payment is received.

Article 4 - Warranties CONSULTANTS SERVICES SHALL NOT BE SUBJECT TO ANY EXPRESS OR IMPLIED WARRANTIES.

Article 5 - Plans, Specifications and Designs

- 5.1 Reports and other services of Consultant shall be performed by Consultant on the assumption that information furnished by the Client or by any person on behalf of or with instructions from the Client is correct, and Consultant shall not be liable for any loss, damage or extra cost arising from any inaccuracy in such information.
- 5.2 If any information furnished by the Client is determined by Consultant to be inaccurate or incomplete, Consultant shall notify the Client of the information which is inaccurate or incomplete, as the case may be, and Consultant shall be entitled to make any necessary changes in any Reports, design documents or construction documents at the expense of the Client. If the Client becomes aware of any information which is inaccurate or incomplete the Client shall notify Consultant of such information.

Article 6 - Reports and Deliverables

- 6.1 Upon receipt of final payment any reports or deliverables will become the property of the Client whether the Project is to be proceeded with or not. The copyright of the Reports shall be and remain with Consultant. Consultant hereby grants a non-exclusive assignable license under such copyrights to the Client to construct the Project.
- 6.2 Reports, deliverables, or memoranda issued to Client or otherwise resulting from any assignment hereunder are not to be used in whole or in part outside of Client's organization or provided to third parties (including but not limited to being used or provided in connection with any sale or offering for sale of securities, including without limitation stock, bonds, notes or any other instruments or transactions which call for investments, loans or other transfers of money) without the prior written approval of Consultant.

Article 7 - Extra Services

The Client shall have the right to request Consultant to perform services in connection with the Project that are in addition to the Services ("Extra Services") and Consultant may, subject to agreement on the payment for such Extra Services, agree to perform such Extra Services, such agreement not to be unreasonably withheld. Consultant shall be paid by the Client for the performance of Extra Services on the same basis and at the same times as Consultant is paid for the Services unless the basis of payment for the Services is a fixed fee in which case the parties shall agree to an equitable adjustment on the fixed fee.

Article 8 - Confidential Information

- 8.1 Consultant shall not disclose any confidential information of the Client relating to the Project communicated to or acquired by Consultant in the course of carrying out the Services which if known by others would have a material and adverse affect on the business and operations of the Client. Consultant shall use such confidential information only for purposes that relate to the performance of the Services and not for any other purpose without the consent of the Client. Similarly, the Client shall not disclose any confidential information of Consultant communicated to or acquired by the Client except as may be required by others who are performing work or services in connection with the Project and who have entered into a confidentiality agreement satisfactory to Consultant.
- 8.2 Confidential information shall not include any information which (a) was at the time of disclosure or thereafter became part of the public domain through no act or omission of Consultant or the Client; or (b) became available to Consultant or the Client from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly from Consultant or the Client; or (c) was known to Consultant at the time of disclosure thereof by the Client and vice versa; or (d) was required to be disclosed by law.

Article 9 - Insurance

- 9.1 Consultant shall obtain and maintain the following types and amounts of insurance coverage: workers compensation-statutory; commercial general liability \$1million per occurrence/aggregate; automobile liability \$1 million per occurrence/aggregate; professional errors and omissions \$1 million per claim/aggregate on a claims-made basis.
- 9.2 During the period in which the Services are being performed, the Client shall at its own expense obtain and maintain insurance to limits which are customary for a project of the nature of the Project, including, but not limited to, fire and extended coverage, all risks insurance against physical loss or damage to property included in the Project, general comprehensive liability insurance and automobile insurance. Consultant shall be a named insured in the policies maintained by the Client for the Project. The Client shall deliver certified copies of the policies to Consultant within 15 days of request. With respect to such policies the Client shall not grant to its insurers any right of subrogation against Consultant for damage or loss

caused by Consultant or if such subrogation rights are granted the Client shall indemnify Consultant for any liability incurred or suffered by Consultant as a result thereof.

Article 10 - Limitation of Liability and Waiver of Damages

Notwithstanding anything else to the contrary herein, the liability of either party to the other under this Agreement (whether by reason of breach of contract, tort or otherwise, including under any applicable indemnification provisions) shall be limited to the greater of: (a) the amount of service fees paid to Consultant under this Agreement; or (b) the amount of professional liability insurance posted by Consultant at the time of execution of this Agreement. In addition, Client and Consultant hereby waive their respective rights to any and all claims against each other for special, indirect or consequential damages of any nature whatsoever, arising out of or in any way related to the services to be performed under this Agreement.

Article 11 - Indemnifications

Each Party hereby agrees to indemnify and hold harmless the other party against all claims, demands, suits, judgments, liabilities, costs and reasonable attorney fees, arising out of the errors, omissions or negligent acts, breach of contract or wrongful misconduct of the indemnifying Party. This obligation shall include, without limitation, all claims and liens by any and all of indemnifying Party's contractors, agents and employees. In addition, the indemnifying Party shall pay any and all attorneys' fees, expenses, and costs incurred by the other Party which relate to the enforcement of the indemnity conditions and obligations of the indemnifying Party, including without limitation the additional insured protection and other insurance obligations of indemnifying Party, under the Agreement

Article 12 - Termination

- 12.1 Either party hereto may, at its option, terminate this Agreement upon written notice in the event the other party becomes insolvent, or a receiver is appointed on account of its insolvency or it enters into an arrangement for the benefit of its creditors.
- 12.2 Either party shall be entitled to terminate this Agreement on 15 days written notice to the other party in the event the other party is in material default of its obligations pursuant to this Agreement and such default have not been cured within 15 days following receipt of written notice of such default.

Article 13 - Force Majeure

If either party is impacted in whole or in part by any event of force majeure including without limitation any act of God, war, riot, labor dispute, change in law, terrorism, civil commotion or unrest, flood, strike, fire, or any cause beyond the control of such party (except for financial inability), then such Party so impacted shall be relieved of its obligations herein. Any party so impacted in whole or in part by force majeure shall promptly give the other party notice of the force majeure event including reasonably full particulars in respect thereof. Any party so impacted shall also be entitled to an equitable adjustment of the Agreement, which may include an increase in price, extension of time or other equitable relief as in good faith is reasonable, appropriate and supportable.

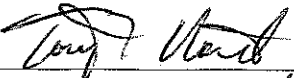
Article 14 - Notice

Any notice, request, order, statement or other communication required or permitted to be given hereunder shall be in writing and may be given by delivery to an officer of the other party or by mailing the same by first class mail, postage prepaid, addressed to the other party, to the addresses shown on the last page of this Purchase Order. Notice given by facsimile transmission or telex shall be deemed to have been given on the day of transmittal, if transmitted during normal business hours, or on the next business day if transmitted outside of normal business hours. Notice given by mail shall be deemed to have been given on the fifth business day after mailing.

Article 15 - General


- 15.1 This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, understandings or agreements either written or oral made or exchanged between the parties prior to the execution of this Agreement.
- 15.2 Consultant may not assign this Agreement except with the consent of the Client, which consent shall not be unreasonably withheld. Consultant shall not be liable or responsible for any means, methods, sequences, procedures or techniques necessary for construction or to ensure project site safety, such responsibilities and liabilities for construction and/or project site safety resting solely with the Client or parties other than Consultant.
- 15.3 This Agreement shall be governed by and construed in accordance with the laws of the state of New Jersey. Before submitting a dispute to the courts, the parties agree to submit such dispute to senior management to attempt to resolve the dispute.
- 15.4 Nothing in this Agreement shall create or shall be construed so as to create the relationship of principal and agent between the Client and Consultant, and for all purposes Consultant shall be an independent contractor in performing the Services.
- 15.5 No waiver by either party hereto of any breach of any of the covenants herein contained shall take effect or be binding upon that party unless the same be expressed in writing and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.
- 15.6 The invalidity of any provision or unenforceability thereof shall not affect the validity or enforceability of any other provisions hereof.
- 15.7 The provisions of Articles 1, 2, 3, 6, 8 (Article 8 for a period of Five (5) years), 10 and 14 shall survive the suspension or termination of this Agreement.

THE CITY OF TRENTON

By: 
Tony F. Mack Mayor
 Print or Type Name and Title

Dated: 9/6/13

HATCH MOTT MACDONALD, LLC

By: 
 Albert J. Mellini, Executive Vice President

Dated: 7-17-13