

COUNCIL DECISION REQUEST

SUBJECT: Fire Station No. 13 Construction Contract Award

MEETING DATE: May 6, 2010

PAYSON GOAL: NEW: EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: LaRon Garrett, Pub. Wks. Dir.

AMOUNT BUDGETED: \$1,499,400

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: \$1,250,400

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: \$0



EXHIBITS (If Applicable, To Be Attached):

POSSIBLE MOTION

I move to award the contract for the construction of Fire Station No. 13, including offsite improvements, to Amon Builders, Inc. for \$1,250,400 for the Base Bid and Alternates No. 2 and No. 4 and authorize the Mayor to sign all necessary contract documents.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

Several years ago the citizens of Payson approved a bond that, in part, was to pay for the construction of a new fire station on the east side of town. In September, 2009 the Town of Payson acquired approximately 1 acre of property at 103 S. Rim Club Parkway for this new fire station. An architect was retained and the design initiated for this new building. Upon completion and approval of the plans, the project was advertised for bid on March 12, 2010. A mandatory pre-bid meeting was held on March 23, 2010 with 14 general contractors attending. Bids were due at 11:00 AM on March 30, 2010. At that time we received 14 sealed bids. Each contractor was to include a Bid Bond, the Specifications Book, and a List of Subcontractors with their bid.

The Call for Bids requested the cost for the Base Bid and four Bid Alternates. The published criteria for awarding the bid was "The lowest responsible, responsive bid is defined as the base bid if only the base bid is awarded. If any alternates are awarded, the lowest responsible, responsive bid is defined as the sum of the base bid plus the alternates awarded." The bid alternates were as follows: No. 1 - the difference in cost to construct the building using wood interior wall studs in place of the metal wall studs specified on the construction drawings; No. 2 - the difference in cost to construct the building with a standing seam metal roof rather than the shingle roof as specified on the construction drawings; No. 3 - the difference in cost to install evaporative coolers on the apparatus bay in place of the ceiling fans as shown on the construction drawings; and No. 4 - to construct slope protection using retaining walls in place of gabion baskets (large river rock inside chain link baskets) as specified on the construction drawings.

The reasoning behind each of the bid alternates and a recommendation on whether to accept or reject them is as follows:

No. 1: Metal interior wall studs are the preferred alternate because they are much more fire resistant than wood studs. In an effort to reduce the overall cost of the building, the alternate of using wood studs was included. The anticipated affect was that the overall construction cost would be substantially reduced if wood studs were used. After reviewing the bids it was determined that most of the contractors either increased the cost if wood studs were used, or at best,

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stated no change in the cost of the building if they used wood studs. Only 5 of the 14 contractors included a deduction for wood studs and none of them were substantial savings. Based on the above information, staff recommends rejecting Bid Alternate No. 1 and using the preferred metal wall studs.

No. 2: The original plans called for asphalt shingles on the roof. The alternate was to provide the additional cost to upgrade the roof to metal. The metal roof is essentially maintenance free and has a much longer useful life than the asphalt shingles. After reviewing the bids it was determined that the added value of reduced maintenance and longevity exceeded the additional cost for the metal roof. Based on the above information, staff recommends accepting Bid Alternate No. 2 and using the metal roof instead of the asphalt shingles.

No. 3: The original plans called for ceiling fans in the apparatus bay for air circulation and cooling. Bid Alternate No. 3 was the additional cost to install evaporative cooling on the apparatus bay in place of the ceiling fans. During the bidding process the Town was able to have a private firm perform an energy audit on the building to determine if there were any modifications that would make the building energy efficient. One of the findings of this audit was that due to the alignment of the apparatus bays it could take advantage of the prevailing breezes in the area and ceiling fans would be much more cost effective than the evaporative coolers. Based on the above information, staff recommends rejecting Bid Alternate No. 3 and using the more energy efficient ceiling fans.

No. 4: The original plans called for installing gabion baskets around the storm water detention basin to protect the slope. Bid Alternate No. 4 was to provide the additional cost to construct retaining walls around the storm water detention basin rather than install the gabion baskets. The advantage to using a retaining wall in place of the gabions is that more usable space is available for future activities on the property. After reviewing the bids it was determined that the added value of the additional usable area exceeded the additional cost for the retaining walls. Based on the above information, staff recommends accepting Bid Alternate No. 4 and installing the retaining walls rather than the gabion baskets.

Following is the bid tabulation to determine the lowest responsive, responsible bidder based on awarding the Base Bid, Alternative No. 2 and Alternative No. 4.

Contractor	Base Bid	Alt. No. 2	Alt. No. 4	Total Bid
Ju-rell	\$985,000.00	\$58,000.00	\$7,500.00	\$1,050,500.00
Dean Douglas	\$1,125,000.00	\$10,000.00	\$4,000.00	\$1,139,000.00
Edge Construction	\$1,180,000.00	\$37,000.00	\$12,000.00	\$1,229,000.00
Amon Builders	\$1,230,000.00	\$20,400.00	\$0.00	\$1,250,400.00
TSG Construction	\$1,217,000.00	\$40,000.00	-\$4,000.00	\$1,253,000.00
Spire Engineering	\$1,204,500.00	\$48,200.00	\$9,400.00	\$1,262,100.00
W M Grace	\$1,244,700.00	\$21,689.00	\$13,334.00	\$1,279,723.00
W E O'Neil	\$1,269,000.00	\$18,400.00	\$700.00	\$1,288,100.00
BMJS	\$1,271,241.00	\$22,811.00	\$13,710.00	\$1,307,762.00
Whiteriver Construction	\$1,258,613.00	\$23,037.00	\$7,764.00	\$1,316,414.00
Woodruff Construction	\$1,321,000.00	\$44,800.00	\$21,600.00	\$1,387,400.00
Low Mountain Construction	\$1,368,000.00	\$23,000.00	\$15,000.00	\$1,406,000.00
Intermountain West Civil	\$1,174,772.00	\$61,000.00	\$180,000.00	\$1,415,772.00
Norquay Construction	\$1,533,000.00	\$39,000.00	-\$1,000.00	\$1,571,000.00

After reviewing the bid submittals for the lowest bidders, it was determined that the three lowest bidders did not meet all of the bid requirements and therefore, are not considered "responsive" bidders. The low bidder did not submit the Specification Book with their bid as required. The second and third low bidders did not submit a List of Subcontractors with their bid as required. Therefore, the lowest bidder that meets all of the bidding requirements is Amon Builders with a total bid, including alternates 2 & 4 of \$1,250,400.00.

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A copy of the proposed contract with Amon Builders is included with this CDR.

PROS:

CONS:

PUBLIC INPUT (if any):

N/A

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

N/A

FUNDING:

Acct: 433-5-2426-01-8602 Budget: \$1,833,400 Available: \$1,499,400 Expense: \$1,250,400 Remaining: \$249,000

Acct: Budget: Available: Expense: Remaining:

Acct: Budget: Available: Expense: Remaining:

3A: Hope A. Cribb Date: 4-28-10

CONTRACT

THIS CONTRACT is made effective this _____ day of _____, 2010 by and between Amon Builders, Inc., an organization authorized to do business in the Town of Payson and State of Arizona (hereinafter "Contractor") and **THE TOWN OF PAYSON**, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter "Owner"), collectively referred to as the "Parties".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the construction of the Fire Station No. 13 of the Town of Payson, Arizona (the "Project").
2. The Contractor will, at its own cost and expense, furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project.
3. The Contractor will complete the Project in a good and workmanlike manner, under the observation and direction of, and to the satisfaction of the Public Works Department of the Town of Payson.
4. The Contractor will commence the work required by the Contract Documents beginning the day following the starting date specified in the Notice to Proceed, and will complete the same within Three Hundred Thirty Five (335) consecutive calendar days thereafter. Within such time, the Contractor will turn said work over to the Owner, complete and ready for use, free and discharged of all claims and demands whatsoever, for or on account of any and all labor and materials used and furnished to be used in said work.
5. The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein including all construction of the Base Bid, Add Alternate No. 1, and Add Alternate No. 2 for the total sum of One Million, Two Hundred Fifty Thousand, Four Hundred Dollars and NO/100 (\$1,250,400.00).
6. The term "Contract Documents" means and includes the following when applicable. The following shall be applicable, except as to any one or more of the following that have not been prepared in conjunction with this Contract:
 1. Advertisement for bids or proposals;
 2. Information for bidders;
 3. Bid;
 4. Bid bond;

5. Contract;
6. General conditions;
7. Supplemental general conditions;
8. Payment bond;
9. Performance bond;
10. Notice of award;
11. Notice to proceed;
12. Drawings;
13. Specifications;
14. Addenda;
15. Special provisions;
16. Details;
17. Proposal;
18. Plans.

7. The Contractor hereby agrees to indemnify and save harmless the Owner and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents, employees and representatives from and against any suit, action, loss, damage, expense, costs, including but not limited to attorney's fees, sustained by any person or property arising out of the work done in fulfillment of the obligations of Contractor under the terms of this Agreement, or on account of any act or omission by the Contractor, or his agents, subcontractors, successors or assigns, or arising out of the construction of the Project, or from any claims or amounts arising or recovered under Workers Compensation Laws or any other law, ordinance, rule or regulation.

8. The Owner will pay to the Contractor in the manner and at such times as set forth in the Contract Documents, the amount set forth herein above in paragraph 5. Retention will be withheld in the amount of Ten Percent (10%) of the project payment. Following satisfactory fifty percent (50%) completion of the project, the owner may reduce retention to Five Percent (5%) for the remainder of the project payments.

9. The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the Parties and supercedes all prior negotiations, representations, or agreements, either written or oral, which are merged herein. The Contract may be amended or modified only by an instrument in writing executed with the same formalities as this Contract.

10. By executing the Contract, the Contractor represents that Contractor has visited the site or otherwise familiarized him/her/itself with the local conditions under which the Project is to be completed, and has correlated those observations with the requirements in the Contract Documents.

11. The Contractor represents and warrants that: (a) it is validly existing and in good standing

under the laws of the State of Arizona, (b) it is appropriately licensed by the Arizona State Registrar Of Contractors to perform this work, (c) it is authorized to perform the work contemplated by the Contract Documents in the Town of Payson, County of Gila, State of Arizona, and (d) the execution, delivery and performance of this Contract has been duly authorized by the responsible persons or officers for and of the Contractor.

12. The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither Party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, and any attempted such assignment or subletting shall render this Contract void and of no effect.

13. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (a) all employees on the Project and all other persons who may be affected thereby; (b) all the Project and raw materials and equipment to be incorporated therein; and (c) other property at the site or adjacent thereto, including, but not limited to trees, shrubs, walks, pavements, lawns, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

14. The Contractor shall purchase and maintain such insurance which will protect Owner and Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

A. Claims under Workers Compensation, disability benefit and other similar employee benefit acts.

B. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

D. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

E. Claims for damages, other than through the work itself, because of injury to or

destruction of tangible property, including loss of use resulting therefrom; and

F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

15. If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, or if Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is allowed, to supply enough properly skilled workmen or proper materials, or if Contractor fails to make prompt payment to subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of or default in carrying out any provision in the Contract Documents, then the Owner may, without election or prejudice to any right or any remedy and after giving the Contractor and his surety, if any, seven (7) days written notice, terminate the Contract and finish the Project by whatever method Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment under the Contract.

16. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

Owner: Town of Payson
 303 North Beeline Highway
 Payson, Arizona 85541
 Attention: LaRon G. Garrett

Contractor: Amon Builders, Inc.
 903 E. Highway 260, Ste. 6
 Payson, AZ 85541
 Attention: Michael J. Amon, President

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication given by mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

17. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the owner of a breach of any of the covenants of this Contract shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Contract.

18. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

19. Time is of the essence of this Contract and of all of its parts.

20. It is not intended by this Contract to, and nothing contained in this Contract shall, create any partnership, joint venture or other arrangement between the Owner and the Contractor. No term or provision of this Contract is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

21. Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Nor shall anything herein be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money if the Town does not have sufficient revenues for this expenditure.

22. This Contract shall be construed and interpreted under the laws of Arizona without regard to principles of conflict of law. This contract is subject to the provisions of A.R.S. §38-511.

23. Business License: The Contractor shall provide the Town with a copy of its Town of Payson business license. If the Contractor is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

24. Scrutinized Business Operations. Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of the Contract will not have a scrutinized business operation in either Sudan or Iran.

25. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).

25.1 Consultant and any Sub-consultant employed by Consultant warrants their compliance with all Federal immigration laws and regulations that relate to their employees and Arizona Revised Statutes Section 23-214(A).

25.2 A breach of the warranty under Section 25.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

25.3 The Town retains the legal right to inspect the papers of the Consultant or Sub-consultant who works on this Contract to ensure that the Consultant or Sub-consultant is complying with Section 25.1.

26. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

IN WITNESS WHEREOF, the Parties have executed or caused to be executed by their duly authorized official, this Contract, to be effective on the day and year first above written.

OWNER:
TOWN OF PAYSON
303 N. Beeline Highway
Payson, AZ 85541

CONTRACTOR:
Amon Builders, Inc.
903 E. Highway 260, Ste. 6
Payson, AZ 85541

By _____

By _____

Name _____

Name Michael J. Amon

Title _____

Title President

ATTEST:

ATTEST:

Silva Smith, Town Clerk

Secretary

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

- I. Identification of parties;
- II. Offer and acceptance;
- III. Existence of contract consideration (we do not review to determine if consideration is adequate);
- IV. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated this _____ day of _____, 2010.

By _____
Samuel I. Streichman, Town Attorney