

RESOLUTION NO. 2004- 18 R

A resolution ratifying the City Manager's execution of an agreement modification with Victoria Air Conditioning, Ltd., for design/build services for the Victoria City Hall Air Conditioning Renovation Project; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager's execution of an agreement modification with Victoria Air Conditioning, Ltd., for design/build services for the Victoria City Hall Air Conditioning Renovation Project, which is attached as **Exhibit "A"** and incorporated herein, is ratified.

2.

This resolution shall become effective immediately upon adoption.

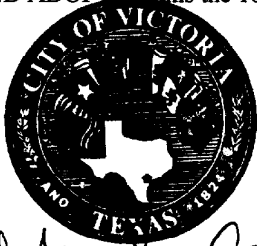
PASSED, this the 10th day of February, 2004.

AYES: **6**

NAYS: **0**

ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 10th day of February, 2003.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Distribution: Legal Department
IMS Department

Gary Middleton
GARY MIDDLETON, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

David Atmar Smith
DAVID ATMAR SMITH, City Attorney

Copies Sent: **FEBRUARY 11, 2004**

Alteration to Terms of Form of Agreement between the City of Victoria and Design/Builder for the Victoria City Hall Air Conditioning Renovation Project

The following terms of the currently effective Form of Agreement between the City of Victoria (City) and Victoria Air Conditioning, Ltd. (Design/Builder) for the Victoria City Hall Air Conditioning Renovation Project are hereby altered to read as follows:

DESIGN/BUILDER'S AGREEMENT: Design/Builder shall complete all work to complete the Project including designing, furnishing all plant, labor, material, and equipment, and performing all work required for the Project in accordance with the Contract Documents, which include all of the following:
Form of Agreement between the City of Victoria and Design/Builder for the Project
Requirements of the City's Request for Qualifications for the Project
Design/Builder's Proposal
General Conditions
Special Conditions
any addenda that are signed and dated by the Owner
any written modifications or change orders agreed to by the Owner and Design/Builder

The Design/Builder will complete the work in three phases. The Contract Time and compensation (Contract Sum) for the completion and acceptance work in each phase will be as follows:

Phase	Compensation	Contract Time for each Phase
Preliminary Design Phase	\$ 11,232.00	42 calendar days
Final Design Phase	\$ 12,500.00	21 calendar days
Construction Phase	\$ 365,000.00	90 calendar days

The DESIGN/BUILDER will complete each phase and receive a Notice to Proceed from OWNER'S REPRESENTATIVE before beginning work on any subsequent phase. The Contract Time will begin 10 calendar days after the date of issue for the Notice to Proceed for each phase of the work. The Notice to Proceed will be issued by the Owner's Representative.

The Construction Phase of the Project must be fully completed within the Contract Time for that phase, as shown above, subject to extensions of time as provided by applicable provisions of the Contract. Failure of the Design/Builder to fully complete the Construction Phase of the Project within the Contract Time, including any extensions granted, shall entitle the Owner to deduct from the money due to the Design/Builder, the amount of \$300 liquidated damages for each calendar day of delay in completion of the work. In addition, the Owner shall be entitled to deduct from the money due the Design/Builder, the amount of \$1,000 liquidated damages for each working day that any part of the City Hall Complex is not habitable all or part of said day due to the failure of the Design/Builder failing to fully complete enough of the Construction Phase of the Project to ensure that the City Hall's air conditioner is capable of cooling the building to less than 78 degrees Fahrenheit during normal City working hours after February 28, 2004 (normal City working hours = 8:00 a.m. to 5 p.m. of each day, plus 5:00 p.m. to 9:00 p.m. on Tuesdays). ~~fully complete the Construction Phase of the Project within the Contract Time.~~ The City Hall Complex shall be considered not to be habitable if a normally occupied office within it has (1) insufficient air conditioning to lower the temperatures therein to 78 degrees Fahrenheit or (2) insufficient heating to raise the temperatures therein to 65 degrees Fahrenheit. The amounts designated as liquidated damages herein are not a penalty but are instead a reasonable estimate of the added expense for supervision, and the loss of anticipated use of the completed project and facility.

~~The Construction Phase of this Project must be entirely during the winter months; therefore, any delay in the completion of the Preliminary Design Phase or Final Design Phase that results in the inability of the City to authorize the beginning of the Construction Phase in a manner that ensures completion of the Construction Phase prior to February 25th following the completion of the phase shall result in an extension of this contract to the following year.~~

The Construction Phase of this Project must be completed by April 30, 2004.

This change will allow the City to start the Construction Phase of the Agreement immediately, which will result in a significant benefit to both the Design/Builder and the City. This immediate start date is acknowledged by both parties to

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constitute sufficient consideration for this alteration. It is the intent of both parties that this alteration shall not adversely affect the effectiveness of the Performance Bond and Payment Bond that secure the construction and payment of the project.

EXECUTED, this the 29th day of January, 2004.

OWNER: City of Victoria, Texas

DESIGN/BUILDER: Victoria Air Conditioning, Ltd.

Denny L. [Signature]
Denny L. [Name] [Title]

Gay Heilker [Signature]
Gay Heilker, President

(seal)

(seal)

ATTEST
[Signature]
Suzette Swoboda, City Secretary

ATTEST
Linda Mueller [Signature]
Linda Mueller, Notary

FORM APPROVED:
[Signature]
David A. Smith, City Attorney

