



CITY COUNCIL ACTION REPORT

July 21, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Asst. City Manager/Economic Development Services
 Tim Richnak, Public Works Director *TR*
 Steven J. Vandette, City Engineer *SV*

SUBJECT: Agenda Item – Approval of MDOT Contract No. 08-5205
 Street Lighting System Beneath I-75 at Long Lake Road
 Project No. 08.102.6

Background:

- The Michigan Department of Transportation (MDOT) has started work on bridge repairs along I-75, from Maple Road to Crooks Road and M-24 to M-15 to the north.
- The proposed work at the Long Lake Road structure will require the removal of the existing street lighting system.
- Under this agreement, MDOT has agreed to reimburse the city for the cost of replacing the lighting system after the completion of the bridge work by MDOT.
- The lighting system will be replaced by Harlan Electric who has the current street light replacement contract with the city as approved by Resolution # 2006-10-381-E-4b
- Work on the street light system would not be anticipated to start until sometime in early 2009.

Financial Considerations:

- The estimated construction cost is \$13,600.00.
- MDOT will participate in the cost of the project in an amount equal to 100 percent of the cost of the project and reimburse the city based on the actual cost of the work.
- Funds to complete the work prior to reimbursement will come from the Major Road Fund, account # 401.447.479.7989.081026.

Legal Considerations:

- Contract No. 08-5205, as submitted, is based on estimated costs, as is standard with all MDOT agreements, since these agreements are prepared when funding for the project is obligated and before actual costs are known. The city's actual cost will be reimbursed based on the actual cost incurred by the contractor's work within the parameters of the agreement.

Policy Considerations:

- Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues.

Options:

- Staff recommends that City Council approve the attached construction Contract No. 08-5205 with the Michigan Department of Transportation (MDOT) for the purpose of fixing the rights and obligations of each agency for the replacement of the street lighting system under I-75 at the Long Lake Road structure. Furthermore, staff recommends that the Mayor and City Clerk be authorized to execute the agreements.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

SPECIAL TRUNKLINE
CONSTRUCTION
BY LOCAL AGENCY

CAB
Control Section IM 63174
Job Number 86892A
Federal Project # IM 0863(062)
Federal Item # KK 1914
CFDA No. 20.205 (Highway
Research Planning &
Construction)
Contract 08-5205

PART I

THIS CONTRACT , consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF TROY, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the construction by the REQUESTING PARTY of street lighting work; together with necessary related work; all within the corporate limits of the CITY.

WITNESSETH:

WHEREAS, the DEPARTMENT is planning construction work on Structures S11-1 of 63174 and S11-2 of 63174 which carry northbound and southbound Highway I-75 over East Long Lake Road within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT has determined that its construction work will require removal of the lighting system beneath these Structures S11-1 and S11-2; and

WHEREAS, the DEPARTMENT has determined it to be in the public interest to have the REQUESTING PARTY construct improvements in conjunction with its construction, said construction being hereinafter referred to as the "PROJECT" and being further described as follows:

Replacement of the street lighting system beneath Structures S11-1 of 63174 and S11-2 of 63174 which carry northbound and southbound Highway I-75 over East Long Lake Road; together with necessary related work, located within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT will participate in the cost of the PROJECT in an amount equal to 100 percent of the cost of the PROJECT, estimated to be \$13,600; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto approve of and shall undertake and complete the construction of the PROJECT in accordance with the terms of this contract. The term "PROJECT COST", as herein used, is hereby defined as the DEPARTMENT'S share of the cost of the physical construction necessary for the completion of the PROJECT as determined by the DEPARTMENT including construction engineering.

2. The REQUESTING PARTY shall cause to be performed all the PROJECT work. It is understood that portions or all of the PROJECT work will be placed under contract by the REQUESTING PARTY. The performance of the PROJECT work will be subject to the following conditions:

- A. The REQUESTING PARTY will advertise and award the contracted portions of the PROJECT work on a competitive bid basis.
- B. Concurrence by the DEPARTMENT will be secured by the REQUESTING PARTY prior to award of any contract for performance of the PROJECT work. The DEPARTMENT reserves the right to review the bids and to recommend rejection of the bids for the PROJECT work prior to the awarding of the contract thereof.
- C. The REQUESTING PARTY will design, or cause to be designed, the PROJECT, and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT shall not relieve the REQUESTING PARTY of its obligation hereunder.
- D. All work in connection with the PROJECT shall be performed in conformance with the DEPARTMENT'S current Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the PROJECT. All materials furnished and used in construction of the PROJECT shall conform to the aforesaid specifications.

The PROJECT work shall be performed in accordance with plans and specifications reviewed by the DEPARTMENT. No changes will be made to the plans and specifications reviewed by the DEPARTMENT which affect the PROJECT without the same being re-reviewed by the DEPARTMENT.

The DEPARTMENT'S review does not relieve the REQUESTING PARTY of meeting any applicable requirements of law or of other public bodies or agencies with respect to the design, construction, or operation of the PROJECT.

- F. The REQUESTING PARTY will comply with all applicable State, Federal and local statutes, ordinances and regulations, and obtain all permits that are required for the performance of the PROJECT work.
- G. The REQUESTING PARTY shall provide all construction engineering and inspection necessary for the PROJECT; however, the DEPARTMENT may, at its own expense, provide a competent inspector, together with necessary assistance, to assist the field representative of the REQUESTING PARTY in completing the PROJECT. Said inspector of the DEPARTMENT, acting through the REQUESTING PARTY'S engineer, shall have the right to reject any or all portions of the work which are not executed pursuant to the plans and specifications.
- H. Prior to the performance of any PROJECT work, the REQUESTING PARTY shall notify the Oakland TSC Manager, Michigan Department of Transportation at the following location when the work will commence so arrangements may be made, if necessary, to have an inspector present while the work is in progress.

Michigan Department of Transportation
Paul Ajegba, Oakland TSC Manager
2300 Dixie Highway, Suite 300
Waterford MI 48328

- I. The REQUESTING PARTY shall require their contractor to provide standard Owner's Protective Public Liability and Owner's Protective Property Damage Liability Insurance with respect to the operations of its contractors or their subcontractors during the performance of the PROJECT work, naming the Michigan State Transportation Commission, the State of Michigan and the DEPARTMENT and its employees as insureds. The policy shall state that the DEPARTMENT must be given thirty (30) days written notice before said insurance is altered or cancelled.
 - (1) Standard Owner's Protective Public Liability Insurance providing for limits of liability of not less than One Million Dollars (\$1,000,000) for each occurrence with an aggregate of One Million Dollars (\$1,000,000) for the terms of the policy with respect to bodily injury or death.

- (2) Standard Owner's Protective Property Damage Liability Insurance providing for limits of liability of not less than One Million Dollars (\$1,000,000) for each occurrence with an aggregate of Two Million Dollars (\$2,000,000) for the terms of the policy with respect to property damage and physical damage to property.
- (3) Evidence of the above insurances is to be sent to the DEPARTMENT at the following address, prior to performance of the PROJECT work.

Michigan Department of Transportation
Sandra Montes
Oakland TSC Utilities-Permits Engineer
2300 Dixie Highway, Suite 300
Waterford MI 48328

- J. The REQUESTING PARTY shall secure a permit from the DEPARTMENT for the PROJECT work and shall conform with all DEPARTMENT permit requirements for any work to be performed on the state trunkline right-of-way.

No charge will be made by the DEPARTMENT to the REQUESTING PARTY for any inspection work on the PROJECT pursuant to the Supplemental Specifications of Permit Form 2205.

- K. The REQUESTING PARTY shall require their contractor to provide a Lien and Performance Bond for work on state trunkline right-of-way in accordance with existing law.

3. The PROJECT COST is presently estimated to be \$13,600 and shall be paid in its entirety by agencies of the federal government and the DEPARTMENT. In the event that the REQUESTING PARTY determines the PROJECT COST will exceed the estimate as set forth herein, the REQUESTING PARTY will advise the DEPARTMENT in writing and receive approval prior to the performance of such work.

4. In order to fulfill the obligations assumed by the DEPARTMENT under the terms of this contract, the DEPARTMENT shall make prompt payment to the REQUESTING PARTY for its share of the PROJECT COST upon execution of this contract and receipt of billing from the REQUESTING PARTY for work performed.

All billings submitted to the DEPARTMENT, for reimbursement for items of work performed under the terms of this contract, shall be prepared in accordance with the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be

submitted unless it is a final or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____" or Final Billing".

Final billing under this contract shall be submitted in a timely manner but not later than twelve months after completion of the work. Billings for work submitted later than twelve months after completion of the work will not be paid.

5. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

6. Upon completion of construction, the REQUESTING PARTY shall operate and maintain the PROJECT at their cost and in accordance with existing procedures.

7. The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

8. All work performed in connection with the PROJECT will be subject to the provisions of 1925 P.A. 17, Subsection 2, MCLA 250.62, but any reference to State Highway Commission shall be deemed to be the DEPARTMENT for the purposes of this section.

9. In addition to any protection afforded by a policy of insurance, the REQUESTING PARTY agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and all officers, agents, and employees thereof:

- A. From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and
- B. From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation, response and cleanup costs, and attorney fees or other related costs, arising out of, under, or by reason of this Agreement, including the design of the PROJECT, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents or employees.

The DEPARTMENT shall not be subject to any obligations or liabilities by contractors of the REQUESTING PARTY or their subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the REQUESTING PARTY shall take no action or conduct which arises either directly or indirectly out of its obligations, responsibilities, and duties under this contract, which results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission.

In the event that the same occurs, for the purpose of this contract it will be considered as a breach of this contract thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including but not by way of limitation, a judgment for money damages.

10. In the event that a contract for the PROJECT is not awarded within a period of two (2) years from the date of execution hereof, this contract shall be null and void.

11. The contracting parties do hereby agree to be bound by all of the provisions and conditions set forth in PART II hereof which are applicable to the PROJECT.

12. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

13. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the REQUESTING PARTY and for the DEPARTMENT; upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

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

CITY OF TROY

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:

JRM APPROVED
6/30/08
JRM
ASSISTANT
ATTORNEY
GENERAL

REVIEWED
6-23-08
CONTRACT ADMIN.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor 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 race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.