



Brown County Directed Engineering Study

BROWNWOOD, TEXAS
5/18/2015

FOR THE
LIFE OF
YOUR
BUILDING

May 18, 2015
(Exhibit #3)

Directed Engineering Study

5/18/2015

Brown County
Attn: County Judge Ray West
200 S. Broadway Street, Room 109
Brownwood, TX 76801

Attention: Mr. Ray West

Subject: Directed Engineering Study

Dear Judge, West:

Brown County (CLIENT) is interested in improving the infrastructure of its facilities through Contract with McKinstry Essention, LLC. (McKinstry). The following outlines the terms under which McKinstry will provide services and a description of those services.

1. Overview

Based on McKinstry's current knowledge and understanding of the Project, McKinstry's scope for Directed Engineering Services will consist of engineering study, cost, scope of work, savings and executable construction contract for all county facilities in Brown County Texas.. The intent of the design of these modifications is to allow CLIENT to operate its buildings more efficiently to include factors such as the use of heating, ventilating, and air conditioning systems in a manner that will provide sufficient heating, cooling and ventilation when patients and staff are present as well as a reduced mode of operation for temperature and humidity control (where applicable) when occupants are not present which will allow for energy and operational savings. These modifications, once implemented, will result in a more comfortable environment for patients and staff.

2. Directed Engineering Study (DES) Scope of Work

McKinstry shall, consistent with applicable state licensing laws, provide engineering design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by McKinstry, or (ii) procured by McKinstry from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between CLIENT and any independent design professional. Scope of Work will include items listed below:

1. Owner's Project Criteria (OPC)

CLIENT shall provide McKinstry with information describing CLIENT's requirements and objectives for the Project. Using this information, McKinstry will develop the Owner's Project Criteria (OPC) document. The OPC shall include CLIENT's use, space, budget, schedule, site requirements, performance and expandability requirements. OPC may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for CLIENT. The OPC may also include performance targets as it relates to energy use after the project is constructed. The parties shall meet to discuss the OPC document and agree upon what revisions, if any, should be made to such criteria.

It is anticipated that the OPC will include:

1. Lighting
2. Lighting Controls
3. HVAC Replacements
4. HVAC Controls
5. Retro-Commissioning
6. Water Conservation/Smart Irrigation
7. Roofing
8. Foundation Repair
9. Weatherization
10. Roof access ladders
11. High Efficiency Washers/Dryers
12. Limited access doors
13. Trash Compaction
14. Remodel courthouse third floor



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2. Preliminary Design Services

McKinstry shall prepare schematic / preliminary design documents based on the OPC. The preliminary design may include design criteria, drawings, diagrams, and specifications setting forth the requirements of the Project. The parties shall meet to discuss the preliminary design and agree upon what revisions, if any, should be made. McKinstry shall perform such agreed-upon revisions.

3. Proposal

Based on the OPC, the preliminary design documents, and any other basis of design documents upon which the parties may agree, McKinstry shall submit a proposal to CLIENT (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

1. a proposed contract price for the design and construction of the Project, which price shall be in the form of a lump sum (currently estimated at approximately \$5.5-\$6.5MM);
2. a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;
3. all other information necessary for the parties to enter into a contract for final design and construction of the project;
4. the guaranteed savings provided by the project;
5. the time limit for acceptance of the Proposal.

McKinstry and CLIENT shall meet to discuss and review the Proposal. If CLIENT has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to McKinstry of such comments or findings. If McKinstry finds the revisions acceptable, McKinstry shall, upon receipt of CLIENT's notice, adjust the Proposal.

McKinstry's services under this Agreement shall be deemed completed upon meeting with CLIENT to discuss the Proposal and making those revisions to the Proposal, if any, McKinstry finds acceptable.

3. CLIENT Responsibilities

In order for McKinstry to effectively execute its obligations under this agreement within the timeframes specified in this agreement, CLIENT shall perform its responsibilities, obligations, and services, including its reviews and approvals of McKinstry's submissions, in a timely manner so as not to delay or interfere with McKinstry's performance of its obligations under this Agreement.

CLIENT shall provide, at its own cost and expense, for McKinstry's information and use, the following, all of which McKinstry is entitled to rely upon in performing its obligations hereunder:

1. Historical utility bills for the last 24 months.
2. Accounting data to conduct due diligence with regard to water consumption by the CLIENT.
3. Technical data to conduct due diligence with regard to water consumption by the CLIENT.
4. All mechanical, electrical, architectural, plumbing, and structural drawings.
5. All operational and maintenance information, balancing records, & specifications.
6. Operational records related to the cost of maintaining specific equipment.
7. Information with regards to any on-going maintenance contracts.
8. Access to individuals that have relevant information pertaining to the day-to-day operation of energy using systems owned and operated by the CLIENT.
9. Access to individuals that have relevant information pertaining to the day-to-day operation of water delivery systems in the CLIENT facilities.
10. Good Faith Survey for hazardous material.
11. Any other information reasonably requested by McKinstry.
12. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
13. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

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14. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project;
15. A legal description of the Site;
16. To the extent available, as-built and record drawings of any existing structures at the Site; and
17. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

4. Ownership Work Product

All drawings, specifications and other documents and electronic data furnished by McKinstry to CLIENT under this Agreement ("Work Product") are deemed to be instruments of service and McKinstry shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth below.

If CLIENT fails to enter into a contract on this Project with McKinstry to complete the design and construction of the Project and CLIENT proceeds to design and construct the Project through its employees, agents, or third parties, McKinstry, upon payment in full of the amounts due McKinstry under Section 6 of this Agreement, shall grant CLIENT a limited license to use the Work Product to complete the Project, conditioned on the following:

1. Use of the Work Product is at CLIENT's sole risk without liability or legal exposure to McKinstry or anyone working by or through McKinstry, including Design Consultants of any tier (collectively the "Indemnified Parties"). CLIENT shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product; and
2. CLIENT agrees to pay McKinstry the additional sum of 7% of the proposed Lump Sum Project Price (detailed in Section 2 of this Agreement) for the scope of work defined herein as compensation for the right to use the Work Product in accordance with this Section 4. This amount is in addition to the Contract Price as defined in Section 6 of this Agreement.

5. Contract Time

McKinstry shall commence performance of the services set forth in this Agreement within ten (10) days of McKinstry's receipt of CLIENT's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. McKinstry shall complete such services no later than one hundred eighty (180) calendar days after the Date of Commencement. The following are key milestones:

1. CLIENT authorizes Directed Engineering Study (DES) and issues Notice to Proceed.
2. Schedule kick-off meeting with all stakeholders after execution of DES Agreement. CLIENT to provide McKinstry, at kick off meeting, all CLIENT-required materials for McKinstry team to begin work.
3. Document Owner's Project Criteria for implementation of project.
4. Review and Approve the Owner's Project Criteria.
5. Regular preliminary design review meetings, at mutually agreed times, with CLIENT staff, Building Committee Members and others as necessary.
6. Preliminary design review / Rough Order of Magnitude (ROM) pricing workshop to approve direction and scope of DES.
7. CLIENT and McKinstry to review draft DES and make final revisions.
8. McKinstry to deliver Energy Services Proposal (ESP).
9. Third-party Engineering Review of Energy Services Proposal (ESP).
10. Final design and construction contract executed contingent on project funding.
11. Project Funding Secured.
12. Construction Starts.

Delays in making decisions or poor meeting attendance and participation by CLIENT as outlined above will delay the schedule and affect costs. McKinstry will document these timing and/or cost implications in writing as necessary. These documents, if necessary, will become part of this Agreement and will modify the schedule accordingly.

6. Contract Price

The Contract Price for this Agreement is one hundred fifty thousand (\$150,000) dollars.



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The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

7. Billing Based On Progress

MCKINSTRY will provide to CLIENT an invoice for services completed by the 30th of each month. CLIENT will pay McKinstry within 30 days of receipt of each bill.

Late payments will be assessed interest in accordance with the Texas Prompt Payment Act and other applicable state laws.

8. Dispute Resolution

The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to the Construction Industry Mediation Rules then in effect. Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be resolved in a court of competent jurisdiction in the State of Texas.

9. Confidentiality

Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the services set forth in this Agreement.

10. Governing Law

This Agreement shall be governed by the laws of the State of Texas.

11. Severability

If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12. Amendments

This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

13. Termination

Either party may terminate this Agreement by giving thirty (30) days written notice. In the event of such termination, MCKINSTRY shall be entitled to compensation for services, overhead, profit, and demobilization costs incurred related to the termination.

14. Waiver of Breach

The waiver by any party of a breach of any provision of this Agreement cannot operate or be construed as a waiver of any subsequent breach by a party.

15. Indemnification

McKinstry specifically agrees to defend, indemnify, and hold harmless CLIENT, its officers, agents, and employees against any and all loss, damage, suits, liability, claims, demands, or costs resulting from injury or harm to persons or property, including claims of McKinstry's own employees, arising out of or in any way connected to McKinstry's performance hereunder. In the event of concurrent negligence of McKinstry and the CLIENT, McKinstry shall be liable only to the extent



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of McKinstry's negligence. McKinstry's activities shall be deemed to include those of its officers, employees, agents, and sub consultants.

In the event of litigation between the parties to enforce the rights under the above paragraph, reasonable attorney's fees shall be allowed to the prevailing party.

16. Limitation of Liability

In no event shall either party be liable to the other party for any indirect, consequential, special, incidental, economic, lost profit, or punitive damages, even if advised of the possibility of such damages. McKinstry's liability to CLIENT shall not exceed the contract price of this agreement.

17. Entire Agreement

This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

Brown County Texas

McKinstry Essention, LLC

E Ray West

Signature

Signature

Ray West
Printed Name

Printed Name

County Judge
Title

Title

May 18, 2015
Date

Date

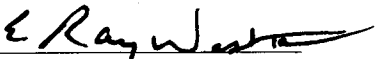


RESOLUTION

We, the undersigned, do hereby certify that the following is a complete, true, and correct copy of a resolution of the Commissioners' Court of Brown County. The resolution was adopted on May 18, 2015 with a quorum being present and set forth in the meeting's minutes.

BE IT RESOLVED, the Brown County Court of Commissioners' hereby authorizes the execution of a Directed Engineering Study (DES) contract with McKinstry Essention, LLC for energy professional services. The procurement vehicle for this project is TIPS/TAPS Contract # 2032714. No other additional approvals are required for the execution of this project. The Court authorizes the County Judge to execute the contract with McKinstry Essention LLC, here on this the 18th day of May, 2015.

We further certify that the following persons are officers of the said city and affix the seal of Brown County, the 18th day of May, 2015.



County Judge