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CITY OF FRESNO
CITY CLERK'S OFFICE

Agenda Items: ID#20-001047 (1-S)

Date: 8/20/2020

FRESNO CITY COUNCIL



Additional Information

Agenda Related Item(s) – ID#20-001047 (1-S)

Item(s)

Actions pertaining to Animal Control Facility Project: (Council District 4):

1. Approve Consent to Assignment, for a Business Alliance between Northstar General Inc., and Quiring General, LLC., allowing Quiring to Act as General Contractor and provide bonds for the project
2. Approve Side Agreement with Quiring General, LLC.

Contents: Signed Agreement

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

AGREEMENT

THIS AGREEMENT (Agreement) made and entered into as of this 19th day of August 2020, entered into between the City of Fresno, a municipal corporation (City), and Quiring General, LLC., (Contractor).

RECITALS

City and Northstar General, Inc., (Northstar) entered into an agreement, (Agreement) on or about May 21, 2020 to build an animal shelter facility (Project) which requires Northstar to provide certain bonds; and

Northstar has been unable to secure the required bonds; and

Quiring is willing to provide the bonds, provided Quiring is assigned the Project as its General Contractor; and

This Agreement requires the Contractor to indemnify, hold harmless, and defend City upon acceptance and execution of such assignment; and

The City and Contractor desire to enter into this Agreement to comply with any and all insurance requirements as dictated in the Agreement with the Contractor upon acceptance and execution of the reassigned contract.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

2. Contractor shall comply with the insurance requirements as described in **Attachment A**, attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

City:
City of Fresno,
A California municipal corporation

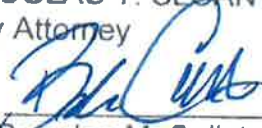
Contractor:
Quiring General, LLC.,


By: _____
Wilma Quan,
City Manager

By: 
Name: Joshua Sherfield

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: Chief Executive Officer
(If corporation or LLC, Board Chair, Pres.
or Vice Pres.)

By:  _____ 8/19/2020
Brandon M. Collet
Senior Deputy Date

By:  _____
Name: John Wood

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

Title: Chief Financial Officer
(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Deputy Date

Attachment: Attachment A

ATTACHMENT A

INSURANCE REQUIREMENTS

a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, subcontractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and

Employer's Liability Insurance.
MINIMUM LIMITS OF INSURANCE
EXHIBIT A

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (a) \$2,000,000 per occurrence for bodily injury and property damage;
- (b) \$2,000,000 per occurrence for personal and advertising injury;
- (c) \$4,000,000 aggregate for products and completed operations; and,
- (d) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)**

5. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,

- (ii) \$2,000,000 general aggregate per annual policy period.
- (b) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by CONTRACTOR pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. If the insurance company is unable to provide such notice, CONTRACTOR is responsible for notifying CITY of coverage changes detailed above immediately. Upon issuance by the insurer, broker, or agent, or notification by CONTRACTOR, of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy prior to the expiration date of the expiring policy.

- (ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CONTRACTOR must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTORS - If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.