

- 2. **AI-34578** Pct. #3 R&B (1200):
 - a. Approval of Certification of Revenues as certified by the County Auditor for revenues received from the City of Mission for the purchase of asphalt for road improvements to Moorefield Road between FM 495 and 2 Mile Line.
 - b. Approval of 2012 appropriation of funds into Precinct #3 ICA-Mission-Moorefield (FM 495 - M2N) in the amount of \$100,000.00 to fund the road improvements to Moorefield Road between FM 495 and 2 Mile Line.
- 3. **AI-34402** Pct. #4 Drainage Improvement Project (1200):
 - a. Approval of Certification of Revenues as certified by the County Auditor for Pct. #4 Drainage Improvement Project Labor Reimbursements.
 - b. Approval of 2012 appropriation of funds into Pct. #4 Drainage Improvement Project (program 036) in the amount of \$41,491.51 (Labor Reimbursements - July & August 2012).

21. **Purchasing Department - Marty Salazar:**

Notes:

A. FOR ANY CONTRACT(S) AWARDED AND APPROVED UNDER THIS AGENDA, EXECUTED COPIES OF THE CONTRACT(S) WILL BE AVAILABLE ON THE COUNTY INTRA-NET WEBSITE AND WILL BE FOWARDED VIA E-MAIL, FAX OR HAND DELIVERED TO HIDALGO COUNTY AUDITOR'S OFFICE.

B. ANY AND ALL REQUESTS FOR PAYMENT(S) APPROVED WILL BE SUBJECT TO COUNTY AUDITORS PROCESSING PROCEDURES INCLUDING AUTHORITY FOR COUNTY TREASURER TO ISSUE PAYMENT(S)/CHECK(S).

A. Hidalgo County

- 1. **Presentation for acceptance and approval of Current inter-local(s) and/or contract(s) for the "Housing of Inmates"**
- 2. **Presentation for discussion, consideration and action**
 Including, but not limited to, the following items in connection with New Adult Detention Center:
 - a) Detention Facility Law Enforcement Center Design- Build Contract with including action regarding Landmark Application for payment, final punch list and release of retainage
 - b) Construction of additional pod(s)
 - c) Selection and engagement of an architect for the construction of additional pods

3. AI-34602 a. Requesting exemption from competitive bidding requirements under Texas Local Government Code, Chapter 262.024, (a)(7)

b. Approval of a "Sole Source Declaration" with R.S. Means Co. LLC for the purchase of JOC Works Software License thru requisition No. 223040 in the total amount of 2,125.00 as per attached proposal.



Approved C.C.
10/09/12

AI-34602

21. A. 3.

CC REGULAR

Meeting Date: 10/09/2012

Submitted For: Marty Salazar

Submitted By: Moises Salazar, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

A. Requesting exemption from competitive bidding requirements under Texas Local Government Code, Chapter 262.024, (a)(7)

B. Approval of a "Sole Source Declaration" with R.S. Means Co. LLC for the purchase of JOC Works Software License thru requisition No. 223040 in the total amount of 2,125.00 as per attached proposal.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2012

ACCT. #: 2-1100-415-18-160-001-0-747

FUNDS AVAILABLE Y/N?: Y

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

Line item transfer on today's Consent Agenda No. 34543 -Requisition No. 223040

Attachments

RS Means JOC Works Software PO Request and Proposal

Sole Source Declaration

Form Review

Inbox
Auditor's Office

Form Started By: Moises Salazar

Reviewed By
Angela Garcia

Final Approval Date: 10/05/2012

Date
10/05/2012 12:59 PM
Started On: 10/04/2012



PURCHASING DEPARTMENT
County Of Hidalgo

MEMORANDUM

“SOLE SOURCE DECLARATION”

TO: Hidalgo County Commissioner’s Court

FROM: Martha L. Salazar, CPPB
Hidalgo County Purchasing Agent *mls*

DATE: October 4, 2012

RE: “Sole Source Declaration” R.S. Means Co. LLC

Hidalgo County continually utilizes awarded Job Order Contractors (JOC’s) for building renovations and additions projects thru County’s participation with State and Co-op Purchasing programs. All JOC contractors provide their proposals based on the RS Means price book as required by the different State and Co-op contracts.

The JOC Works software which is designed and produced by R.S. Means Co. LLC will be a useful tool for the County Purchasing Department in the price verification of the different JOC’s proposals thus expediting completion and accuracy of the procurement process.

Therefore, the Hidalgo County Purchasing Department requires the purchase of the JOC Works software license from R.S. Means Co. LLC.

This sole source declaration is valid while R.S. Means Co. LLC remains as sole source unless revoked due to an additional source for any similar software described and detailed herein for other Departments, Programs or Agencies.

Requisition

Req # 00223040

PO #

Date: 09/14/12

Bill To: x
x

Vendor : 384941
R.S. MEANS CO. LLC
63 SMITHS LANE
KINGSTON MA 02364
FAX (800)632-6732

Ship To: PURCHASING DEPARTMENT
2802 S. BUSINESS HWY 281
EDINBURG TX 78539

Contact: NIELDA CAVAZOS
956-318-2626

Contract No:

Special Instructions:

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
1.00	YEAR	ONE (1) LICENSE JOCWorks Software, Pro Version One (1) License, Annual Fee	2,125.00	2,125.00
		<u>Account No</u>	<u>Encumbrance</u>	
		2-1100-415-18-160-001-0-336	2,125.00	
			Freight	.00
			Total	2,125.00

Authorized By: _____

Requisition No: 00223040 Vendor: R.S. MEANS CO. LLC Owner: NCAVAZOS1
 Po No: Address: 63 SMITHS LANE
 Date Entered: 09-14-2012 KINGSTON MA 02364
 Status: Needs Approval by PURC

Line No	Quantity	Description	Unit Price	Payment Amount
1	1	ONE (1) LICENSE JOEWorks Software, Pro Version	2,125.0000	2,125.00

Account Number	Description	Account Balance	Amount
2-1100-415-18-160-001-0-336	PURCHASING-COMPUTER SERVICES	.00	2,125.00
Total			2,125.00



June 26, 2012

Mr. Moises Salazar, Buyer III
Hidalgo County Purchasing Department
2802 South Business Hwy 281
Edinburg, TX 78539

RE: RSMMeans JOCWorks Software

Dear Mr. Salazar:

RS Means is pleased to provide Hidalgo County with a price proposal for an annual subscription service of one JOCWorks Software License.

The annual service is inclusive of the following:

- Means Current Year Facilities Cost Data
- Enhancements to the JOCWorks Software
- 800# Technical Support

Means will provide technical and engineering support services through an 800 number (800) 334-3509. The service is for both IT software support and Mean Data (Means Engineering) with available hours of 8:00 AM to 5:00 PM EST.

To accept this proposal, Hidalgo County may provide a Purchase Order or Credit Card as acceptance and notice to proceed.

Fees

JOCWorks Software, Pro Version One (1) License, Annual Fee	\$ 2,125.
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Terms

Purchase Order
Net 30 Day

Sincerely,
RSMeans – Reed Construction Data

Robert F. Gair, Principal
JOC Program Manager

rgair@rsmeans.com
(781) 422-5103 Direct
(202) 285-7826 Cell
(678) 680-1746 Fax

JOC Works SOFTWARE License Agreement

This agreement is between you (Entity or Person) and RS Means Company, Inc., a Delaware corporation ("Means"). Please read the terms and conditions of this license agreement (Agreement) carefully before using this SOFTWARE, as defined below. By entering "I Agree" and clicking the "OK" button or by using the SOFTWARE after or before reviewing this agreement, you are accepting and agreeing to the terms of this Agreement.

If you have any qualms and are not willing to be bound by the terms of this Agreement, do not use the SOFTWARE and promptly return it in original and undamaged condition to the place from which you obtained them. By installing and using this SOFTWARE you are accepting all of the terms and conditions of this Agreement.

1.0 Ownership

The SOFTWARE, together with any associated written materials, binders, related SOFTWARE, trade secrets, and intellectual property, including but not limited to any images, "applets", photographs, animation, video, audio, music and incorporated text including MeansData™ data files and corresponding RS Means Unit Price Cost Guides, if any (collectively referred to hereafter as SOFTWARE) is owned by RS Means, its sublicensors and its suppliers. The SOFTWARE is proprietary to RS Means, its sublicensors and its suppliers and is protected by United States copyright, trademark, trade secret, and associated intellectual property laws, and by international treaty provisions. The SOFTWARE is licensed, and not sold. You acknowledge and agree that the entire right, title and interest in and to the SOFTWARE is owned by and shall remain with Means, its sublicensors and/or its suppliers. If the SOFTWARE presently or at any time in the future incorporates MeansData™ data files and corresponding unit price books, you hereby further acknowledge and agree to the terms and conditions contained in Section 8, 8.1, and 8.2. Means, its sublicensors and its suppliers retain all rights not expressly granted in this Agreement.

GRANT OF LICENSE

2.1 Named User SOFTWARE

If the enclosed SOFTWARE is licensed to you by Means as "SINGLE USE SOFTWARE" then Means grants you a non-exclusive right for you or, if you are not an individual, a specific employee designated by you, the right to use one copy of the SOFTWARE in object code form on a single standalone computer (example, with a single CPU) owned, leased or otherwise controlled by you, or on a Named User Computer Network. A Computer Network is any combination of two or more computers (one of which must be a network server) that are electronically linked and capable of sharing the use of a single SOFTWARE program. A "Named User Computer Network" is a Computer Network for which you have paid a separate license fee for the SOFTWARE for each specific individual user of the SOFTWARE on the Computer Network. Means does not license the SOFTWARE for use or sharing by more than one specific individual, even if that use is not concurrent, unless you have purchased a separate license and paid an additional license fee for each additional individual using the SOFTWARE. A copy of the SOFTWARE stored on hard disk on a network server for the sole purpose of use by network workstations is not deemed to be in use on the network server.

You agree to have a reasonable mechanism in place to assure that only those individuals designated as named users may use the SOFTWARE.

2.0 Concurrent Use SOFTWARE

If the enclosed SOFTWARE is licensed to you as "CONCURRENT USE SOFTWARE" then Means grants to you a non-exclusive right to use one copy of the SOFTWARE in object code form on a Licensed Computer Network, which is owned, leased or otherwise controlled by you. A Computer Network is any combination of two or more computers (one of which must be a network server) that are electronically linked and capable of sharing the use of a single SOFTWARE program.

A Licensed Computer Network is a Computer Network for which you have licensed one copy of the SOFTWARE for each concurrent user of the SOFTWARE on the Computer Network. A copy of the SOFTWARE that resides on a network server for the sole purpose of use by network workstations is not deemed to be in use on the network server, and therefore does not require an additional license. You agree to have a reasonable mechanism in place to assure that the number of persons using the SOFTWARE concurrently does not exceed the number of licenses.

3.0 INSTALLATION OF SOFTWARE

You assume responsibility for selection of the SOFTWARE to achieve your intended results, and you are solely responsible for installation of the SOFTWARE and for acquisition of such equipment and SOFTWARE as may be necessary for operation of the SOFTWARE.

4. 0 OTHER RESTRICTIONS

This is your evidence of license to exercise the rights granted herein and must be retained by you. You may not copy the SOFTWARE, except that you may either (a) make one copy of the SOFTWARE solely for backup or archival purposes, provided that Means proprietary legends and copyright notices are reproduced on such copy, or (b) transfer the SOFTWARE to a single hard disk, provided that you keep the original solely for backup or archival purposes. You may not copy the written materials accompanying the SOFTWARE. You may, after written notification to and consent of Means store one (1) backup copy of the SOFTWARE at a third-party disaster recovery facility, provided that such third party agrees in writing to abide by the terms and conditions of this Agreement. You agree to maintain accurate records of the location of all copies, including archival copies, of the SOFTWARE. You may not rent, lease, reverse-engineer, decompile, disassemble, translate or publish the results of benchmark tests of the SOFTWARE. You may not use the SOFTWARE for service bureau work, for time-sharing arrangements or for the benefit of any third party. You agree to comply with the export laws and regulations of the United States to assure that the SOFTWARE is not exported, directly or indirectly, in violation of law.

5.0 WARRANTY

Means warrants that, for ninety-days (90) from the date of invoice (the "Warranty Period"), (i) the SOFTWARE will perform substantially in accordance with Means applicable functional specifications, and (ii) the electronic media on which the SOFTWARE is distributed is free from defects in materials and workmanship. The foregoing warranty is expressly conditioned on your observance of the operating procedures set forth in the written materials accompanying the SOFTWARE. The foregoing warranty shall not apply if the SOFTWARE has been damaged or misused in any respect. Means does not warrant that the SOFTWARE will

meet your requirements or operate uninterrupted or error free. To the maximum extent permitted by applicable law, Means disclaims any and all other warranties, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

6.0 EXCLUSIVE REMEDY

Your sole and exclusive remedy for breach of the above warranty is that Means shall, if it receives written notice of such breach during the Warranty Period, at its sole option, either (a) correct or cure any reproducible defect in the SOFTWARE in breach of such warranty within a reasonable time by issuing corrected instructions, a restriction, or a bypass, or (b) refund the price paid by you for the SOFTWARE. In the event Means furnishes a correction or cure pursuant to clause (a), Means shall warrant such correction or cure for the remainder of the original Warranty Period or sixty (60) days, whichever is longer. Outside the United States, these remedies are not available without proof that you acquired this copy of the SOFTWARE from an authorized source.

7.0 LIMITATION OF LIABILITY

In no event shall Means or its suppliers be liable to you or any third party for indirect, special, incidental, economic, consequential or punitive damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, liabilities to third parties arising from any source, or other pecuniary loss), regardless of the nature of the claim, arising out of the use or inability to use the SOFTWARE, even if Means has been advised of the possibility of such damages. In no event shall the liability of Means or its suppliers exceed the amount paid by you for the SOFTWARE. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

Means uses its reasonable efforts to ensure complete, reliable and accurate data. However, Means makes no guaranty or warranty as to the correctness or sufficiency of any information or data contained in this product and Means assumes no liability or responsibility in connection with the information or data or their use or applications.

8.0 DISCLAIMER OF WARRANTIES

MEANS expressly disclaims any and all warranties, whether oral or written, express or implied, including but not limited to warranties or merchantability and fitness for a particular purpose. You assume full responsibility for the selection of data files to achieve your intended purposes, for the proper installation and use of data files, and for verifying the results obtained from data files. Means is not responsible for any support or maintenance of the data files. The data files are license to you as is and where is. Means makes no express or implied warranty or guarantee in connection with the content of the information contained in the data files, including the accuracy, correctness, value, sufficiency, or completeness of the data, methods, and other information contained herein.

8.1 Limitation of Liability

Neither Means nor anyone else who has been involved in the creation, production and delivery of data files shall be liable for any indirect, special, consequential, or incidental damages, or damages for lost data, or profits, arising from the use of or inability to use data files or of errors or omissions therein, even if Means has been advised of the possibility of such damages. In no event shall Means' total liability in connection with data files exceed the

amount of money paid to Means by you for such data files, whether such liability arises from any claim based upon contract, tort or otherwise. You acknowledge and agree that the amounts paid by you to Means for Data Files reflect the allocation of risks between the parties and the limitations of Means' liability hereunder.

9.0 AUDIT

Means may, at any time, either request a signed certification by you verifying that the SOFTWARE is being used in accordance with the terms of this Agreement and/or audit your use of the SOFTWARE at any time during regular business hours to ensure compliance with the terms and conditions of this Agreement.

10.0 U.S. GOVERNMENT RESTRICTED RIGHTS

The SOFTWARE is provided with RESTRICTED AND LIMITED RIGHTS. If the SOFTWARE is supplied to the Department of Defense ("DoD") of the United States Government, the SOFTWARE is classified as "Commercial Computer SOFTWARE" and the DoD only acquires "restricted rights" as defined in Clause 252.227-7013(c)(1) of DFARS. If the SOFTWARE is supplied to any other unit of the United States Government, the Government's rights are as defined in Clause 52.227-19(c)(2) of FAR or, in the case of NASA, as defined in Clause 18-52.227-86(d) of the NASA Supplement to the FAR.

11.0 CONFIDENTIALITY

You acknowledge and agree that:

- (i) the SOFTWARE and accompanying written materials are confidential;
- (ii) you will instruct and require all of your employees, agents, and contractors who have access to the SOFTWARE and accompanying written materials to maintain the confidentiality thereof;
- (iii) you will exercise the same degree of care, but not less than reasonable care, to safeguard the confidentiality of the SOFTWARE and accompanying written materials as you would exercise to safeguard the confidentiality of your own confidential property; and
- (iv) you will disclose the SOFTWARE and accompanying written materials only to those employees, agents or contractors required to have knowledge of same to perform their duties and whom have agreed in writing to abide by the confidentiality obligations of this Agreement. The foregoing confidentiality provisions shall not apply to any information which
 - (a) you can demonstrate was in your possession prior to receipt,
 - (b) is or subsequently becomes publicly available without your breach of any obligation owed the disclosing party;
 - (c) is disclosed to you without restriction on disclosure by a third party who had the right to disclose such information,or (d) you can demonstrate by written records was independently developed by you without reliance on the SOFTWARE or accompanying written materials.

12.0 TERM

This license is effective upon your installation, our use, or entering "I Agree" and/or clicking "OK" and shall continue until terminated. You may terminate this license by returning the SOFTWARE and all copies thereof to Means. Means may terminate this license upon the

breach by you of any provision contained in this Agreement. Upon such termination by Means, you agree to return the SOFTWARE, and all copies thereof to Means, or destroy all copies of the SOFTWARE and notify Means in writing that all copies of the SOFTWARE have been destroyed.

Both the license and your right to use the SOFTWARE and the data terminate automatically if you violate any part of this Agreement. In the event of termination, you must immediately destroy all copies of the SOFTWARE and notify Means in writing that all copies of the SOFTWARE have been destroyed or return all copies of the SOFTWARE to Means.

13.0 CANADIAN LICENSES

If you obtained this product in Canada, you agree to the following: The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including notices, have been and shall be written in the English language only. Les parties aux présentes confirment leur volonté que cette Convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise.

14. MISCELLANEOUS

You may not assign, delegate or otherwise transfer this Agreement or your rights or obligations hereunder without the prior written consent of Means. Any attempted assignment of this Agreement without consent from Means shall be invalid and unenforceable. This is the entire agreement and understanding between you and Means with respect to the subject matter hereof, and supersedes all prior agreements, representations, negotiations, proposals and understandings, whether written or oral, including those made by sales representatives or dealers of Means, concerning the subject matter hereof. This Agreement may not be amended or modified except in writing and signed by authorized representatives of the party against whom the amendment is sought to be enforced. The waiver or failure by either party to claim a breach of any provision shall not be a waiver of a breach of any other provision or a subsequent breach of the same provision.

The sublicensors and suppliers to Means shall be deemed third-party beneficiaries of this Agreement, to the extent permitted by law. Any notices required or permitted to be given to under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, if to RS Means, 63 Smiths Lane, Kingston, MA 02364 Attn: JOCWorks and if to you, addressed to your registered user at your registered address.

This Agreement shall be governed by the laws of the New York without regard to conflicts of law principles. In the event that litigation is needed to enforce the terms and conditions of this Agreement, Means shall be entitled to recover its legal costs and fees, including reasonable attorneys' fees, if it prevails in such litigation. You hereby expressly consent to the personal jurisdiction of the state and federal courts located in New York for any lawsuit arising from or relating to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You assume responsibility for selection of the SOFTWARE to achieve your intended results, and you are solely responsible for installation of the SOFTWARE and for acquisition of such equipment and SOFTWARE as may be necessary for operation of the SOFTWARE.