

FOR BOARD ACTION

Agenda Item # 6.d.

Meeting Date:

4/25/06

SUBJECT: Contract for Construction Services
IBM Substation Duct Bank

PREPARED BY: Neil Stiller
Sr. Electrical Engineer

IBM Corporation, through its contractor Fluor Facility & Plant Services, Inc., has requested construction services from RPU for the construction of concrete encased electrical conduit (duct) linking the IBM Substation to the IBM campus duct system. This work is part of IBM's campus-wide electric infrastructure improvements currently underway. This request is the second of several similar requests during the next few months.

The proposed construction services contract would provide services to Fluor Facility & Plant Services, Inc. by RPU and subcontractor personnel on a fixed contract basis. The \$91,854 estimate is based on a detailed and agreed-to scope of services. RPU will be engaging Mastec North America, Inc., a construction labor subcontractor, to complete this work. The proposed contract for services is attached. The subcontractor's proposal is also attached.

The agreement has been reviewed by the City Attorney's office. Certain language concerning limits of liability and insurance were found to need revision. Staff believes that these issues can be resolved through negotiation with Fluor personnel.

RPU has a long history of providing skilled labor and technical expertise for maintenance and facilities improvements on the IBM campus.

UTILITY BOARD ACTION REQUESTED:

It is recommended that the Board approve a contract agreement with Fluor Facility & Plant Services, Inc. where RPU provides construction services per the attached proposal in the amount of \$91,854, and request the Mayor and the City Clerk execute the agreement, pending satisfactory review by the City Attorney.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

IBM Substation Power Duct Installation Plan

April, 2006

Introduction

This document supplements the Fluor Facility & Plant Services request for quote #RCH5023128-01. Mastec North America Inc. is the selected excavation and duct construction contractor. A fence contractor of RPU's choice will be required to rebuild substation chainlink fencing following the project. RPU personnel will oversee and inspect all work. All tasks are based on a 10 hour regular work day, assuming 8 hours of on-site time. Not included in the estimates are:

- Delays due to changes required by Fluor or IBM
- Delays due to systems or equipment installed by others that are not ready
- Field corrections for engineering or manufacturing errors
- Expenses associated with extraordinary site security & building access
- Significant rebuilding of cable supports in the electric vault
- Overtime rates.

Contract addendum

Per review by the Asst. City Attorney, it is necessary to revise terms and conditions of the contract between RPU and Fluor Facility & Plant Services, Inc. The following paragraph has been suggested by legal counsel concerning liability:

Notwithstanding any other provision of this Purchase Order or the Terms and Conditions governing this Purchase Order, each party to this agreement shall indemnify, hold harmless and defend, by insurance or otherwise, the other party and its officers, employees and agents, from any and all damages, claims and liability arising out of, or in any manner related to, that party's acts, errors or omissions related to the work to be prosecuted under this Purchase Order, or the acts, errors or omissions of its officers, employees and agents. Under no circumstances shall any party or its officers, employees or agents be liable for any special, incidental or indirect damages or for any economic consequential damages including lost profits, business, revenue, goodwill or anticipated savings. In all events, the City's obligation to defend, indemnify and hold the Company or Owner harmless shall be limited to the dollar value of the work to be performed under this purchase order.

The following paragraph has been suggested by legal counsel concerning insurance requirements:

The City has provided Company and Owner with a copy of its existing insurance policies which Company and Owner accept as meeting all of the requirements of the Terms and Conditions governing the Purchase Order, notwithstanding the insurance requirements contained within the Terms and Conditions.

Work necessary to support duct construction:

Perform 161 kV switching and safety clearances to facilitate safe excavation and duct construction. This may include up to two outages of the south half of the station yard and transformer T1. Outage duration is intended to be during the workday only so as to provide worker and equipment safety zones near the 161 kV equipment. During these times, IBM will be served by transformer T2 only.

Assist Mastec personnel to support control cables as the excavation and construction cross the existing concrete box trench. *(1 day during removal, 1 day during reconstruction)*

- Disassemble modular box trench components as excavation occurs.

- Install cable supports and mechanical protection of cables

- Reinstall box trench when duct construction is completed and backfill operations are underway.

Assist Mastec personnel to access the exterior electric vault as penetration of the east wall and the concrete duct entrance is constructed. *(2 days)*

- Verify safe air quality

- Reposition cables and provide mechanical protection to existing feeders 1000 and 1010.

- Reposition cable support racking. This only includes minor adjustments.

- Monitor Mastec workers during vault activity.

- Significant rebuilding of the racking is not included in the estimate.

Restore ground grid cable connections cut during excavation. *(3/4 day)*

- Cadweld or crimp repair connectors on up to 5 ground grid cables

- Restore ground connections to chainlink fence

Assist Mastec personnel to conclude final site grading, seeding, and drainage restoration. *(2 days)*

- Perform preliminary grading survey prior to construction

- Verify planned duct installation will not impeded site drainage

- Verify grading work by Mastec is satisfactory for site maintenance

- Apply seed and mulch as needed

Drawing submittal for as-built drafting:

Submittals *(1/2 day)*

- Site physical construction and grading diagrams.

CONTRACT PART III: GENERAL TERMS - SHORT FORM

Project: ProjectName
Contractor: ContractorName

Project Location(s): ProjectLocation
RFP or Contract: RFPContractNumber

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CONTRACT PART III: GENERAL TERMS – SHORT FORMProject: ProjectName
Contractor: ContractorNameProject Location(s): ProjectLocation
RFP or Contract: RFPContractNumber**1 INTENT OF SPECIFICATIONS AND DRAWINGS**

The specifications and drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole. Should any conflict, error, or omission appear in the drawings, specifications, instructions, or in work done by others, Contractor shall notify Company at once and Company will issue written instructions to be followed. If Contractor proceeds with any of the Work in question prior to receiving such instructions, all necessary corrections shall be at Contractor's expense.

2 SCOPE OF WORK CHANGES

- 2.1 The Scope of Work shall be subject to changes by Company. Such changes shall be in writing, by additional and/or revised drawings, specifications, or exhibits.
- 2.2 If Contractor believes that a modification of the Contract Price or schedule is justified, whether as a result of a change made pursuant to the above Section or as a result of any other circumstance, then Contractor shall give Company written notice of same within five (5) working days after the happening of such event. Within ten (10) working days after such event, Contractor shall supply a written statement supporting Contractor's claim, which statement shall include Contractor's detailed estimate of the effect on the Contract and schedule. Contractor agrees to continue performance of the Work during the time any claim hereunder is pending. Contractor hereby waives and releases Company and Owner from any claim not reported by Contractor in accordance with this Article.

3 GUARANTEES

Contractor guarantees Company and Owner that the Work shall strictly comply with the provisions of this Contract and all specifications and drawings referred to in this Contract, or thereafter furnished by Company, shall be of good quality and shall be free from defects in design, materials, construction, and workmanship. Contractor further guarantees Company and Owner that all materials, equipment, and supplies furnished by Contractor for the Work shall be new, merchantable, of the most suitable grade, and fit for their intended purposes. Contractor further guarantees Contractor's computer software, hardware, and systems, and all software, hardware, systems, and any materials and services included in the Work, shall process, without error or fault, dates and date-related data, including dates or data containing or referencing dates later than December 31, 1999. Without limitation of any other rights or remedies of Company or Owner, if any defect in the Work in violation of the foregoing guarantees arises within twenty-four (24) months after the date of final acceptance of work by Company, Contractor shall upon receipt of written notice of such defect promptly furnish, at no cost to Company or Owner, all labor, equipment, and materials at the job site necessary to correct such defect and cause the Work to comply fully with foregoing guarantees. If Contractor fails to promptly correct any defect, then Company or Owner may correct, or cause to have corrected, such defect and charge all related costs to Contractor.

4 OWNERSHIP OF DRAWINGS AND DATA

All drawings, technical documents, and data prepared or developed by Contractor and furnished to Company in the performance of the Work shall be the property of Company and may be used by Company or Owner without restriction.

5 CLEANUP

Contractor shall keep Company and Owner's premises and the vicinity thereof clean and free of any debris and rubbish caused by the Work and on completion of the Work, shall leave such premises clean and ready for use.

CONTRACT PART III: GENERAL TERMS – SHORT FORMProject: ProjectName
Contractor: ContractorNameProject Location(s): ProjectLocation
RFP or Contract: RFPContractNumber**9 FINAL ACCEPTANCE AND PAYMENT PROCEDURE**

- 9.1 When Contractor has fully completed the Work, it shall give a written Notice of Completion to Company specifying the Work completed and the date it was completed. Within thirty (30) days after receipt of said Notice of Completion, Company may inspect the Work and shall either (1) give the Contractor a written Notice of Acceptance for the purposes of final payment and final acceptance or (2) reject the Notice of Completion and specify defective or uncompleted portions of the Work. Contractor shall promptly remedy such defective and uncompleted portions of the Work at Contractor's expense, and shall again give Company a written Notice of Completion of the Work for acceptance or rejection as provided herein.
- 9.2 Company shall not be obligated to make final payment until Contractor has delivered to Company a Certificate and Release satisfactory to Company that Contractor has fully performed the Work, and that no property of Owner or Company is subject to any unsatisfied lien or claim as a result of performance of the Work. Upon Company's request, Contractor shall provide full releases of lien satisfactory to Company executed by all parties who by reason of furnishing material, labor, or other services for the Work are potential lienors against Company or Owner's property.

10 OFFSET

Company, in addition to any other rights or remedies, shall be entitled to deduct any amount owed by Contractor to Company in connection with any transaction or occurrence from any amounts due Contractor under this Contract.

11 INSURANCE

- 11.1 Contractor shall, at its sole cost, obtain and maintain in force for the duration of the Contract (including the Guarantee period) insurance of the following types, with limits not less than those set forth below:
- 11.1.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the provisions of the laws of the nation, state, territory, or province having jurisdiction over Contractor's employees, and Employer's Liability Insurance with a minimum limit of liability of \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. Contractor shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance, or otherwise attempt to opt out of the statutory Workers' Compensation system.
- 11.1.2 Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; and with a minimum limit of liability of \$1,000,000 each occurrence for products/completed operations liability. Such policy shall have a general aggregate limit of not less than \$2,000,000. The products/completed operations liability coverage shall be maintained in full force and effect for not less than three years following completion of Contractor's Services. The policy shall be endorsed to name Company and Owner, including their respective affiliates, directors, and employees, as additional insureds. Upon ISO Endorsement CG 20 10 11 85, "Additional Insured - Owners, Lessees or Contractors (Form B)."

CONTRACT PART III: GENERAL TERMS – SHORT FORMProject: ProjectName
Contractor: ContractorNameProject Location(s): ProjectLocation
RFP or Contract: RFPCONTRACTNUMBER

- 11.1.3 Automobile Liability covering use of all owned, non-owned, and hired vehicles with a minimum combined single limit of liability of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall be endorsed to name Company and Owner, including their respective affiliates, directors, and employees, as additional insureds.
- 11.2 Contractor hereby releases Company and Owner, including their respective affiliates, directors, and employees, and shall cause Contractor's Insurers to waive rights of subrogation against such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of Contractor's performance of the Contract.
- 11.3 Certificates of insurance satisfactory in form to Company shall be supplied by Contractor to Company evidencing that the above insurance is in force, that not less than thirty (30) days written notice will be given Company prior to any cancellation or restrictive modification of the policies, and that the waiver of subrogation is in force. Contractor shall also provide executed copies of the additional insured endorsements required in this Contract. At Company's request, Contractor will provide certified copies of each policy required under this Contract.
- 11.4 The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by Company or Owner. Contractor's General and Automobile Liability Insurance policies shall contain a Cross Liability or Severability of Interest clause. The fact that Contractor has obtained the insurance required in this Article shall in no manner lessen nor affect Contractor's other obligations or liabilities set forth in this Contract.

12 INDEMNITY

- 12.1 Contractor agrees to release, indemnify, hold harmless, and defend Company and Owner, their parents, affiliates and subsidiaries, and their officers, employees, agents, and representatives, from and against all claims, demands, causes of action, loss, expense, or liability arising from or relating to
- 12.1.1 Actual or asserted infringement, improper appropriation, or use of trade secrets, proprietary information, copyrights, or patents; and
- 12.1.2 Injury to or death of persons (including the employees of Company, Owner, Contractor, and its subcontractors) or damages to or loss of property (including the property of Contractor, Company, or Owner) arising directly or indirectly out of the acts or omissions to act of Contractor or its subcontractors, or their employees or agents, in the performance of the Work, but excepting where the injury or death of persons or damage to or loss of property was caused by the sole negligence or willful misconduct of the party to be indemnified; and
- 12.1.3 Failure by Contractor to comply with any applicable law, regulation, or statute, or with the terms of this Contract; and
- 12.1.4 Any failure of Contractor's computer software, hardware, and systems, and all software, hardware, systems, and any materials and services incorporated in Contractor's Work, to adequately process, without error or fault, data and dates which contain or reference dates later than December 31, 1999.

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12.2 Contractor's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Company or Owner for legal action to enforce Contractor's indemnity obligations.

12.3 Contractor acknowledges specific payment of \$10.00 incorporated into the Contract Price as legal consideration of Contractor's indemnities as may be provided in this Contract.

13 LIENS

Contractor agrees to indemnify, defend, and hold Company and Owner harmless from and against all laborers', materialmen's, and mechanics' liens arising out of Contractor's performance of the Work, and shall keep the property and premises of Owner and Company free from all such claims, liens, and encumbrances. To the full extent permitted by law, Contractor waives all rights of liens against the property and premises of Owner and Company. If Contractor fails to release and discharge any claim or lien of others against Owner's or Company's property within five (5) working days after receipt of notice from Company to remove such claim or lien, Company may, at its option, discharge or release the claim or lien, and Contractor shall pay Company any and all costs and expenses, including reasonable attorneys' fees and cash settlements incurred by Company.

14 CONTRACTUAL RELATIONSHIP

Contractor represents that it is fully experienced and properly qualified, equipped, organized, and financed to perform the Work provided for herein. Contractor represents that it is properly licensed and qualified to do business in all governmental jurisdictions in which the Work is to be performed. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Company or Owner. Contractor agrees that Contractor is an independent contractor and an employer subject to all applicable unemployment compensation, occupational safety and health, or similar statutes so as to relieve Company of any responsibility or liability for treating Contractor's employees as employees of Company for the purpose of their safety or of keeping records, making reports, or paying of any payroll taxes or contribution. Contractor further agrees, as regards to the Work under this Contract, that it will keep and have available to all necessary records and make all payments, reports, collections, and deductions, and otherwise do any and all things so as to fully comply with all federal, state, and local laws, ordinances, and regulations as they affect performance of this Contract, so as to fully relieve and protect Company from any and all responsibility or liability therefor or in regard thereto each and every aspect of the Work herein.

15 ASSIGNMENTS AND SUBCONTRACTS

Any attempt by Contractor to assign or subcontract this Contract in whole or in part, without first obtaining Company's consent, shall be voidable at the option of Company. Contractor hereby agrees that Company may assign this Contract to Owner, Owner's designated representative, or to Company affiliates.

CONTRACT PART III: GENERAL TERMS – SHORT FORM

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16 CONTRACTOR PERSONNEL, TOOLS, AND EQUIPMENT

Contractor agrees to supply at all times an adequate number of well-qualified supervisory and craft personnel to perform the Work and an experienced Supervisor at job site who shall be satisfactory to Company and authorized to act for and represent Contractor with all directions given and all decisions by him being binding on Contractor. Any employee of Contractor deemed by Company to be objectionable shall be removed from the job site immediately upon request and shall be promptly replaced by Contractor at no expense to Company. All tools and equipment used by Contractor shall be in satisfactory operating condition, fit for the uses intended, and suitable for the safe and efficient performance of the Work.

17 GRATUITIES

Contractor, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of Company or Owner, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract, or obtain favorable treatment under a contract. Violation of this Article may be deemed by Company to be material breach of this Contract.

18 LAWS AND REGULATIONS

This Contract shall be subject to the law and jurisdiction of the State of California unless expressly designated otherwise in this Contract.

19 TRIAL

Contractor hereby knowingly, voluntarily, and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Contract and agrees that any such dispute may, at Company's option, be tried before a judge sitting without a jury.

END OF PART III: GENERAL TERMS - SHORT FORM

FLUOR FACILITY & PLANT SERVICES, INC.

Request for Quotation

4/18/2006

Quote Number _____

RFQ Number RFQ008455	Respond By 4/11/2006	Respond To FLUOR FACILITY & PLANT SERVICES
Buyer BARCOMB, KATHY		IBM
Phone/FAX 919-543-2692/845-489-9266		C/O WEST BROTHERS B305 DOCK 38-41 3039 CORNWALLIS ROAD

Supplier ROCHESTER PUBLIC UTILITIES	Ship To
4000 E RIVER RD NE	
ROCHESTER, MN 55906	
Contact Mike Smith	
Phone/FAX 280-1643 / 280-1542	

Line	Item	Requested Quantity	Unit Of Measure	Quoted Price/ Unit of Measure	Package Quantity	Lead Days
1	RCH5023128-01 DUCT BANK FROM EMH44 TO RPU SUBSTATION	1	LOT			
	Manufacturer			Manufacturer _____		
	Part Number			Part Number _____		
	Substitutes Allowed			Not Bidding <input type="checkbox"/>		

DUCT BANK FROM EMH44 TO RPU SUBSTATION

Project Number: RCH50231
 Project Name: Replace Electrical System
 Project Manager: Dana Koenig
 Phone Number: 507-253-7609

Estimated Award Date: Tuesday, April 18, 2006

Construction Information:
 Start Date: May 01, 2006
 Completion Date: May 31, 2006

Equipment Warranty:
 Start Date: NA

SCOPE OF WORK: Please submit a cost to provide a duct bank per sheets D001, F001, F002, F003, IBM10-P-053 and IBM10-P-406. Work consists of installing an electrical concrete duct bank approximately 400 feet from EMH44 to substation vault as indicated on drawings. EMH 44 shall be installed per a separate contract. Plans will be delivered to RPU.

Material: \$ _____

Labor: \$ _____

10% retainage: \$ _____

Total Bid: \$ _____

Please fax pricing back to Fluor Procurement @ 845-489-9266 no later than midnight (Eastern Standard Time) on: Tuesday, April 11, 2006

Documents Attached

**FLUOR FACILITY & PLANT
SERVICES, INC.**

Request for Quotation

4/18/2006

Quote Number _____

RFQ Number RFQ008455	Respond By 4/11/2006	Respond To FLUOR FACILITY & PLANT SERVICES
Buyer BARCOMB, KATHY		IBM
Phone/FAX 919-543-2692/845-489-9266		C/O WEST BROTHERS B305 DOCK
		38-41
		3039 CORNWALLIS ROAD

Quoted by _____	Phone _____
FAX _____	Payment Terms _____
Freight _____	FOB _____
Estimated Weight _____	Firm Thru Date _____
Currency _____	

Comments _____ **Additional Comments Attached**

Electrical Contractor, CSI Bid Quotation Breakdown

Shall be submitted with Bid

Division #	Description	Man Hours	Labor Cost	Mat'l Qty	Material unit of measure	Material Cost	Total line and column
16	DEMOLITION:						
	Power, signal and lighting						
	Data and Communications						
	Security						
	Fire Alarm						
16	ELECTRICAL:						
	Conduit						
	Wire and Cable						
	Switches and Receptacles						
	Disconnects						
	Circuit Breakers						
	Transformers						
	Panel boards						
	Lighting						
	Alarm and Detection						
	Public Address System						
	Cable Tray						
	Wireway						
	Communications						
	Fiber Optics						
	Security						
	Miscellaneous						
	Total Electrical						
16	ELECTRICAL: FIRE ALARM						
	Conduit						
	Wire and Cable						
	Fire Alarm and Detection						
	Total Fire Alarm						
	SUMMARY OF TOTALS:						

Neil Stiller
Rochester Public Utilities
4000 East River Rd NE
Rochester, MN 55906

April 5,2006

RPU IBM Substation 2006

Rebar		\$600.00	\$ 600.00
Concrete		\$4,300.00	\$ 4,300.00
Rock	(fill rock) material	\$ 500.00	\$ 500.00
Rock	(clean) material	\$ 1,250.00	\$ 1,250.00
Rock	restoral	\$ 1,250.00	\$ 1,250.00
Pipe, Spacers, Grounding			<u>\$ 20,793.00</u>
TOTAL MATERIAL			\$ 32,792.00
Labor	27 X 350 ft.	\$ 9,450.00	\$ 12,300.00
	Access MH	\$ 1,000.00	\$ 1,000.00
	Opening	\$ 2,000.00	<u>\$ 2,000.00</u>
TOTAL LABOR			<u>\$ 15,300.00</u>
PROJECT TOTAL			\$ 48,092.00

Any questions please feel free to give me a call.

Jim Thorson
507-250-3164
MasTec



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract agreement with Fluor Facility & Plant Services, Inc., and request the Mayor and the City Clerk to execute the agreement , subject to review by the City Attorney, for

IBM Substation Duct Bank

The amount of the contract agreement to be NINETY-ONE THOUSAND, EIGHT HUNDRED FIFTY FOUR AND 00/100 DOLLARS (\$91,854.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 25th day of April, 2006.

President

Secretary