

BILL NO. S-11-09-14

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROCUREMENT OF SITE WATER DISTRIBUTION PIPING FOR THE THREE RIVERS FILTRATION PLANT NORTH-SOUTH RESERVOIR, RES. #1986-2010, W.O. #65713 between HD SUPPLY WATERWORKS, LTC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the PROCUREMENT OF SITE WATER DISTRIBUTION PIPING FOR THE THREE RIVERS FILTRATION PLANT NORTH-SOUTH RESERVOIR, RES. #1986-2010, W.O. #65713 by and between HD SUPPLY WATERWORKS, LTC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for procurement of site water distribution piping for the Three Rivers Filtration Plant North-South Reservoir:

involving a total cost of ONE MILLION, FIVE HUNDRED FIFTY-SEVEN THOUSAND, THREE HUNDRED SIXTY-FIVE AND 00/100 DOLLARS - (\$1,057,365.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Interoffice Memo

Date: September 8, 2011
To: Common Council Members
From: Andrew Schipper, Program Manager, City Utilities Engineering
RE: **Three Rivers Filtration Plant North-South Reservoir Site Ductile Iron Piping Procurement Res. #1986-2010, W.O. #65713**

The Supplier shall furnish all insurance, bonds, and materials for the complete delivery of all work associated with the Ductile Iron Piping Procurement as needed for the project: "UV Disinfection Project". The goods of this contract are generally described as ductile iron piping products.

Implications of not being approved: We will not be able to work our plan to comply with EPA's Long Term 2 Enhanced Surface Water Treatment Rule. Purchase of this pipe is critical path on multi year construction schedule to meet deadline of UV disinfection substantial completion by July 2013.

This project was advertised to suppliers on June 17, 2011 and June 24, 2011 in the Fort Wayne Newspapers the Journal Gazette and the News-Sentinel.

The piping procurement contract for Resolution # 1986-2010 awarded to HD Supply Waterworks, LTD for \$1,057,365 was the lowest most responsive bidder of 2 bidders and 8.5% below the Engineer's estimate of \$1,155,000. The second lowest bidder was \$155,635 above HD Supply Waterworks, LTD bid.

The cost of said project funded by Sewer Utility.

Council Introduction Date: September 13, 2011

CC: BOW
Matthew Wirtz
Mark Gensic
Diane Brown
Chrono
File

PROJECT: UV Disinfection - Three Rivers Filtration Plant North-South Reservoir Ductile Iron Piping Procurement

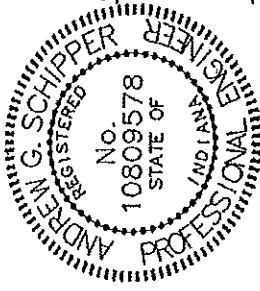
Resolution#: 1986-2010

Work Order#: 65713

Contract / Program Manager: Andrew Schipper

Bid Date: (Quote Date) June 6, 2011

Funding: Water Utility



Certified By: *Andrew G. Schipper*

Andrew G. Schipper, P.E.

Date:

July 6, 2011

BID				Engineer's Estimate		HD Supply Waterworks		American	
Item#	Description	Quantity	Unit	LS Price	LS Price	LS Price	LS Price	LS Price	LS Price
1	Base Bid Price	1	LS	\$	785,000.00	\$	790,499.00	\$	952,000.00
2	Alternate 1 Price	1	LS	\$	370,000.00	\$	266,866.00	\$	261,000.00
TOTAL BID PRICE				\$	1,155,000.00	\$	1,057,365.00	\$	1,213,000.00

AGREEMENT

Resolution Number: 1986-2010

Work Order: 65713

THIS AGREEMENT is by and between CITY OF FORT WAYNE (hereinafter called Buyer)
and HD SUPPLY WATERWORKS, LTD. (hereinafter called Seller).

Buyer and Seller, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 -- GOODS AND SPECIAL SERVICES

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents. The Goods and Special Services to be furnished are described in Section 011100, Summary of Goods and Special Services.

ARTICLE 2 -- THE PROJECT

- 2.01 The Project for which the Goods and Special Services to be provided under the Contract Documents is generally described as procurement of site water distribution piping for the Three Rivers Filtration Plant. The Goods of this Contract are generally described as ductile iron piping products. The title of the Project is:

CITY OF FORT WAYNE
THREE RIVERS FILTRATION PLANT
NORTH-SOUTH RESERVOIR
SITE DUCTILE IRON PIPING PROCUREMENT
FORT WAYNE, INDIANA

ARTICLE 3 -- ENGINEER AND DESIGNER

- 3.01 The Engineer will act as Buyer's representative, will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the furnishing of Goods and Special Services in accordance with the Contract Documents. The Engineer will be named at a later date. The Contract Documents for the Goods and Special Services have been prepared by Donohue & Associates, Inc., who is hereinafter called Designer. The Designer will consult with, advise, and assist the Engineer in connection with the completion of the Project in accordance with the Contract Documents.

ARTICLE 4 -- POINT OF DESTINATION

- 4.01 The place where the Goods are to be delivered is defined in the General Conditions as the Point of Destination and is designated as:

Three Rivers Filtration Plant
1100 Griswold Drive
Fort Wayne, IN 46805

ARTICLE 5 -- CONTRACT TIMES

5.01 Time of Essence

- A. All time limits for Milestones, if any, the delivery of Goods and the furnishing of Special Services as stated in the Contract Documents are of the essence of the Contract.
- B. All time limits for Milestones, if any, the submittal of Shop Drawings, the delivery of Goods and the furnishing of Special Services is contingent upon Buyer issuing a Purchase Order for the preparation of Shop Drawings within the time limits stated in the Instructions to Bidders.

5.02 Days for Submittal of Shop Drawings

- A. All Shop Drawings and Samples required by the Contract Documents will be submitted to Buyer for Engineer's review and approval within 7 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions. Not less than 35 days before the date when the Contract Times commence to run, the Buyer will issue to the Successful Bidder a Purchase Order in the amount stated in paragraph 7.02.A.1 below for the preparation of Shop Drawings.

5.03 Date for Delivery of Goods

- A. The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery not later than 140 days, and not sooner than 84 days, after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

5.04 Days for Furnishing Special Services

- A. The days for furnishing of Special Services to Buyer will commence within 28 days after Engineer's written notice to Seller. The Special Services are expected to commence approximately 140 days (with installation of the Goods) and be completed 420 days (with the approximate completion of the pipe installation) after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

5.05 Liquidated Damages

- A. Buyer and Seller recognize that time is of the essence of this Agreement and that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.03 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project are materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.03. Further, they recognize the delays, expense and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$3,000 for each day that expires after the time specified in Paragraph 5.03 for delivery of acceptable Goods.

5.06 Final Inspection

- A. After all of the Goods have been incorporated by the construction contractor into the Three Rivers Filtration Plant, North-South Reservoir Structural and Piping Improvements Project, tested in accordance with such testing requirements as are specified, and are functioning, as intended, Buyer or Engineer will make final inspection. Final inspection will be made not later than 420 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Owner accepts/rejects the following alternates as described in Section 01230 and indicated on the Bid Form.
- A. Accept /Reject Alternate 1: 60" North Reservoir FW Bypass
- 6.02 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds as follows:
- A. A Lump Sum of One Million Fifty Seven Thousand Three Hundred Sixty Five Dollars (\$1,057,365.00).

ARTICLE 7 – PAYMENT PROCEDURES

- 7.01 Submittal and Processing of Payments.
- A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 7.02 Progress Payments
- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to 5 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
 2. Upon receipt of the second such Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to 95 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
- 7.03 Final Payment
- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.06 of the General Conditions, Buyer shall pay the remainder of the Contract Price as recommended by Engineer.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the project.

ARTICLE 9 – SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
- A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and

become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.

- C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 Contents

A. The Contract Documents consist of the following:

- 1. This Agreement (pages 00530-1 to 00500-7, inclusive);
- 2. Performance Bond (pages 00610-1 to 00610-2, inclusive);
- 3. Payment Bond (pages 00615-1 to 00615-2, inclusive);
- 4. General Conditions (pages 00700-1 to 00700-18, inclusive);
- 5. Supplementary Conditions (pages 00800-1 to 00800-7, inclusive);
- 6. Specifications as listed in the table of contents of the Project Manual;
- 7. Drawings consisting of a cover sheet and sheets numbered 1 through 6, inclusive, with each sheet bearing the following general title: THREE RIVERS FILTRATION PLANT, NORTH-SOUTH RESERVOIR SITE DUCTILE IRON PIPING PROCUREMENT.
- 8. Addenda (numbers 1 to 3, inclusive);
- 9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A-1 to Agreement between Buyer and Seller dated _____, Assignment of Contract; Consent to Assignment; and Acceptance of Assignment;
 - b. Exhibit A-2 to Agreement between Buyer and Seller dated _____, Agreement to Assignment by Seller's Surety;
 - c. Purchase order from Buyer to Seller for furnishing of Shop Drawings. The Purchase order will be issued at the time stated in Article 20 of the Instructions to Bidders.
- 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;

- b. Written Amendments;
 - c. Change Orders;
 - d. Field Orders;
 - e. Engineer's written interpretations and clarifications.
- B. The documents listed in paragraph 10.01.A. are attached to this Agreement (except as expressly noted otherwise above).
 - C. There are no Contract Documents other than those listed above in this Article 10.
 - D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 Defined Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

11.02 Assignment

- A. Buyer has the right to assign the Contract for furnishing Goods and Special Services hereunder and Seller shall accept such assignment. Forms documenting the assignment of the Contract, and consent of Seller's surety to the assignment are attached as exhibits to this Agreement.
 - 1. The Contract will be executed in the name of Buyer initially, and will be assigned to a construction contractor designated by Buyer. The assignment will occur on the effective date of the agreement between Buyer and the construction contractor, which is expected to occur on or about November 15, 2011. As of the date of acceptance of assignment by the construction contractor, all references in the Contract Documents to Buyer shall mean the designated contractor whose responsibilities will include the installation and incorporation of the Goods.
 - 2. The assignment of the Contract shall relieve Buyer from all further obligations and liabilities under the Contract. After assignment, Seller shall become a subcontractor or supplier to the assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Contract shall become the rights, duties and obligations of the assignee.
 - 3. After assignment:
 - a. All performances warranties and guarantees required by the Contract Documents will continue to run for the benefit of Buyer and, in addition, for the benefit of the assignee.
 - b. Except as provided in this Paragraph 11.02.A.3.b, all rights, duties and obligations of Engineer to assignee and Seller under this Contract will cease.
 - 1) Engineer will review Seller's Applications for Payment and make recommendations to assignee for payments as provided in Paragraphs 10.02 and 10.06 of the General Conditions.

- 2) Upon the written request of either the assignee or Seller, Engineer will issue with reasonable promptness such clarifications or interpretations of the Contract Documents, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be final and binding on assignee and Seller unless:
 - a) an appeal from Engineer's clarification or interpretation is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13 of the General Conditions; or
 - b) If no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by assignee or Seller to the other within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by assignee and Seller), to exercise such rights or remedies as the appealing party may have with respect to such clarification or interpretation in accordance with applicable Laws and Regulations.
- 3) When rendering a clarification or interpretation under Paragraph 11.02.A.3.b.2, Engineer will not show partiality to assignee or Seller and will not be liable in connection with any clarification or interpretation rendered in good faith.

B. No other assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 Successors and Assigns

- A. Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

11.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

(Continued on Next Page)

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement in triplicate. One counterpart each has been delivered to Buyer, Seller, and Engineer. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

This Agreement is dated _____, 2011

Buyer:

CITY OF FORT WAYNE

By: _____
(signature)

JAMES HOWARD, PURCHASING DIRECTOR
(typed name and title)

Seller:

HD Supply Waterworks, Ltd.

By: Mark Witkowski
(signature)

Mark Witkowski
Director of Credit Collections
(typed name and title)

Address for giving notices:

Address for giving notices:

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____