

BILL NO. S-16-08-03

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION
CONTRACT - ITB #4000 - NORTHSIDE PARK
ADMINISTRATION BUILDING ROOF
IMPROVEMENTS - \$147,800.00 between FORT
WAYNE ROOFING AND SHEET METAL
CORPORATION and the City of Fort Wayne,
Indiana, in connection with the PARKS AND
RECREATION DEPARTMENT.

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

SECTION 1. That the CONSTRUCTION CONTRACT - ITB
#4000 - NORTHSIDE PARK ADMINISTRATION BUILDING ROOF
IMPROVEMENTS - \$147,800.00 by and between FORT WAYNE ROOFING
AND SHEET METAL CORPORATION and the City of Fort Wayne, Indiana, in
connection with the PARKS AND RECREATION DEPARTMENT, 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
demolition and installation of new insulated EPDM roofing
system at the Fort Wayne Parks Administration Building -
approximately 13,000 sqft of new roof

involving a total cost of ONE HUNDRED FORTY-SEVEN THOUSAND EIGHT
HUNDRED AND 00/100 DOLLARS - (\$147,800.00). A copy of 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

**Northside Park Administration Roof Imp,
ITB#4000**

Service Description

Rates

The following Attachments are part of this Agreement:

This Agreement is entered into between Supplier and the City as of August 24, 2016. The additional terms and conditions on the reverse side hereof are part of this Agreement. Capitalized terms on this page are used as defined terms when the context so requires. The City may extend the Contract at its option, for an equivalent period, by written notice to the Supplier not less than thirty days prior to the expiration date.

City of Fort Wayne

SERVICE AGREEMENT – PAGE 1

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Supplier shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier are and shall remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Supplier shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Supplier shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Supplier to perform the essential functions of the job. Supplier agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Supplier's failure to comply with this paragraph.
4. **INDEMNITY.** Supplier shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Supplier, then the City will reimburse Supplier for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Supplier's obligations to indemnify, defend, or hold harmless. Supplier shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
5. **LIMITATION OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorney's fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.
6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High-Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

(a) Worker's Compensation	per statutory requirements.
(b) General Liability	\$1,000,000 minimum per occurrence/ \$2,000,000 aggregate
(c) Automobile Liability	\$1,000,000 minimum per occurrence
(d) Products Liability	\$1,000,000 minimum per occurrence
(e) Completed Operations Liability	\$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
1 East Main Street, Rm B91
Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Supplier further agrees that all information, data findings, recommendation proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any cognizable property right of the Supplier in copyright, license, patent or other wise use such information, data findings, recommendation proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
12. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.
13. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificate required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
14. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice therefore.
15. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
16. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.
17. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather.
18. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address it may be specified by such other party by written notice sent or delivered in accordance herewith.
19. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier shall not subcontractors to perform any part of the Services without the prior written consent of the City.
20. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event any dispute or disagreement between the parties either with respect to the interpretation of a provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
21. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, account records, and other evidence pertaining to the cost incurred. They shall make such materials available for their respective offices at all reasonable times during the contract period and for three (3) years after the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if request.
22. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Supplier and subcontractors shall not discriminate against any employee or applicant for employment in performance of this contract. Supplier shall not discriminate with respect to hire, tenure, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin or ancestry. Breach of this contract may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
23. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable under the laws of the state of Indiana and shall not be affected. This Agreement is governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This Agreement shall be binding upon the parties hereto and their respective personal and legal representatives, successors and assigns.



E.B.E. RIDER:

ITB#4000

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **Fort Wayne Roofing and Sheet Metal**, hereinafter referred to as **CONTRACTOR**,

WITNESSETH:

WHEREAS, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **Northside Park Administration Roof Improvement Project – No. 215035**, which project was bid under Resolution Number **ITB#4000**; and

WHEREAS, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s** as subcontractors on this project is **10%** of the contract amount; and

WHEREAS, **OWNER** has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. **Conditional Award** - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, **OWNER** awards the construction contract to the **CONTRACTOR**.
2. **E.B.E. Retainage requirements** - If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain five percent (5%) of the total amount owing to insure compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the **CONTRACTOR** are not to exceed 95% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. **Request for Waiver** - If, at the time final payment application is made, contractor has not attained the ten 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10% E.B.E. goal.
4. **Determination of Waiver Requests** - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. **Good Faith Per Se.** - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. **Consequence of noncompliance** - In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. **Waiver approved** - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF,

The parties have executed the E.B.E. Rider this _____ day of _____, 20____.

CONTRACTOR

BY: _____ Company _____

Name Printed _____

ATTEST:

Al Moll, Director
Fort Wayne Parks and Recreation

Revised 2-09

Bid Tabulation

Northside Administration Roof Improvements

Project No.: 215035

ITB.# 4000

Bids Due: July 28, 2016

CONTRACTOR:	FW Roofing	CL Schust	CMS	Dahm Bro	Advanced
Base bid: New Roof w/\$4000.00 allow	\$117,500.00	\$122,000.00	\$125,300.00	\$129,900.00	\$154,720.00
Alternate 1: Reroof 3 canopies	\$15,800.00	\$15,875.00	\$17,440.00	\$19,700.00	\$21,500.00
Alternate 2: Add 1.5 polyiso	\$14,500.00	\$14,730.00	\$16,500.00	\$18,900.00	\$16,275.00
Alternate 3: Add Rein EPDM Roof	\$3,500.00	\$3,000.00	\$2,600.00	\$1,700.00	\$6,500.00
TOTAL: Base bid, Alternate 1 and 2	\$147,800.00	\$152,605.00	\$159,240.00	\$168,500.00	\$192,495.00
Addendum Receipt Verification:1,2,3	x	x	x	x	x

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs , BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Northside Park Administration Building Roof Imp
Awarded To	Fort Wayne Roofing and Sheet Metal
Amount	\$147,800.00
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	Eight
Number of Bidders	Five
Required Attachments	RFPs – attach Award Matrix; Bids – attach Tab Sheet

EXTENSIONS

Date Last Bid Out	7-11-2016
# Extensions Granted To Date	none

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	
Sole Source/ Compatibility Justification	

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☒ Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Demolition of existing roof system and installation of approximately 13,000 sqft of insulation and fully adhered EDPM roof membrane system..

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	

FUNDING SOURCE

<i>Account Information.</i>	Park Cumulative Capital Fund

MEMORANDUM

To: City Council Members, City of Fort Wayne
From: Marsha Ort
CC: File
Subject: ITB4000
Date: August 2, 2016

The Fort Wayne Parks and Recreation Department is requesting approval for a contract with Fort Wayne Roofing and Sheet Metal Corp in the amount of \$147,800.00. The contract is for demolition and installation of new insulated EPDM roofing system at the Fort Wayne Parks Administration Building. Approximate 13,000 sqft of new roof.

Eight vendors picked up plans and specifications and five bids were received.

Funding for this project is coming from Park Cumulative Capital.

We respectfully request your approval of this contract so that we may proceed with the work. If you have any questions, please feel free to contact me at 427-6417 or Steve Schuhmacher at 427-6401.

Thank you in advance.