



Board of County Commissioners Agenda Request

2P

Agenda Item #

Requested Meeting Date: June 25, 2024

Title of Item: Climate Makers contract for jail controls

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
Submitted by: Jim Bright		Department: Maintenance
Presenter (Name and Title): Jim Bright Facilities Coordinator		Estimated Time Needed:
Summary of Issue: Attached is the contract between Aitkin County and Climate Makers for HVAC controls associated with the jail boiler and chiller replacement. The resolution for the bid was approved at an earlier meeting with the contract to follow. The contract has been reviewed by the county attorney.		
Alternatives, Options, Effects on Others/Comments:		
Recommended Action/Motion: Approve the contract between Climate Makers and Aitkin County		
Financial Impact: Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ \$127,616.00 Is this budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i> There is \$750,000 of Fiscal Recovery Funds set aside for this project.		

Legally binding agreements must have County Attorney approval prior to submission.

Service Agreement
SECTION ONE

THIS AGREEMENT is made and entered into by and between the County of Aitkin, State of Minnesota (County), through the Aitkin County Maintenance Department, (Department), and Climate Makers Inc. (Independent Contractor).

RECITALS

WHEREAS, the County, through the Department, wishes to purchase the services of the installation of HVAC Integrated Automation from Independent Contractor; and

WHEREAS, the County and the Independent Contractor mutually agree that services to be performed by the undersigned shall be performed as an Independent Contractor and not as an employee, officer, or agent of the County;

WHEREAS, the Independent Contractor is prepared to perform services for the County;

WHEREAS, there are funds available for the purchase of these services;

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the County, through the Department, and the Independent Contractor agree as follows:

1) **Term and Cost of the Agreement**

The Independent Contractor agrees to furnish services on behalf of the County during the period commencing upon receipt of signed contract and terminating January 1, 2025.

The Independent Contractor shall be paid a total sum of \$127,616.00. The cost of this Agreement shall not exceed \$ 127,616.00 without written of approval from Aitkin County.

2) **Services to be Provided**

The Independent Contractor agrees that it shall furnish all materials, labor, and equipment, tools and other items necessary for the performance of the contractual undertaking that it has assumed herein. The Independent Contractor agrees that it has a substantial economic investment in tangible assets used in performing the services hereunder. Independent Contractor shall serve as the sole employer with respect to any of the employees employed by the Independent Contractor for the performance of the services required hereunder.

The parties agree that the County shall initially designate the work to be performed. It shall also make a final inspection within a reasonable period of time after the Independent Contractor claims that the work has been completed so final payment can be made. All work shall be performed in a workmanlike manner.

3) **Payment for Services**

Payment for services shall be made directly to the Independent Contractor after completion of services upon the presentation of a claim in the manner provided by law for payment of claims against the County.

4) **Independent Contractor Status**

That at all times and for all purposes hereunder, Independent Contractor shall be an independent contractor and is not an employee, official, or agent of the County for any purpose. No statement contained in this Agreement shall be construed so as to find Independent Contractor to be an employee, official, or agent of the County, and Independent Contractor shall not be entitled to any of the rights, privileges, or benefits of employees of the County, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

Independent Contractor acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Independent Contractor and that it is Independent Contractor's sole obligation to comply with the applicable provisions of all Federal and State Tax laws.

Independent Contractor shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. The parties agree that the Independent Contractor shall have sole control over the means and manner of performance of the Independent Contractor's obligations hereunder including, but not limited to the method, time, hours, days to be worked and other details of performance (subject to the specifications in Sections Two and Three). The County reserves the right to inspect the job site for the sole purpose of ensuring that the end result shall be or has been accomplished and the specifications of Sections Two and Three met. The County takes no responsibility for the supervision or direction of the performance of any of the services to be performed by the Independent Contractor or of its employees or subcontractors. Independent Contractor shall serve as the sole employer with respect to any of the employees employed by the Independent Contractor for the performance of the services required hereunder. The County further agrees that it shall exercise no control over the selection and dismissal of the Independent Contractor's employees.

Independent Contractor is responsible for hiring sufficient workers to perform the services/duties required by this contract, withholding their taxes, and paying all other employment tax obligations on their behalf.

The Independent Contractor shall comply with all federal, state, county or other government regulations or laws, including, but not limited to, the Fair Labor Standards Act, the Wage and Hour Laws, the Occupational Safety and Health Act and the Equal Opportunity laws.

5) **Indemnification and Insurance**

The Independent Contractor agrees it will defend, indemnify and hold harmless the County, its officers, agents, and employees against any and all liability, loss, costs, damages and expenses which the County, its officers, agents, or employees may hereafter sustain, incur, or be required to pay arising out of the Independent Contractor's performance or failure to adequately perform its obligations pursuant to this Agreement.

Independent Contractor further agrees that in order to protect itself as well as the County under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force the following:

- a) Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days' prior notice thereof to the County.
- b) Workers' Compensation Insurance.

The following insurance must be maintained for the duration of this Agreement.

5.1. Comprehensive General Liability Insurance

- (a) Minimum Combined Single Limit
 - \$2,000,000 per occurrence
 - \$4,000,000 aggregate

(b) The following coverage must be specifically insured and certified with no internal sub-limits.

1. Independent Contractors' Contingent Liability
2. Products/Completed Operations Liability
3. Contractual Liability
4. Personal Injury Liability
5. Broad Form Property Damage Liability

(c) The Contractual Liability is to be either on a blanket basis for all written and oral contracts or specifically endorsed to acknowledge the Agreement between the insured and the County.

5.2. Automobile Liability Insurance on Vehicles Owned by the Independent Contractor

Minimum limits
\$1,500,000 on a combined single limit basis.

5.3 Workers' Compensation Per Statutory Requirements

5.3.1. County reserves the right to rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against bidder.

Prior to the effective date of this contract, and as a condition precedent to this Agreement, the Independent Contractor will furnish the County with Certificates of Insurance listing the County as a certificate holder. A Certificate of Insurance for each policy must be on file with the County Land Department within 10 days of execution of this Agreement and prior to commencement of any work under this Agreement. Each certificate must include a 10-day notice of cancellation, nonrenewal, or material change to all named and additional insureds. The County reserves the right to rescind any agreement not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against Independent Contractor. All insurance policies shall be open to inspection by the County, and copies of policies shall be submitted to the County upon written request. All subcontractors shall provide evidence of similar coverage.

6) **Data Practices**

All data collected, created, received, maintained, or disseminated for any purposes by the activities of Independent Contractor because of this contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such act now in force or as adopted, as well as federal regulations on data privacy.

7) **Records-Availability and Retention**

Pursuant to Minn. Stat. § 16C.05, subd. 5, the Independent Contractor agrees that the County, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonable deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Independent Contractor and involve transactions relating to this Agreement.

Independent Contractor agrees to maintain these records for a period of six years from the date of termination of this Agreement.

8) **Merger and Modification**

- a) It is understood and agreed that the entire Agreement between the parties is contained here and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- b) Any material alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing as an amendment and signed by the parties.

9) **Default and Cancellation**

- a) If the Independent Contractor fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute default.

Unless the Independent Contractor's default is excused, the County, through the Department, may, upon written notice, immediately cancel this Agreement in its entirety.

Further, upon the Independent Contractor's default, the County shall have the right to retain the bidder's bond submitted by the Independent Contractor, and to pursue any and all legal remedies.

- b) This Agreement may be cancelled with or without cause by either party upon thirty days' written notice.

10) **Subcontracting and Assignment**

Independent Contractor shall not enter into any subcontract for performance of any services contemplated under this Agreement without the prior written approval of the County through its Land Commissioner or Assistant Land Commissioner, and subject to such conditions and provisions as the County may deem necessary. The Independent Contractor shall be responsible for the performance of all subcontractors.

11) **Nondiscrimination**

During the performance of this Agreement, the Independent Contractor agrees to the following:

No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed, sexual orientation or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.

12) **Execution**

IN WITNESS WHEREOF, the County has caused this Agreement to be signed by its duly authorized officers and the Independent Contractor has hereunto set its hand.

Dated this _____ day of _____, _____.

INDEPENDENT CONTRACTOR

COUNTY OF AITKIN, MINNESOTA

Contractor Name, Date

J. Mark Wedel, Board Chair

Date: _____

Print Contractor Name

Contracting Company Name

Jessica Seibert, County Administrator

Date: _____

Address