

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 05-26

For the purpose of selecting Johnson Controls, Inc. as the lowest responsive and responsible bidder in response to a Request For Bids relating to the Portland Center for the Performing Arts (PCPA), Keller Auditorium "Chiller Replacement Project," and authorizing the General Manager to execute a contract with Johnson Controls, Inc.

WHEREAS, the existing chillers in the Keller Auditorium were installed as part of the original construction in 1967, have experienced significant failures and are currently at the end of their useful life; and

WHEREAS, in the public interest, for purposes of providing effective facility temperature maintenance, protection of the environment and significant energy savings, PCPA desires to replace the chillers; and

WHEREAS, MERC staff, under the direction of the General Manager, prepared and issued a Request for Bids for the PCPA "Chiller Replacement Project"; and

WHEREAS, four bidders submitted bids in response to the Request for Bids; and

WHEREAS, Section 3(B) of the MERC Contracting and Purchasing Rules requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

WHEREAS, MERC staff has evaluated the bids, and Johnson Controls, Inc. is the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:

1. The Metropolitan Exposition-Recreation Commission selects Johnson Controls, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the PCPA Chiller Replacement Project; and
2. The Metropolitan Exposition-Recreation Commission approves the award of a contract, in a form substantially similar to the attached Exhibit "A," to Johnson Controls, Inc.; and
3. The Metropolitan Exposition-Recreation Commission authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on October 26, 2005.


Chair


Secretary/Treasurer

Approved As to Form:

Daniel B. Cooper, Metro Attorney

By: 

Lisa Umscheid

Senior Assistant Metro Attorney

Exhibit A

Public Contract

Contract # _____

This Contract is made by and between the Metropolitan Exposition-Recreation Commission, whose address is 777 N.E. Martin Luther King Jr. Blvd., Portland, OR, 97232, and governing body for the Portland Center for the Performing Arts, Keller Auditorium, located at 222 S.W. Clay, Portland, OR, and Johnson Controls, Inc., whose address is 4011 SE International Way, Suite 605, Milwaukie, Oregon, 97222-8826, hereinafter referred to as the "Contractor."

The Contractor and MERC agree as follows:

Article 1. Contract Documents

The Contract Documents consist of this Contract, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms (including Bid price sheet with signature pages, Surety name request, Resident/Non-resident Bidder Status, Non-Collusion Affidavit, Bid Bond, MBE/WBE/ESB Business Program Compliance forms, MBE/WBE/ESB Utilization forms, the Certificate of Compliance for Recycled Materials, Statement of Employee Drug Testing Program and First Tier Subcontractor list), Prevailing Wage Rate Compliance, Performance and the Labor and Materials Payment Bonds, General Conditions, Supplementary Conditions, Technical Specifications, Appendices to the Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Contract and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order. This Contract may be amended only by written instrument signed by both MERC and Contractor. The law of the State of Oregon shall govern the construction and interpretation of this contract.

Article 2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents for the Keller Auditorium Chiller Replacement Project.

Article 3. Contract Amount

As consideration for Contractor's performance hereunder, MERC agrees to pay Contractor the Contract Amount as adjusted by approved Change Orders issued pursuant to the Contract Documents. Contractor agrees to accept the Contract Amount as full payment for Contractor's performance of the described Work, and shall not hold MERC responsible for materials, expenses or costs not included in the Scope of Work.

The Contract Amount is \$270,866.00, (Two Hundred Seventy Thousand Eight Hundred Sixty Six and 00/100 dollars). MERC shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

Exhibit A

Article 4. Additional or Deleted Work

Contractor shall, when so instructed by MERC under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

Article 5. Time of Completion; Adjusted Payments; Term of Contract

Time is of the essence of this Construction Agreement. The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract and acquisition of the building permit. Contractor shall commence work under this Contract within no more than ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the Work to substantial completion no later than **February 28, 2006, or at such date as may be extended by Change Order approved by Contractor and Owner.** By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

If Contractor fails to substantially complete the Work, within the Contract Time, as determined by MERC in accordance with the Contract Documents, Contractor may be subject to liquated damages to MERC as described in the Contract Documents, General Conditions, Section 00700.

This Contract Term shall be from the date of Notice to Proceed through June 30, 2006, unless otherwise extended by Amendment signed by both parties to this Contract. The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the Work by the date specified.

Article 6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to MERC and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents.

Article 7. Remedies for Default

If Contractor fails to perform as specified in the Contract Documents, MERC shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the remedies provided by law which MERC would have in the absence of any provision of the Contract.

Article 8. Laws of Oregon Apply

The laws of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

Article 9. Entire Contract

The Contract Documents constitute the final written expression of all of the terms of this Contract and are a

Exhibit A

complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of this written agreement shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both MERC and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

Article 10. Liability and Indemnity

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor. Contractor assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall defend, indemnify, and hold harmless the City of Portland, Metropolitan Exposition-Recreation Commission, Metro, their agents, elected and appointed officials, and employees, (the Indemnities) from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Contract. Contractor is solely responsible for paying Contractor's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

Article 11. Termination

MERC may terminate this Contract upon giving Contractor seven (7) days written notice. In the event of termination, Contractor shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect, consequential or any other damages. Termination by MERC will not waive any claim or remedies it may have against Contractor.

Article 12. Insurance

Contractor shall purchase and maintain at Contractor's expense, the following types of insurance covering the Contractor, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. MERC its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.

Contractor shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

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Contractor shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving Contractor of this requirement is contained in the Contract Documents.

Article 13. Public Contracts

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of the Bureau of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against MERC on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

Article 14. Attorney's Fees

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

Article 15. Quality of Goods and Services

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

Article 16. Ownership of Documents

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media,

Exhibit A

computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

Article 17. Subcontractors

Contractor shall contact MERC prior to negotiating any subcontracts and Contractor shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article 12.

Article 18. Right to Withhold Payments

MERC shall have the right to withhold from payments due Contractor such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Contract Documents and if Contractor has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

Article 19. Safety

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

Article 20. Integration of Contract Documents

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between MERC and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

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Article 21. Compliance

Contractor shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

Article 22. Assignment

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

Johnson Controls, Inc.

MERC

By: _____
Signature

By: _____
Jeff Miller

Print Name: _____

Title: General Manager

Title: _____

Date: _____

Date: _____

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777 NE MLK JR BLVD PORTLAND, OREGON 97232 | PO BOX 2746 PORTLAND, OREGON 97208
TEL 503 731 7800 | FAX 503 731 7870
www.merc-facilities.org



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METROPOLITAN EXPOSITION-RECREATION COMMISSION

BID TABULATION

On Tuesday, October 11, 2005 at 2:00 p.m. PT bids were submitted for the PCPA, *Keller Auditorium Chiller Replacement Project*. At 2:00 p.m. in accordance with the specifications the BIDS were publicly opened and read aloud. **Bids were received as follows:**

* (The apparent low bidder is highlighted)

FIRM NAME	BASE BID	ALT #1	ALT #2	ALT #3	ALT #4	ALT #5	ALT #6
Hunter Davisson Inc.	\$277,830.00	\$6,620.00	\$8,473.00	\$1,842.00	\$815.00	\$5,583.00	\$1,661.00
Reitmeier Mechanical	\$328,156.00	\$9,990.00	\$13,788.00	\$1,860.00	\$615.00	N/A	\$1,740.00
Johnson Controls Inc.	\$269,658.00	\$5,463.00	\$11,613.00	N/A	\$4,255.00	\$37,651.00	\$1,668.00
American Heating Inc.	\$489,548.00	\$10,408.00	\$14,511.00	\$1,721.00	\$4,500.00	\$28,200.00	\$1,800.00

Bids will be reviewed in accordance with the Bid Documents, and MERC staff will determine its decision regarding Bids Submitted as soon as possible.

Signed: _____
Mark Hunter, Construction/Capital Projects Manager

Date: 10/11/2005

Dist: Bidders, Plan Holders, MERC Staff

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of selecting Johnson Controls, Inc. as the lowest responsive and responsible bidder in response to a Request For Bids relating to the Portland Center for the Performing Arts (PCPA), Keller Auditorium "Chiller Replacement Project," and authorizing the General Manager to execute a contract with Johnson Controls, Inc.

Resolution No: 05-26

Date: October 26, 2005

Presented by: Mark Hunter

Background: On September 22, 2005, Bids Documents were issued for the second time for the Keller Auditorium Chiller Replacement Project. The initial bids received in March of this year were rejected by the Commission, as the lowest bid was determined to be not responsive and responsible due to the failure of the Bidder to complete the First Tier Subcontractor Disclosure Form, required by State Law.

The existing Chillers require replacement due to their age and increasing problems with operation. On October 11, 2005, bids were opened and publicly read. Four bids were received (see attached bid tabulation), with the lowest base bid being \$269,658.00 without accepting any of the six alternates also bid and shown on the bid tabulation. Staff recommends that Alternates #1 (added - ancillary demolition) and #4 (deducted - deletion of unneeded apparatus) be accepted to bring the contract total to \$270,866.00.

Fiscal Impact: The budget for the proposed project is \$250,000. Funds are available in the budget to compensate for the difference.

Other Considerations: The project is scheduled to be done this winter with completion by February 28, 2006. If approved by the Commission, we hope to have a signed agreement by the beginning of November and initiate the equipment acquisition process.

Recommendation: Staff recommends that the Commission by Resolution 05-26, accept the bid of Johnson Controls, Inc., to include Alternates #1 and #4, for the Chiller Replacement Project at the Keller Auditorium.