

AN ORDINANCE 2008-09-11-0779

ACCEPTING THE OFFER FROM JOHNSON CONTROLS, INC. FOR THE REPLACEMENT OF THE HVAC SYSTEM AT THE BARBARA JORDAN COMMUNITY CENTER WITH ONE PACKAGED ROOF-TOP UNIT AND ONE 15-TON SPLIT-SYSTEM FOR A COST OF \$60,715.20, FROM 2007 CERTIFICATES OF OBLIGATION.

* * * * *

WHEREAS, an offer was submitted by Johnson Controls, Inc., using the Texas Multiple Award Schedule Contract # 6-840160 for the replacement of the existing heating, ventilation, and air-conditioning ("HVAC") systems currently installed at the Barbara Jordan Community Center with one packaged roof-top unit and one 15-ton split-system for a cost of \$60,715.20; and

WHEREAS, this purchase meets the requirements under the terms of the State of Texas Cooperative Purchasing Agreement adopted by the City of San Antonio by Resolution No. 91-39-53 on September 12, 1991; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The offer from Johnson Controls, Inc. for the replacement of the existing HVAC systems currently installed at the Barbara Jordan Community Center with one packaged roof-top unit and one 15-ton split-system for a cost of \$60,715.20 is hereby accepted, subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates and endorsements. A copy of the bid tabulation sheet and contract are attached hereto and incorporated herein for all purposes as Exhibit I.

SECTION 2. The amount of \$60,715.20 is appropriated in SAP Fund 43902020, 2007 CO Municipal Facilities, SAP WBS CO-20700-01-01-15, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 40-00160-90-02. The amount of \$60,715.20 is authorized to be transferred to SAP Fund 43099000.

SECTION 3. The budget in SAP Fund 43099000, SAP Project Definition 40-00160, Learning Center Repairs, shall be revised by increasing SAP WBS element 40-00160-90-02 entitled Transfer From CO-20700-01-01-15, SAP GL account 6101100 – Interfund Transfer In, by the amount \$60,715.20.

SECTION 4. The amount of \$60,715.20 is appropriated in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00160, Learning Center Repairs, SAP WBS Element 40-00160-06-01, entitled Other, SAP GL Account 5301010.

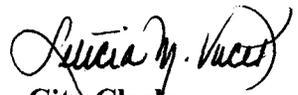
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP

Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall take effect September 21, 2008.

PASSED AND APPROVED this 11th day of September, 2008.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 9

Name:	9
Date:	09/11/2008
Time:	03:35:03 PM
Vote Type:	Motion to Approve
Description:	An Ordinance accepting the offer from Johnson Controls, Inc. for the replacement of the HVAC system at the Barbara Jordan Community Center with one packaged roof-top unit and one 15-ton split-system for a cost of \$60,715.20, from 2007 Certificates of Obligation. [Sharon De La Garza, Assistant City Manager; Janie Cantu, Director, Purchasing & Contract Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1				x		
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x			x	
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				x
John G. Clamp	District 10		x				

City of San Antonio Bid Tabulation

Opened: June 18, 2008				
For: HVAC Replacement for the Barbara Jordan Center			TXMAS	TXMAS
08-096			Johnson Controls, Inc.	Trane
VF			326 W. Nakoma	9535 Ball Street, Suite 1100
Item	Description	Qty.	San Antonio, TX 78216 210-349-9100	San Antonio, TX 78217
1	HVAC Replacement for the Barbara Jordan Center	1	\$60,715.20	\$74,805.02
Total Estimated Award			\$60,715.20	\$74,805.02

Exhibit I

CITY OF SAN ANTONIO PURCHASING AND CONTRACT SERVICES

Issued By: vf/VF CITY CONTRACT NO. 08-096
COOPERATIVE CONTRACT NO.: TXMAS 5-03FAC020
PROCURING ENTITY/COOPERATIVE: STATE of TEXAS

Date Issued: August 12, 2008

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**TERMS & CONDITIONS FOR CONTRACT FOR
REPLACEMENT OF HEATING, VENTILATION AND AIR-CONDITIONING SYSTEMS AT
BARBARA JORDAN CENTER**

Contract Documents: The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

- a. This Terms and Conditions Document;
- b. Any Purchase Orders Issued hereunder by the City of San Antonio ("City"); and
- c. Exhibit I - All applicable terms and conditions of Contract # TXMAS 6-0840160, procured by the State of Texas and made available to local governmental entities through the *Texas Multiple Award Schedule (TXMAS)*, including the proposal submitted by Johnson Controls dated June 18, 2008.

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document and any Purchase Order issued hereunder shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, Price Schedule, any Attachments identified herein

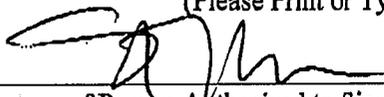
The City's Purchasing Division is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office in the City Hall Annex, 131 W. Nueva, or by calling (210) 207-7260.

It is the policy of the City of San Antonio to involve qualified Small, Minority, Woman-owned, and local business in construction, procurement, professional services, and leases and concessions contracting. The City of San Antonio has established the following minority business enterprise (MBE), woman business enterprise (WBE), African-American business enterprise (AABE), and small business enterprise (SBE) utilization goals: MBE Goal: 15%; WBE Goal: 10%; AABE Goal: 3%, SBE Goal: 50%.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Price Schedule. A signature below indicates that the Vendor has read the entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: SCOTT R. MEEKER
(Please Print or Type)

Firm Name: JOHNSON CONTROLS, INC.



Address: 326 W. NAKOMA

Signature of Person Authorized to Sign Offer

City, State, Zip Code: SAN ANTONIO, TX 78216

Email Address: scott.r.meeker@jci.com

Telephone No.: (210) 349-9100

Fax No.: (210) 349-8730

FOR CITY USE ONLY

AWARD

Items Accepted:	Ordinance No:	Date:	Amount:
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Approved: _____

CITY OF SAN ANTONIO

CITY CONTRACT NO.: 08-096

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Please complete the following:

Prompt Payment Discount: _____% _____ days. (If no discount is offered, Net 30 will apply.)

Please check the following blanks which apply to your company:

Ownership of firm (51% or more):

Non-minority _____ Hispanic _____ African-American _____ Other Minority (specify) _____
 Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)

Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) _____

Tax Identification Number: 39-0380010

I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.
2. **Rejection of Disclaimers of Warranties & Limitations of Liability.** Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.
3. **Acceptance of Offer.** By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.
4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
5. **Taxes.** Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.
6. **Point of Destination.** All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery.
7. **Delivery Times.** Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.
8. **Failure to Meet Delivery Schedule.** When delivery is not met as provided for in the contract, the Purchasing and Contract Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.
9. **Acceptance By City.** The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
10. **Warranty.** Unless a specific warranty is provided elsewhere in these contract documents, the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.
11. **Change Orders.** In order to comply with Texas law governing purchases made by municipalities, the follow rules shall govern all change orders made under this contract.

- (a) Any change orders that become necessary during the term of this contract as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished may be approved by the Director of the Purchasing and Contract Services ("Purchasing Director"), or her designee, provided that such change orders:
- (1) are made in writing, signed by the Purchasing Director or her designee;
 - (2) do not involve an increase or decrease in contract price of more than \$25,000; and
 - (3) sufficient funds have already been allocated by City or are available to the Purchasing Director to cover any increase in contract price.
- (b) Any other change will require approval of the City Council, City of San Antonio.
- (c) In the case of an increase, the sum of all change orders cannot exceed 25% of the original contract price.
- (d) Changes that do not involve an increase in contract price may, however, be made by the Purchasing Director.

12. Contract Termination

TERMINATION-BREACH:

- (a) Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and Contract Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract for convenience upon ten days prior written notice.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

13. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT

JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

14. Assignment and Subcontracting

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing Division. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.
- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

15. Independent Contractor. Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

16. Patents/Copyrights. The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

17. Public Information Act. Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

18. Conflict of Interest. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In

this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

19. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

20. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

21. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

22. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with all applicable federal, state and local laws, rules and regulations.

23. Venue. Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

24. Entire Agreement. This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

25. Insurance.

A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Purchasing and Contract Services Department, which shall be clearly labeled "HVAC REPLACEMENT @ BARBARA JODAN CENTER" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's Purchasing and Contract Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will City allow modification whereupon City may incur increased risk.

C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

Type	Amount
*Workers Compensation Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Broad form property damage, to include fire legal liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage (f) \$50,000
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Purchasing & Contract Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

G) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this agreement.

H) It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

I) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

26. Prevailing Wage Rate.

(a) Definitions.

(1) Prevailing Wage Rate – that rate which has been determined by City to be the applicable prevailing wage rate, including the per diem rate and the rate for legal holiday and overtime pay, as set forth in Attachment No. 1 attached hereto and fully incorporated herein, for each category of worker.

(2) Worker - person employed by Contractor or a Subcontractor in the execution of this contract. A worker includes, but is not limited to, laborers and mechanics.

(b) Payment of Prevailing Wage Rate - Contractor shall pay to its workers not less than the prevailing wage rate for that class of worker as described in said Attachment A. Further, Contractor shall stipulate in all contracts with subcontractors engaged by Contractor in furtherance of the execution of this contract that said subcontractors pay not less than the prevailing wage rate for its workers, and shall attach as an exhibit to said contracts a copy of Attachment A.

(c) Penalty for Non-payment - A Contractor or Subcontractor who pays less than the prevailing wage rate to its workers, shall pay to City Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this contract. Contractor shall stipulate in all contracts with subcontractors engaged by Contractor in furtherance of the execution of this contract that Subcontractor is subject to this \$60.00 penalty if Subcontractor fails to pay said prevailing wage rates to its workers.

In accordance with Chapter 2258, TEX. GOV'T CODE, City shall be entitled to withhold payment from Contractor under the contract to satisfy this penalty, even if the party incurring the penalty is a Subcontractor of Contractor. If City withholds payment from Contractor as a result of a Subcontractor's violation,

Contractor may withhold payment from said Subcontractor in accordance with said Chapter 2258. Further, release or disbursement of funds withheld as a penalty hereunder shall be governed by said Chapter 2258.

- (d) **Records** - Contractor and Subcontractor shall keep a record showing: (1) the name and occupation of each worker employed by the Contractor or Subcontractor; and (2) the actual per diem wages, including legal holiday and overtime wages, paid to each worker. These records shall be open at all reasonable hours to inspection by the officers and agents of City. Contractor shall stipulate in all contracts with subcontractors engaged by Contractor in furtherance of the execution of this contract that Subcontractors must maintain and make available for inspection the records as described in this article.

Workers' Compensation Insurance Coverage.

(a) Definitions:

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.
 - (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- (c) The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- (d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- (e) The contractor shall obtain from each person providing services on a project, and provide to the City:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

- (f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading

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information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

27. Payment Bond. Contractor shall provide a payment bond as security for all persons supplying labor and material in the performance of this contract. Said bond shall be executed by a corporate surety acceptable to City, licensed pursuant to the Texas Insurance Code in the full amount of the contract price. Said bond must be in a form acceptable to City. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253 and the Texas Property Code, chapter 53. This bond must be executed and delivered to City prior to commencement of work under this contract.

The remainder of this page is intentionally left blank.

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II. PRODUCT SPECIFICATIONS & DESCRIPTION OF SERVICES

Period of Contract. This Contract shall begin upon award by the San Antonio City Council by passage of an ordinance therefore, and terminate upon completion of all services described herein. Contractor shall complete all work no later than October 31, 2008, unless extension is granted in writing by the City's Director of Purchasing & Contract Services, or her designee.

Furnish all equipment, materials, tools, and labor to install (1) new JCI Packaged Roof-Top and (1) 15 Ton Split-System at the Barbara Jordan Center, 2803 E. Commerce in San Antonio, TX 78237, in accordance with the specifications of contract 08-096 and TXMAS 5-03FAC020 and the Johnson Controls proposal dated June 18, 2008.

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III. PRICE SCHEDULE

Complete Price: \$ 60,715²⁰

Equipment Warranty: (# of Years): 1 YR COMPLETE / 5 YR COMPRESSOR

Installation Warranty: (# of Years or Months): 12 years or months (Circle one)

Installation to be completed within 35 days after receipt of order.

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Statement:

"Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us <<http://www.ethics.state.tx.us>>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205."

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IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING DIVISION
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING DIVISION
CITY HALL ANNEX
131 W. NUEVA
SAN ANTONIO, TEXAS 78204

FAX QUOTES TO: ATTENTION: VELMA FONTENOT,
PURCHASING DIVISION
FAX NO. 210-207-7270

REMARKS:

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ATTACHMENT A – PREVAILING WAGE RATES

General Decision Number: TX080003 06/06/2008 TX3

Superseded General Decision Number: TX20070003

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

Modification Number	Publication Date
0	02/08/2008
1	03/28/2008
2	04/11/2008
3	05/09/2008
4	06/06/2008

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ASBE0087-001 01/01/2006

	Rates	Fringes
Asbestos/Insulator Worker (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems.).....	\$ 19.67	6.37

BRTX0001-004 05/01/2008

	Rates	Fringes
BRICKLAYER.....	\$ 24.50	1.50

* ELEC0060-001 06/02/2008

	Rates	Fringes
Cable splicer.....	\$ 22.90	6.48
ELECTRICIAN (Including pulling and installing cable through conduit for low voltage).....	\$ 22.65	6.48

ELEV0081-001 01/01/2005

	Rates	Fringes
Elevator Constructor MECHANIC.....	\$ 26.885	12.115+A

FOOTNOTE; A = UNDER 5 YEARS EMPLOYMENT, 6% BHR; OVER 5 YEARS
EMPLOYMENT, 8% BHR. PAID HOLIDAYS : New Year's Day,
Memorial Day, Independence Day, Labor Day, Thanksgiving
Day, Friday after Thanksgiving Day and Christmas Day.

ENGI0450-001 04/01/1994

	Rates	Fringes
Power equipment operators: Cranes.....	\$ 12.95	3.30

IRON0066-001 06/01/2007

	Rates	Fringes
IRONWORKER (Excluding metal building erectors) Structural.....	\$ 17.40	5.00

MARB0002-001 07/01/2005

CITY CONTRACT NO.: 08-096

	Rates	Fringes
TILE SETTER.....	\$ 18.50	6.10

 PLUM0142-001 10/10/2007

	Rates	Fringes
Plumbers and Pipefitters (Including HVAC WORK).....	\$ 28.30	8.02

 SFTX0669-001 04/01/2008

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 25.30	13.30

 SHEE0067-001 04/01/2007

	Rates	Fringes
Sheet metal worker (Including HVAC Duct Work).....	\$ 23.70	9.74

 SUTX1988-002 11/01/1988

	Rates	Fringes
Acoustical Ceiling Installer.....	\$ 12.26	

CARPENTER (Excluding Acoustical Ceiling Installer & Drywall Hanger).....	\$ 10.64	
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CEMENT MASON/CONCRETE FINISHER.....	\$ 11.46	
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DRYWALL HANGER.....	\$ 11.88	
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GLAZIER.....	\$ 10.78	1.40
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IRONWORKER (Excluding Metal Building Assemblers) Reinforcing.....	\$ 10.19	3.57
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Laborers:		
Mason Tenders.....	\$ 8.36	1.78
Mortar Mixers.....	\$ 8.99	
PLASTERER'S TENDERS.....	\$ 8.68	
Unskilled.....	\$ 7.06	

LATHER.....	\$ 15.25	
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PAINTER (Excluding Tapers/Finishers).....	\$ 8.01	
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PLASTERER.....\$ 15.25

Power equipment operators:

Front End Loader.....\$ 7.36

Roofers:

Kettlemen.....\$ 8.85

Roofers.....\$ 8.14

Waterproofers.....\$ 6.88

Sheet Metal Worker

Other Work.....\$ 11.62

Taper/Finisher.....\$ 7.99

TRUCK DRIVER.....\$ 7.10

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 9
Council Meeting Date: 9/11/2008
RFCA Tracking No: R-3803

DEPARTMENT: Purchasing & Contract
Services

DEPARTMENT HEAD: Janie Cantu

COUNCIL DISTRICT(S) IMPACTED:
Council District 2

SUBJECT:
HVAC System Replacement for Barbara Jordan Community Center

SUMMARY:

This ordinance authorizes a contract for a total amount of \$60,715.20 with Johnson Controls, Inc. The contract will authorize the replacement of the existing HVAC (heating, ventilation, and air-conditioning) systems currently installed at the Barbara Jordan Community Center with one (1) packaged roof-top unit and one (1) 15-ton split-system.

BACKGROUND INFORMATION:

Installed in 1982, the HVAC systems at the Barbara Jordan Community Center are currently not providing heat in the winter and running at partial capacity in the summer. The Facility Management Division evaluated the current equipment and determined it to be past its useful service life.

The attached tabulation of two (2) requests for offer for the HVAC replacement is submitted for Council consideration and action. The more cost effective offer was submitted by Johnson Controls, Inc., utilizing the Texas Municipal Award Schedule (TXMAS) Contract #6-840160 for a total cost of \$60,715.20. This purchase is made in accordance with the State Cooperative Program passed on Resolution No. 91-39-53 dated 9/12/1991.

ISSUE:

Due to the age of the equipment, the Barbara Jordan Community Center's HVAC system is currently operating at partial capacity. The Center was recently forced to close part of the facility and move staff into alternate areas with air conditioning. The Center will expand its staff in the latter part of September and will require heating and cooling of the entire building.

ALTERNATIVES:

The offer by Johnson Controls, Inc. will allow for the efficient and effective replacement of the current HVAC system. Should the contract not be approved, the City may choose to rent spot coolers at an additional cost.

FISCAL IMPACT:

The total cost for this purchase is \$60,715.20, and will be funded as a Capital Project expenditure as allotted for FY 2008 from the 2007 Certificates of Obligation, appropriated by City Council on September 4, 2008.

RECOMMENDATION:

Staff recommends approval of this ordinance for a contract with Johnson Controls, Inc. to replace the current HVAC systems at the Barbara Jordan Community Center with one (1) packaged roof-top and one (1) 15-ton split system.

ATTACHMENT(S):

File Description	File Name
Contract	08-096 Request for Offer.pdf
Bid Tab	08-096 Bid Tab.pdf
Voting Results	
Ordinance/Supplemental Documents	200809110779.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Janie Cantu Director Purchasing & Contract Services

APPROVED FOR COUNCIL CONSIDERATION:

Sharon De La Garza Assistant City Manager