

AN ORDINANCE 2008-06-19-0552

**AMENDING THE PROFESSIONAL SERVICE AGREEMENT WITH
CARTER & BURGESS, INC FOR PROGRAM MANAGEMENT SERVICES
AT SAN ANTONIO INTERNATIONAL AIRPORT TO MODIFY
REPORTING REQUIREMENTS.**

* * * * *

WHEREAS, the City awarded a three-year Agreement for Professional Program Manager Services to Carter & Burgess, Inc. commencing March 27, 2003, pursuant to Ordinance No 97283, to provide design and construction quality assurance, management of design and construction, and other incidental special services for the San Antonio International Expansion Program which is a multi-year capital improvements project of approximately \$450 million; and

WHEREAS, the original Agreement for Professional Program Manager Services has been amended various times as authorized by various Ordinances to address changing needs and circumstances of the Project; and

WHEREAS, an audit of the Airport Expansion Project managed by Carter & Burgess, Inc. conducted by the City Auditor in 2007 revealed some reporting deficiencies in the Agreement for Professional Program Manager Services; and

WHEREAS, the Parties negotiated an amendment to the Agreement for Professional Program Manager Services to enhance the City's ability to monitor and control the services provided by Carter & Burgess, Inc.; and

WHEREAS, it is necessary to further amend the original Agreement for Professional Program Manager Services; **NOW THEREFORE:**

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

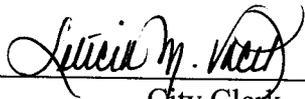
SECTION 1. The City Manager or her designee is authorized to execute the attached Amendment to Agreement for Professional Program Manager Services for the San Antonio International Airport, enhancing the City's ability to monitor and control the services provided by Carter & Burgess.

SECTION 2. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 19th day of June, 2008.



**M A Y O R
PHIL HARDBERGER**

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

IMPORTANT MAILING INSTRUCTIONS:

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

PHYSICAL ADDRESS: CITY CLERK
CITY HALL (COMMERCE ST. & FLORES ST.)
100 MILITARY PLAZA, 2ND FLOOR
SAN ANTONIO, TEXAS 78205

MARK ENVELOPE: *"ANNUAL CONTRACT FOR COMPREHENSIVE NUTRITION PROJECT"*
BIDS TO BE OPENED: 2:00 P.M., APRIL 29, 2008.
BID NO.: A879-08-JW



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 11

Name:	11, 12, 13, 14
Date:	06/19/2008
Time:	03:13:40 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment to the Professional Services Agreement with Carter & Burgess, Inc. for Program Management Services at San Antonio International Airport to modify reporting requirements and other administrative items. [Penny Postoak Ferguson, Assistant City Manager; Mark Webb, Director, Aviation]
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				x
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9				x		
John G. Clamp	District 10	x					

**CONTRACT AMENDMENT TO AGREEMENT FOR PROGRAM
MANAGEMENT FOR PROFESSIONAL SERVICES FOR THE SAN ANTONIO
INTERNATIONAL AIRPORT**

This Amendment (herein called the "Amendment") to the Agreement for Program Manager Professional Services for the San Antonio International Airport is entered into by and between the City of San Antonio (herein called the "City"), a Texas municipal corporation, acting by and through its City Manager, and Carter & Burgess, Inc. (hereinafter called "Program Manager," "PM" or "Manager"), a Texas corporation, acting by and through its duly authorized corporate representative, as set out below. **WITNESSETH:**

WHEREAS, On May 27, 2003 an Agreement for Program Manager Services for the San Antonio International Airport Expansion Project (herein called the "Original Agreement"), was entered into by the City and Program Manager as authorized by Ordinance No. 97283 on March 6, 2003; and

WHEREAS, under the terms of the Original Agreement, the Aviation Director as the City's representative, and Carter & Burgess, Inc. extended the contract term until September 23, 2007 through several administrative extensions; and

WHEREAS, an Amendment to the Agreement for Professional Program Management Services for the San Antonio International Airport extended the contract term until September 30, 2010 as authorized by Ordinance No. 2007-06-28-0796 on June 28, 2007;

NOW THEREFORE, in consideration of the terms, covenants, agreements and demises herein contained, and in consideration of other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the Original Agreement entered into by and between the City and the Program Manager is amended as follows:

1.0 Article 2.1. Article 2.1 is replaced in its entirety with the following: "The Manager accepts the relationship of professional trust and confidence established between it and the City by this Agreement. It covenants with the City to act in good faith and furnish its best skill and judgment as an Independent Contractor and to cooperate with the Architects, Engineers and subconsultants in the Program in furthering the interests of the City. The Manager agrees to furnish to the City all services provided for herein. The Manager shall promote furtherance of the Program in the most expeditious and economical manner consistent with the interests of the City and the requirements of the Contract Documents. Nothing in this Agreement shall create any fiduciary duties on the part of the Manager in favor of City."

2.0 Special Reports. Article 3.2.5.1 Article 3.2.5.1 is hereby inserted into and made a part of the Amendment: "The Aviation Director shall be able to

request and Contractor shall deliver special reports regarding the Contractor's progress and expenditures associated with each Project as agreed to by the parties."

3.0 Labor Reporting. Article 3.2.5.2. Article 3.2.5.2 is hereby inserted into and made part of the Agreement: "Within 60 days of this Amendment and monthly thereafter, PM must account for, track and report to City all its hours charged to each Project within the Program. Such hours reported shall list the employee names, the rate charged and be broken down into 30 minute time increments with all time being assigned to a particular Project. It is recognized that several PM staff positions work on multiple projects and assignments on any given day and these staff positions shall be classified in a general and administrative category. The PM will identify and the City may, in its sole determination, approve or disapprove the charging category(ies) and the percentage of labor hours that a PM staff member may charge to a particular Project labor category. A monthly report shall be developed to disclose the hours charged to each Project and the total cost (including direct labor cost, overhead, and profit) for the reporting period and cumulative to date for each Project."

4.0 Construction Records. Article 3.3.24. Article 3.3.24 is replaced in its entirety with the following: "PM shall develop and implement a Program construction records system organized by Project file, including review and processing of applications by Contractors for progress and final payments. PM shall develop, implement and monitor a system for tracking Project payment requests from Contractors while being processed by the City. PM shall record the progress for each Project and submit written progress reports, organized by Project file, to the City including information on each Contractor's Work, the percentage of completion, and the number and amounts of change orders, and PM shall keep a log available to the City reflecting all such information. PM shall maintain at the Project site, on a current basis, records of all necessary construction contracts; shop drawings; samples; purchases; materials; equipment; applicable handbooks; governmental, commercial and technical standards and specifications; maintenance and operating manuals and instructions; and any other documents and revisions thereto which arise out of each Project construction contract. PM shall obtain data from Contractors, in accordance with their contract, and maintain a current set of record drawings, specification and operating manuals and instructions, and any other documents and revisions thereto which arise out of each Project construction contract. Additionally, PM shall: 1) maintain, and cause all subcontractors to record and maintain, all written and electronic correspondence which is not legally privileged, including, but not limited to, electronic mail, memorandums, directives, agreements, contract changes and other physical or electronic writings associated with each Project; and 2) categorize and organize all such aforementioned correspondence by Project file. At the completion of the Project PM shall deliver all such records to the City."

5.0 Rate Adjustments. Article 4.1.1. Article 4.1.1 is hereby inserted into and made a part of the Amendment: "In November of 2007 Carter & Burgess, Inc. was purchased by Jacobs Engineering Group resulting in a change in base labor rates and fixed overhead rate. The PM and City hereby agree that, notwithstanding anything else in the Agreement, PM will be allowed a one time adjustment in the base labor rates contained in Exhibit B, Section A, Base Labor Rate Schedule of this Agreement to the actual base labor rates for PM employees as of the effective date of this Amendment. The PM and City further agree that, notwithstanding anything else in the Agreement, on a going forward basis, the Fixed Overhead Rate Schedule in Exhibit B, Section B shall be the based on PM's audited overhead report for the most recent completed fiscal year, which rates shall be adjusted each year, and shall be applied to base labor rates and all associated calculations under the Agreement. In no event shall the combined amounts of the increase in base labor rates and the adjustment in fixed overhead rates made pursuant to this Amendment exceed the amounts that would have been paid under the Agreement prior to the effective date of this Amendment."

6.0 Reimbursable Expenditures. Article 4.3. Article 4.3 is replaced in its entirety with the following: "Manager shall adhere to all applicable City policies governing reimbursable expenditures. The City shall reimburse the Manager monthly at actual costs for expenses the Manager incurs in support of the Program, so long as, such expenses are allowable and are charged at the appropriate rate(s) set out in the applicable City policies. Expenditures that are allowable include, but are not limited to, office rental; leased vehicles pre-approved in writing by the City, parking; computer purchase/rental; work-specific, personal employee vehicle mileage (to be reimbursed in accordance with the most current IRS guidelines); computer software; reasonable travel expenses; telephone charges; printing; photography; postage; delivery; office supplies; janitorial services and other expendables and incidentals. Notwithstanding the foregoing, travel expenses shall be reimbursed at the lesser of actual costs of the applicable Federal per diem rates for meals and lodging in the applicable location. The City reserves the right to limit living expenses such as lodging, meal and local transportation for extended temporary assignments of PM staff. City will not reimburse and Manager shall not charge the City for any vehicle expenditures associated with the personal use of a personal, company or rental vehicle."

7.0 Legal Services. Article 5.1.5. Article 5.1.5 is replaced in its entirety with the following: "The City or its representatives shall provide all legal, accounting, and insurance consulting services necessary for the Program; legal review and preparation of any construction auditing services as the City may require to account for the expenditures of sums paid to Contractor(s), the Architect and the Engineers; and for the review of bid documents. In the event that City requests an audit of the Program or any Project(s) such audit shall be performed by either the City or an independent third party auditor hired by the City. The City and the

Manager shall each make all written and electronic records deemed necessary by the auditor available. Any labor hours and costs incurred by Manager in complying with an audit requested by the City, or in challenging, appealing or in any way disputing the audit, shall be accumulated and identified separately on the monthly billing invoices from the Program expenditures and reimbursed by the City. The City shall be reimbursed for all Manager labor hours and expenses associated with the audit, or any challenge, appeal or other dispute thereof, if the Project audit results vary by three percent (3%) or greater to the detriment of the City from the total contract value recorded for that Project and as agreed and collected from the Contractor."

8.0 Exhibit C. Reimbursable Expenses Assumption 4 is replaced in its entirety with the following: "Reimbursable expenses to be provided at the lesser of actual cost or the amount calculated as otherwise provided for in the Agreement or any applicable City policies governing reimbursable expenditures."

Except as amended hereby, all other provisions of the Original Agreement are hereby retained in their entirety and remain unchanged.

EXECUTED AND AGREED TO this 6th day of June, 2008.

CITY OF SAN ANTONIO

CARTER & BURGESS, INC.

By: _____
Sheryl Sculley, City Manager

By: S. Brad Davis
Signature

S. BRAD DAVIS - MANAGING PRINCIPAL
Printed Name & Title

APPROVED:

By: _____
City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 11
Council Meeting Date: 6/19/2008
RFCAs Tracking No: R-3506

DEPARTMENT: Aviation Department

DEPARTMENT HEAD: Mark Webb

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
PSA for Program Management Services with Carter & Burgess, Inc. @ SAIA

SUMMARY:

An ordinance authorizing execution of an amendment to the Professional Services Agreement with Carter & Burgess, Inc. for Program Management Services at the San Antonio International Airport.

BACKGROUND INFORMATION:

The San Antonio International Airport Expansion Program is a multi-year capital improvement project with planned design and construction of approximately \$450 million. The Program Management Contract functions as an extension of Aviation Department staff to provide design and construction quality assurance, management of design and construction, and special services incidental to the planning, design, funding construction and commission of these capital improvements.

On March 2003, City Council approved a Professional Services Agreement with Carter & Burgess, Inc. in the amount of \$16,148,000.00. In June 2007, the agreement was amended to extend the contract term for an additional three years and increase the compensation fee in the amount not to exceed \$18,900,000.00 for a revised contract value of \$35,048,000.00.

In November 2007, Carter & Burgess, Inc. joined with Jacobs Engineering, Inc. to become Jacobs Carter Burgess, Inc.

During the months of April thru December 2007, an audit was conducted by the City Auditor on an Airport Expansion Project managed by Jacobs Carter Burgess. The results of the audit identified the contractor over billed the project in excess of \$250,000.00, which equated to approximately 3.76% of the total value of the project. The amount of the over billing was withheld from the project retainage; however, the Program Management contract did not contain provisions to recover the costs billed by Jacobs Carter Burgess associated with their assistance on this audit. This amendment would allow for such an occurrence on future projects and will enhance other contract monitoring capabilities for the City. The City and the Program Manager have taken various steps

to ensure that the issues associated with the overbilling have been corrected for future work. The City and the Program Manager have taken various steps, including an improved contractor billing verification process, a revised process to track calendar days, and an improved documentation procedure for change orders, to ensure that the issues associated with the overbilling have been corrected for future work.

ISSUE:

This ordinance will amend the professional services agreement to enhance the accountability and contract monitoring capabilities of this contract in the following areas:

- Jacobs to revise labor reporting to a more detail format - on a per project basis.
- Jacobs to revise the construction record system to include provisions for all electronic communications and requires sub-contractors to follow this requirement.
- Jacobs to revise the fixed overhead rates to annual audited overhead rates and will allow Jacobs a one time adjustment to the base labor rates as a result of the Jacobs acquisition. The combined changes will not exceed the amounts paid under the current agreement.
- Jacobs will follow applicable City policies for reimbursable expenditures and personal use of any company vehicle will not be reimbursed.
- Jacobs will accumulate and identify all labor hours and costs incurred due to any audit request. Jacobs will reimburse the City for the Jacobs billed labor hours and costs incurred if the audit results vary 3% or greater to the detriment of the City.

This action is consistent with City Council's policy of providing for contract monitoring and compliance for City contracts.

ALTERNATIVES:

The approval of this action will allow for the enhancement of the City's ability to monitor and control the services provided by the Program Management Team. City Council can choose not to approve this action, which would result in limiting the enhancements needed to effectively monitor this contract.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

RECOMMENDATION:

Staff recommends approval of the amendment to the Professional Service Agreement to provide Program Management Services in connection with the Airport Expansion Program at SAIA.

The Discretionary Contract Disclosure forms required by the Ethics Ordinance are included herein as attachments.

ATTACHMENT(S):

File Description	File Name
Discretionary Foster CM Group	Discretionary-Foster CM Group.pdf
Discretionary-PB America dba Parsons Brinkeroff	Discretionary-PB America dba Parson Brinkerhoff.pdf
Discretionary-Ricondo	Discretionary-Ricondo.pdf
Discretionary-Carter Burgess	Discretionary-Carter Burgess.pdf
Amendment	Jacobs Amendment.pdf
Voting Results	
Ordinance/Supplemental Documents	200806190552.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Mark Webb Director Aviation Department

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager