

AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 8-15-2024

Meeting Date: 8-26-2024

Submitted By: Lance Anderson

Department: Facilities

Signature of Elected Official/Department Head:



Court Decision: <small>This section to be completed by County Judge's Office</small>

<p>August 26, 2024</p>

Description:

Consider and Approve with Authorization for County Judge to Sign Addendum to Prime Source Construction Agreement as Previously Approved by Commissioners Court 8-12-2024 for the installation of Fencing at 411 Marti Drive. TIPS Contract # 23010402 at a total value of \$26,565.00.

(May attach additional sheets if necessary)

Person to Present: Josh Green

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) PUBLIC CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

Action Item Consent Workshop Executive Other _____

Check All Departments That Have Been Notified:

County Attorney IT Purchasing Auditor
 Personnel Public Works Facilities Management

Other Department/Official (list) _____

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

July 24, 2024

Johnson County Marti Location
Attn: Cody Sibley
Josh Green



THE INTERLOCAL PURCHASING SYSTEM

Contract #23010402

WORK INCLUDES

We are pleased to provide you with this proposal for the following work to be performed at the Johnson County Marti Location located at 411 Marti Dr. Cleburne, TX 76033. Proposal includes both labor and materials for approximately 375 Linear Feet of Fence.

1. Install 375 Linear feet of Chain-link fence in the discuss locations.
2. Using 2-7/8" x GB40 Terminal post, 2-3/8"x GB40 Line post, 1-5/8" x GB20 top rail and 6ft X 9ga galvanized chain-link.
3. Post will set 3ft in the ground set in concrete 6" from the top of the hole and back filled with dirt.
4. Install a 25ft slide gate on V track.
5. Gate operator will be installed by a Subcontractor. That comes with a 1-year warranty if it is not a result of the gate being hit, struck, altered, or caused by/from a natural disaster. We ask that before we install the operator that power is ran and we can install power to the operator ourselves.

EXCLUSIONS

1. The Contractor shall not be held responsible for any damage to utility lines or foreign objects that were not identified through a "Dig Test".
2. It should be acknowledged that the presence of rocks or foreign debris within the excavation area is beyond our control. Therefore, any expenses or delays incurred in the removal of such materials during excavation shall not be attributed to the Contractor, unless explicitly stated in the terms of our agreement.
3. The scope of work outlined in this proposal excludes plumbing, electrical, grading, and site preparation activities.
4. Additionally, the responsibility for obtaining bonds, permits, conducting testing, and submitting necessary documentation shall not fall under the purview of the Contractor. Work not specified in line items.

PROJECT TERMS AND CONDITIONS

1. Contractor shall carry Worker's Compensation and General Liability Insurance.

2. Contractor shall coordinate all schedules and work hours with the Owner or the designated representative. Standard work hours shall apply to this project.
3. Once work commences, Contractor shall proceed diligently to final completion.
4. Contractor shall not be responsible for existing building conditions such as but not limited to: trapped moisture in the existing roof, leaking roof, walls, windows, gutters, interior drains, pipes, air conditioning equipment, ducts, vents, fans, parapets, mansards, waterlines, electrical lines, masonry walls, adjacent roofs, skylights, trim, or existing water damage to interior of building (walls, ceilings, floors, etc.), hidden conduit within or below the existing roof system, multiple roofs, the existence of mold and/or asbestos containing materials, results of the placement of new materials on the existing roof, normal construction foot traffic, and spalling from fasteners on concrete decks.
5. Payment Schedule shall be as follows with all invoices due upon receipt:
 - A. 50% upon material delivery
 - B. 40% upon substantial completion
 - C. 10% upon issuance of warranty
6. This proposal, if accepted, shall become the entire agreement between the parties. There are no agreements either express or implied that extend beyond the face of this proposal.
7. Price is good for acceptance of contract for 60 days from the date of this proposal.

TOTAL VALUE OF FENCING WORK AS OUTLINED ABOVE:

\$ 26,565.00

ACCEPTANCE

If accepted the district will need to simply issue a Purchase Order to Prime Source Construction, Inc. by Fax 817-426-5007 or email Admin@PrimeSourceConstruction.com using the districts normal procedure. Be sure to include "TIPS PURCHASE" somewhere on the purchase order AND e-mail a copy to TIPSPO@TIPS-USA.com.

Should you have any questions or concerns please contact our office at the number listed above or the TIPS Hotline at 866-839-8477.

Respectfully Submitted,
Brad Doty
Prime Source Construction, Inc.

**JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO PRIME SOURCE CONSTRUCTION, INC. AGREEMENT
(411 Marti Drive - Fencing)**

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This Addendum is part of an Agreement between JOHNSON COUNTY, TEXAS, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY" or "JOHNSON COUNTY" and PRIME SOURCE CONSTRUCTION, INC. PRIME SOURCE CONSTRUCTION INC. may be referred to herein as "PRIME SOURCE" or "COMPANY".

1.2

JOHNSON COUNTY and PRIME SOURCE as applicable, may be collectively identified as the "Parties" or each individually a "Party". This Addendum is part of the Agreement with PRIME SOURCE and is intended to modify (as set forth in this Addendum) all documents, including the Quotes and Proposals put forth by PRIME SOURCE. This Addendum modifies (as set forth in this Addendum) any other document proffered to COUNTY by PRIME SOURCE or their agents and other documents defining the Agreement between JOHNSON COUNTY, TEXAS and PRIME SOURCE.

1.3

The Parties recognize that PRIME SOURCE is also subject to provisions of the TIPS-USA Interlocal Cooperative Purchasing Agreement No. 23010402.

1.4

This Addendum, combined with the terms of the attached Proposal from PRIME SOURCE CONSTRUCTION, INC., upon execution by both parties, constitutes a contractual Agreement between JOHNSON COUNTY, TEXAS and PRIME SOURCE CONSTRUCTION, INC.

2.1

This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas.

2.2

Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.3

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.4

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. JOHNSON COUNTY will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, JOHNSON COUNTY **CANNOT** enter into an agreement whereby JOHNSON COUNTY agrees to **indemnify or hold harmless any other party**; therefore, all references of any kind to JOHNSON COUNTY indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that COUNTY is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that COUNTY'S general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that COUNTY does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that COUNTY will not agree to waive any rights and remedies available to COUNTY under the Uniform Commercial Code (“UCC”); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that COUNTY will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that COUNTY will provide statutory workers compensation for its employees; however, COUNTY does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

5.2

Texas Local Government Code Section 113.064. Approval of Claims by County Auditor, provides:

“(a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor....”

Texas law requires that all disbursements of County funds be approved by the County Auditor and

the Commissioners Court prior to such disbursement. JOHNSON COUNTY can and will make due disbursements following the approval of the disbursement by Commissioners Court (following the COUNTY'S receipt and review of a proper invoice through the proper COUNTY department responsible for the purchase of the goods or services). JOHNSON COUNTY cannot and does not authorize any entity to directly access County funds. PRIME SOURCE understands that the JOHNSON COUNTY Commissioners Court normally meets on the second and fourth Monday of each month or the day following such Monday if the Monday is a County holiday. PRIME SOURCE further understands that invoices must be received by the COUNTY **not less than fourteen (14) days prior** to the Commissioners Court meeting in order for a payment to be reviewed by the necessary departments and offices and placed on the "bill run" for the Commissioners Court.

5.3

JOHNSON COUNTY does not authorize PRIME SOURCE or any entity to initiate debit entries to JOHNSON COUNTY'S account at any financial institution. Any provision in any document authorizing an entity to access COUNTY funds or financial accounts electronically or otherwise and to make withdrawals or transfers of such funds is hereby deleted and is of no effect and the Agreement shall be deemed modified to comport with payment procedure prescribed by Texas law for Texas counties.

6.1

No officer, member, or employee of COUNTY, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project or purchase is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project or purchase shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that JOHNSON COUNTY, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information COUNTY reasonably believes that PRIME SOURCE might lawfully seek to claim as confidential, then COUNTY will forward the request to PRIME SOURCE. It shall be the obligation of PRIME SOURCE to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with PRIME SOURCE in making such submission to the Texas Attorney General's Office.

PRIME SOURCE acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.

6.3

Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that JOHNSON COUNTY will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

JOHNSON COUNTY shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

PRIME SOURCE certifies that pursuant to Section 231.006 of the Texas Family Code (regarding unpaid child support) that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. **PRIME SOURCE** hereby certifies that it is not ineligible to receive State or Federal funds due to child support arrearages

7.2

PRIME SOURCE verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. **PRIME SOURCE** verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.3

PRIME SOURCE verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

7.4

PRIME SOURCE verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) "Boycott energy company" has the meaning assigned by Section 809.001.
- (2) "Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.
- (3) "Governmental entity" has the meaning assigned by Section 2251.001.

7.5

At any time following the expiration of 365 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving COMPANY 90 days written notice of such termination. This provision shall not be deemed to conflict with any other provision allowing JOHNSON COUNTY to terminate the contract upon a shorter or lesser notice.

7.6

PRIME SOURCE certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY23) and with any additional existing and future "China Tech Prohibitions" promulgated or enacted by the United States Government.

7.7

PRIME SOURCE certifies by signature of its authorized representative on this document that it complies with the China Tech Prohibitions and any products used during the professional services will also comply with the "China Tech Prohibitions".

7.8

Further, **PRIME SOURCE** certifies by signature of its authorized representative on this document that it will not use any products or equipment on this project that does not comply with the "China Tech Prohibitions".

8.1

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of JOHNSON COUNTY and signed by the Johnson County Judge or the COUNTY employee or official to whom authority has been explicitly delegated by the Commissioners Court.

8.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent PRIME SOURCE is being contracted to provide information technology and services or to maintain and make available information for use by JOHNSON COUNTY and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of JOHNSON COUNTY, TEXAS or the State of Texas or a political subdivision thereof.

8.3

To the extent PRIME SOURCE is being contracted to provide construction management services, construction services or engineering services and to accumulate data and information then PRIME SOURCE shall make any accumulated data, records or information available for use by Johnson County. Accumulated data, records and information are and shall be the property of Johnson County, Texas or the State of Texas.

8.4

At the termination of this Agreement, to the extent PRIME SOURCE possesses or controls access to JOHNSON COUNTY data, upon request by COUNTY, PRIME SOURCE must copy the data to a storage medium in common use at the time or as agreed to by the Information Technology Department of JOHNSON COUNTY and deliver such medium and data to JOHNSON COUNTY INFORMATION TECHNOLOGY DEPARTMENT. PRIME SOURCE recognizes such data is data of the State of Texas or a political subdivision thereof and must be maintained according to the laws of the State of Texas governing the retention and storage of such data. Destruction of such data contrary to law and contrary to the rules promulgated by the Texas State Library and Archives Commission may be subject to criminal prosecution and civil liability.

8.5

All provisions of the agreement are modified such that in no event would JOHNSON COUNTY have less than 120 days from notice of termination of the Agreement to secure any data or records in a useable and readable format. JOHNSON COUNTY'S securing of such data or records is intended to be done and will be allowed to be accomplished in a common and economically efficient method extant at the time of extracting, copying and securing such

data and records.

8.6

The parties agree Johnson County is **NOT** bound and shall not be bound to or liable for any condition, duty, obligation or requirement that is set forth only by reference to additional Documents that are not part of the physical document approved by the Commissioners Court and made part of the minutes of the Johnson County Commissioners Court. Provisions which COMPANY seeks to make terms of the contract or agreement by references to links or websites for contract terms are rejected by JOHNSON COUNTY and CANNOT and WILL NOT be enforced against JOHNSON COUNTY.

8.7

JOHNSON COUNTY is not subject to any provision that may be changed without notice or that may be changed without specific overt consideration and approval by the Commissioners Court of Johnson County acting on that change, modification or amendment to the contract or its terms occurring after the date of the execution of this Addendum.

8.8

Notwithstanding any provision set forth in the Master Services and Purchasing Agreement for Agency or any other document put forth by PRIME SOURCE, JOHNSON COUNTY does not waive any rights or remedies available to a Texas political subdivision pursuant to Texas law. This provision supersedes any contrary provision.

8.9

PRIME SOURCE will not factor its receivables (from JOHNSON COUNTY) to any company or bank without the permission of the Johnson County Commissioners Court.

9.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to JOHNSON COUNTY in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. ***THE TERMS OF THIS JOHNSON COUNTY CONTRACT TERMS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENT(S) PUT FORTH BY PRIME SOURCE IS HEREBY DELETED.***

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

Ch Boe

Christopher Boedeker
As Johnson County Judge

8-26-24

Date

Attest: April King
County Clerk, Johnson County



8-26-24

Date

PRIME SOURCE:

[Signature]
Brad 1877
V.P.

PRIME SOURCE

8-16-24

Date