

ORDINANCE NO. 7-2018

AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO ENTER INTO A CONTRACT FOR IMPROVEMENTS FOR THE LOUDONVILLE WATER STORAGE RESERVOIR AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the Village of Loudonville desires to enter into an agreement for the Water Storage Reservoir #1 Replacement Project in the Village of Loudonville; and

WHEREAS, the Village of Loudonville has advertised for and accepted bids for said improvements as required by law; and

WHEREAS, Kelstin, Inc. has submitted a bid to carry out the required improvements and the Council of the Village of Loudonville wishes to accept that bid believing that it is the lowest and best bid submitted;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:

SECTION 1: That the Village Administrator and the Fiscal Officer of the Village of Loudonville are hereby authorized and directed to enter into a contract with Kelstin, Inc. for the Water Storage Reservoir #1 Replacement Project at a contract price of \$1,055,675.00, pursuant to the terms set forth on the attached Exhibit A and the bid specifications of the Water Storage Reservoir #1 Replacement Project. Said contract shall be in the form set forth in the attached Exhibit A.

SECTION 2: The Council does hereby waive any bidding inconsistencies of Kelstin, Inc.'s bid submission and rejects all other bidders.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health and safety in the Village of Loudonville, for the reason that it is immediately necessary to make said improvements to the Loudonville water reservoir system for public safety, public accessibility, and preservation of the property. This Ordinance shall therefore take effect and be in force immediately upon its passage and approval by the Mayor of the Village of Loudonville.

Dated: _____

Stephen Stricklen, Mayor

Attest:

Elaine Van Horn, Fiscal Officer

Thomas R. Gilman, Village Solicitor

ARTICLE 5 - PAYMENT PROCEDURES

- 5.01 Submittal and Processing of Payments - Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 5.02 Progress Payments - Owner shall make progress payments monthly on account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days after approval of the Application for Payment during the performance of the Work as provided herein. All such payments will be based upon Bid item prices with measurement for lump sum items by percent completed and for unit price items by number of units completed.
- A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with the General Conditions.
1. 92 percent of work completed (with the balance being retainage) until the Work is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price after which no additional retainage will be withheld.
 2. 92 percent of the invoice cost of materials and equipment delivered to the Site of the Work or other point in the vicinity of the Work and not incorporated in the Work provided such materials have been inspected and found to meet the Specifications (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- 5.03 Final Payment - Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.
- 5.04 Retainage - Retained amounts will be deposited in an escrow account from the date the contract is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price in accordance with Ohio Revised Code requirements. Retainage amounts with accumulated interest not paid to the Contractor upon Substantial Completion will be paid to the Contractor within 30 days of final acceptance by the Owner.

ARTICLE 6 - INTEREST

- 6.01 All moneys not paid when due as provided in the General Conditions shall bear interest at the rate prescribed by the Ohio Revised Code.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data" and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based upon the information and observations referred to in Paragraph 7.01.E above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 The Contract Documents Consist of the following:

- A. This Agreement (Pages D-1 to D-5, inclusive).
- B. Contractor's Bid (Pages C-1 to C-6, inclusive) with Attachments.
- C. Bid Guaranty and Contract Bond or Contract Bond (as applicable) (Pages [Page] to [Page], inclusive).
- D. General Conditions (Pages G-1 to G-53, inclusive).
- E. Supplementary Conditions (Pages H-1 to H-10, inclusive).
- F. Specifications.
- G. Geotechnical Report
- H. Wage Rate Schedules.
- I. Drawings consisting of 17 sheets with each sheet bearing the following general title: Village of Loudonville, Ohio – Water Reservoir #1 Replacement and which are not bound in the Project Manual.
- J. Addenda (Numbered [No.] to [No.], inclusive).
- K. The following which may be delivered or issued on or after the Effective Date of the Agreement the form for which may or may not bound in the Project Manual.
 - 1. Notice to Proceed.

2. Application for Payment.
3. Work Change Directives which are not bound in the Project Manual.
4. Change Order(s).
5. State of Ohio Subcontract Form.
6. Certificate of Substantial Completion.
7. Wage Rate Affidavit.
8. Waiver of Liens Affidavit.

8.02 The documents listed are bound in the Project Manual (except as noted otherwise above).

8.03 There are no Contract Documents other than those listed above in this Article 8.

8.04 The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms - Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

9.02 Assignment of Contract - No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns - Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability - Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Contractor's Certifications - Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
- C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels;
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in two counterparts. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 20 ____ (Which is the Effective Date of the Agreement).

Attest: _____(s)

Name: _____

Title: _____

(SEAL)

OWNER: _____

By: _____(s)

Name: _____

Title: _____

Address: _____

(Attach evidence of authority to sign)

Attest: _____(s)

Name: _____

Title: _____

(SEAL)

CONTRACTOR: _____

By: _____(s)

Name: _____

Title: _____

Address: _____

(If Contractor is a corporation, a partnership or a joint venture, attach evidence of authority to sign)