

ORDINANCE NO. 959

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH VULCAN INDUSTRIES; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received bids for a Screenings Compactor for the Wastewater Treatment Plant; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on June 7, 1996; and

WHEREAS, bids were received and opened on June 25, 1996 at 11:00 am by the Wastewater Supervisor, Steve Hanson, in the Canby City Council Chambers and the following responses were read aloud:

BIDDER	ADDRESS	BID
Vulcan Industries	212 S. Kirlin Missouri Valley, IA 51555	\$25,747.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on July 3, 1996, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

WHEREAS, the Canby City Council determined that the low responsive bid was that of Vulcan Industries; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Recorder are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Vulcan Industries for the Screenings Compactor for the bid amount of \$25,747.00. A copy of the contract is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.


Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on July 3, 1996; ordered posted as required by the Canby City Charter and scheduled for second reading on July 17, 1996, after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.


Marilyn K. Perkett, City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 17th day of July, 1996, by the following vote:

YEAS 6 NAYS 0


Scott Taylor Mayor

ATTEST:


Marilyn K. Perkett, City Recorder

This document has important legal consequences; consultation with an attorney is encouraged.

Standard Form of Procurement Agreement Between Owner and Contractor

Prepared by

Engineers' Joint Contract Documents Committee

and

Issued and Published Jointly by



Professional Engineers in Private Practice
A practice division of the
National Society of Professional Engineers

and by

American Consulting Engineers Council

and by

American Society of Civil Engineers

and by

Construction Specifications Institute

This Standard Form of Procurement Agreement has been prepared for use with the Standard Form of Instructions to Bidders for Procurement Contracts (EJCDC Document 1910-26-D, 1981 edition) and with the Procurement General Conditions (EJCDC Document 1910-26-B, 1981 edition). Their provisions are interrelated and a change in one may necessitate a change in the others.

22

Index to Procurement Agreement

	Page Number
Contract Price	2
Contract Time	1
Contractor's Representations	3
Engineer	1
Final Payment	2
Goods and Services	1
Interest	2
Liquidated Damages	2
Miscellaneous	4
Other Provisions	4
Payment Procedures	2
Point of Delivery	1
Procurement Documents	3
Progress Payments	2

THIS PROCUREMENT AGREEMENT is dated as of the _____ day of _____ in the year 19 __ by and between _____

_____ (hereinafter called OWNER)

and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. GOODS AND SERVICES.

CONTRACTOR shall furnish the Goods, Special Services and other services as specified or indicated in the Procurement Documents. The Goods to be furnished are generally described as follows: _____

The following Special Services are required: _____

Article 2. ENGINEER.

The Goods have been specified by _____

who is hereinafter called ENGINEER and who will act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER by OWNER in connection with the furnishing of the Goods, Special Services and other services in accordance with the Procurement Documents.

Article 3. POINT OF DELIVERY

The place where the Goods are to be delivered is defined in the Procurement General Conditions as the point of delivery and designated as: _____

Article 4. CONTRACT TIME.

4.1. The Goods are to be delivered to the point of delivery and ready for OWNER's acceptance of delivery:

—on (or within a period of fifteen days prior to) _____, 19 __.

—on (or within a period of fifteen days prior to) the _____ day after the date when the Contract Time commences to run as provided in paragraph 2.2 of the Procurement General Conditions.

4.2. The furnishing of Special Services to OWNER will commence within _____ days after OWNER's written notice to CONTRACTOR following OWNER's acceptance of delivery of the Goods, and shall be completed within _____ days. Such notice will be given no later than _____ days after OWNER's acceptance of delivery.

cross out inappropriate language

24

(Cross out inapplicable page)

4.3. All Shop Drawings and samples required by the Procurement Documents will be submitted to ENGINEER for review and approval:

—on or before _____, 19__.

—within _____ days after the date when the Contract Time commences to run as provided in paragraph 2.2 of the Procurement General Conditions.

4.4. *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Procurement Agreement and that OWNER will suffer financial loss if the Goods are not delivered at the point of delivery and ready for acceptance of delivery by OWNER within the time specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance with Article 12 of the Procurement General Conditions. They also recognize that the timely performance of services by other parties involved in OWNER's project are materially dependent upon CONTRACTOR's specific compliance with the requirements of paragraph 4.1. Further, they recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual losses or damages (including special, indirect, consequential, incidental and any other losses or damages) suffered by OWNER if complete acceptable Goods are not delivered on time. Accordingly, and instead of requiring proof of such losses or damages, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER _____dollars (\$ _____) for each day that expires after the time specified in paragraph 4.1 for delivery of acceptable Goods.

Article 5. CONTRACT PRICE.

5.1. OWNER shall pay CONTRACTOR for furnishing the Goods and Special Services and for performing other services in accordance with the Procurement Documents in current funds as follows:

(Insert a lump sum, unit prices or both, attaching exhibits if necessary)

(CONTRACTOR's Bid may be attached as an exhibit to a void lengthy retyping of unit price schedules, formulae for escalation of prices, information as to alternatives, etc.)

Article 6. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 6 of the Procurement General Conditions. Applications for Payment will be processed by ENGINEER as provided in the Procurement General Conditions.

6.1. *Progress Payments.* OWNER shall make progress payments on account of the Contract Price in accordance with paragraph 6.3 of the Procurement General Conditions on the basis of CONTRACTOR's Applications for Payment as follows:

6.1.1. Upon receipt of the first Application for Payment submitted in accordance with paragraph 6.1 of the Procurement General Conditions and accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.2.1 of the Procurement General Conditions, an amount equal to _____ % of the Contract Price.

6.1.2. Upon receipt of the second such Application for Payment accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.2.2 of the Procurement General Conditions, an amount sufficient to increase total payments to CONTRACTOR to _____ % of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 6.2.3 of the Procurement General Conditions.

6.2. *Final Payment.* Upon receipt of the final Application for Payment accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.6 of the Procurement General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER.

Article 7. INTEREST

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of OWNER's project.

25

Article 8. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Procurement Agreement CONTRACTOR makes the following representations:

8.1. CONTRACTOR has familiarized himself with the nature and extent of the Procurement Documents and has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Procurement Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

8.2. CONTRACTOR has familiarized himself with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect the production and delivery of the Goods and furnishing of Special Services and other services in connection therewith.

8.3. CONTRACTOR does not require additional information from OWNER or ENGINEER to enable CONTRACTOR to furnish the Goods, Special Services and other services at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Procurement Documents, but subject to CONTRACTOR's right to request interpretations and clarifications in accordance with paragraph 9.2 of the Procurement General Conditions.

8.4. CONTRACTOR has correlated the results of all such examinations, investigations, and resolutions with the terms and conditions of the Procurement Documents.

Article 9. PROCUREMENT DOCUMENTS.

The Procurement Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to, or accompany, this Procurement Agreement, made a part hereof and consist of the following:

- 9.1. This Procurement Agreement (pages 1 to 4, inclusive).
- 9.2. Exhibits to this Procurement Agreement (pages _____ to _____, inclusive).
- 9.3. Performance and other Bonds, identified as exhibits and consisting of _____ pages.
- 9.4. Notice of Award.
- 9.5. Procurement General Conditions (pages 5 to 17, inclusive).
- 9.6. Procurement Supplementary Conditions (pages _____ to _____, inclusive).
- 9.7. Procurement Specifications bearing the title _____
and consisting of _____ divisions and _____ pages, as listed in table of contents thereof.
- 9.8. Drawings, consisting of a cover and sheets numbered _____ through _____, inclusive, with each sheet bearing the following general title: _____.
- 9.9. Addenda numbers _____ to _____, inclusive.
- 9.10. CONTRACTOR's Bid (pages _____ to _____, inclusive) marked exhibit _____ (Attach Bid Form only in special circumstances).
- 9.11. Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive).
- 9.12. All Modifications, including Change Orders, duly delivered after execution of this Procurement Agreement.
- 9.13. _____

2/6

There are no Procurement Documents other than those listed above in this Article 9. The Procurement Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the Procurement General Conditions).

Article 10. MISCELLANEOUS

10.1. Terms used in this Procurement Agreement which are defined in Article 1 of the Procurement General Conditions shall have the meanings indicated in the Procurement General Conditions.

10.2. No assignment by a party hereto of any rights under or interests in the Procurement Documents 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 Procurement Documents.

10.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Procurement Documents.

Article 11. OTHER PROVISIONS.

IN WITNESS WHEREOF, the parties hereto have signed this Procurement Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Procurement Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Procurement Agreement will be effective on _____, 198__.

OWNER:

CONTRACTOR:

By _____
[Corporate Seal]

By _____
[Corporate Seal]

Attest _____

Attest _____

Address for giving notice

Address for giving notice

(If OWNER is a public body attach)
(evidence of authority to sign)
(and resolution or other document)
(authorizing execution.)

(If CONTRACTOR is a corporation)
(attach evidence of authority)
(to sign.)