

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

3H-4

Meeting Date: December 5, 2006

Consent

Regular

Ordinance

Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 1 to Contract with The Gordian Group, Inc. (R2005-1489) to implement the first renewal for consulting/professional services in conjunction with the Job Ordering Contract (JOC) system to extend the contract to December 4, 2007 and increase the not-to-exceed limit from \$175,000 to \$265,000.

Summary: Amendment No. 1 is the first of two renewals to the contract with The Gordian Group, Inc. The Gordian Group provides professional services required to implement the JOC system to facilitate renovation, repair, and/or maintenance improvement projects. Compensation is 1.5% of the dollar value of issued JOC work orders. This extension increases the not to exceed limit for fees by \$90,000 for a cumulative total of \$265,000. Staff is bringing forward the amendment at this time based on pending work which would exceed the value assigned to the contract. All terms of the original contract remain in effect. (FD&O Admin) Countywide (JM)

Background and Justification: Amendment No. 1 is a renewal to the Contract for Consulting/Professional Services which was awarded to The Gordian Group, Inc. on August 16, 2005. The Gordian Group was selected to perform professional services as part of the implementation of the Job Order Contract (JOC) system to facilitate the construction of minor projects. Services include the production of, and update to, the automated software, JOC training for contractors and staff, technical support, and unit price books.

Attachments:

1. Contract for Consulting/Professional Services
2. Amendment No. 1

Recommended by:

Annex Wolf
Department Director

11/17/06
Date

Approved by:

[Signature]
County Administrator

11/27/06
Date

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of _____ by and between **PALM BEACH COUNTY**, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and **THE GORDIAN GROUP**, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. number is 58-1900371.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

SECTION I – BASIC SERVICES OF CONSULTANT

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of implementation of a Job Order Contracting (JOC) System, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY's representative/liaison during the performance of this Contract shall be Chauncey Taylor II, Director, Facilities Services, telephone No. (561) 233-0221.

SECTION 2 – PERIODS OF SERVICE

The CONSULTANT shall commence services on the effective date of this agreement identified above and extends for a two year period or until the maximum payment identified in Section 3.5 is reached, whichever occurs first. Reports or other deliverables shall be provided by the Consultant per a mutually agreed upon schedule determined on a deliverable by deliverable basis throughout the term of the contract.

SECTION 3 – PAYMENTS TO CONSULTANT

- 3.1 The total amount to be paid by the COUNTY under this Contract, for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph 3.3 below) shall be 1.5 percent of the value of work orders awarded under the JOC System. The Consultant will bill the COUNTY on a monthly basis. Where incremental billings for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
- 3.2 Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, indicating that services have been rendered in conformity with the CONTRACT and then will be sent to the Finance Department for payment. Invoices will be paid within thirty (30) days following the COUNTY representative's approval, which will not be unreasonably withheld.

- 3.3 No "Out-of-pocket" expenses are eligible for reimbursement under the terms of this Contract. All "out-of-pocket" expenses are the responsibility of the CONSULTANT.
- 3.4 In order for both parties to close their books and records, the CONSULTANT will clearly state "**Final**" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to COUNTY. Since this account will thereupon be closed, any and other further charges, if not properly included on this final invoice, are waived by the CONSULTANT.
- 3.5 At no time during the performance of this Contract shall the total amount of fees payable under this Agreement exceed the \$175,000 limit established for the initial term of two (2) years.

SECTION 4 – RENEWAL AND TERMINATION

The COUNTY may elect to renew the terms and conditions of this Contract twice, with or without modifications as mutually agreed, for a period of one year duration and a maximum of \$90,000 each. Each renewal period shall commence upon execution of a renewal agreement by the Board of County Commissioners.

This Contract may be canceled by the CONSULTANT upon sixty (60) days prior written notice to the COUNTY in the event of failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. In no event, whether termination is with or without cause, shall the COUNTY be liable for any lost profits, lost opportunity damage, or consequential damages. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- d. Continue and complete all parts of the work that have not been terminated.

The COUNTY agrees to a Licensing Period with the CONSULTANT that is concurrent with the term of this Agreement. If the COUNTY elects not to exercise the renewal options and is unsuccessful in negotiating an alternate agreement, the COUNTY will abandon use of the CONSULTANT's proprietary System.

SECTION 5 – TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this "Certificate" within one (1) year following final payment. County has the authority and right to audit CONSULTANT'S records under this provision.

SECTION 6 – PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any conflicting relationship with the COUNTY.

All of the services required herein shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel or subconsultants must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY before said change or substitution can become effective.

The CONSULTANT represents that all services shall be performed by skilled and competent personnel to the professional standard of care set forth above.

SECTION 7 – SUBCONSULTANTS

The COUNTY reserves the right to accept the use of a sub-consultant, or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Contract. The CONSULTANT is encouraged to seek small business enterprises for participation in subcontracting opportunities.

If a sub-consultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to the right of the COUNTY to reject the new sub-consultant.

Section 8 – NON-DISCRIMINATION

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, sexual orientation, age or national origin.

Section 9 – INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees, sub-consultants and suppliers perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Contract.

The CONSULTANT represents that all sub-consultant agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the COUNTY is an intended express third party beneficiary of any such subcontract.

Section 10 – CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, fit, or any other consideration contingent upon or resulting from the award of marking of this Contract.

Section 11 – AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

Section 12 – FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for

materials used to fulfill contractual obligations with the COUNTY. The CONSULTANT is not authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees payroll, payroll taxes, and benefits with respect to this contract.

Section 13 – AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

Section 14 – INSURANCE

CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

Commercial General Liability CONSULTANT shall agree to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.

Business Automobile Liability CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.

Worker's Compensation Insurance & Employers Liability CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.

Additional Insured CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.