

CITY OF OBERLIN, OHIO

ORDINANCE No. 13-51 AC CMS

AN ORDINANCE ACCEPTING THE BID OF WARREN FIRE EQUIPMENT, INC., OF WARREN, OHIO, FOR SELF-CONTAINED BREATHING EQUIPMENT FOR THE OBERLIN FIRE DEPARTMENT AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the bid of Warren Fire Equipment, Inc., of Warren, Ohio, for the purchase of Self-Contained Breathing Equipment for the Oberlin Fire Department, being the lowest and best bid submitted, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract for same in the amount of \$195,554 including delivery.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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 of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: to authorize the purchase of firefighter breathing equipment as soon as possible to ensure the efficient operation of the City of Oberlin Fire Department, and shall take effect immediately upon passage.

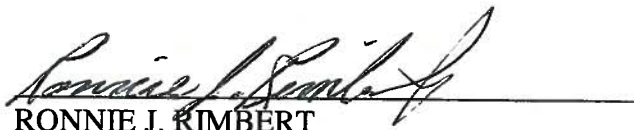
PASSED: 1st Reading: September 3, 2013

2nd Reading: _____

3rd Reading: _____

ATTEST:


BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL


RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 09/04/2013

EFFECTIVE DATE: 09/03/2013

NOTICE OF AWARD



To: Warren Fire Equipment, Inc.
6880 Tod Avenue
Warren OH 44481

The City of Oberlin, Ohio, having considered the Bid submitted by you for **Self-Contained Breathing Apparatus** in response to the Advertisement for Bids dated June 24, 2013 and in the amount of **\$195,554** does hereby notify you that your Bid has been accepted by City of Oberlin Ordinance No. 13-51 AC CMS, dated September 3, 2013.

The following variations from the Specifications and Bid Instructions have been allowed:

Exceptions to Specifications – as submitted

Delivery of equipment shall be pending the final approval/certification of equipment by NFPA/NIOSH.

You are required to execute the Agreement within ten (10) calendar days from the date of this Notice to you. If you fail to execute said Agreement within ten (10) calendar days of the date of this Notice, the City of Oberlin will be entitled to consider all your rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City of Oberlin will also be entitled to such other rights as may be granted by law.

City of Oberlin, Ohio
By: [Signature]
Title: City Manager Date: September 4, 2013

Acceptance of Notice of Award

Receipt of the above Notice of Award is hereby acknowledged by

Warren Fire Equipment, Inc. this 10 day of September, 2013.

By: [Signature: Robert Malow]

Title: President

AGREEMENT

This Agreement, made this 4th day of September, 2013 by and between the City of Oberlin, Ohio, hereinafter called the "Owner", acting herein through its City Manager, and Warren Fire Equipment, Inc., doing business as a corporation in the City of Warren, County of Trumbull, and State of Ohio, hereinafter called the "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

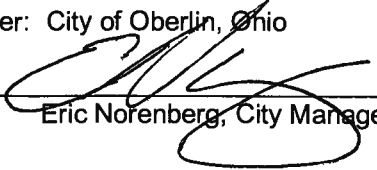
1. The Contractor will furnish equipment in accordance to with the following Specifications and Contract Documents
2. The following variations from the Contract Documents and or options have been agreed to:
 - a. Approved Exceptions to Specifications.
 - b. Due to the anticipated delay to Scott Aviation in receiving final certification/approval for their 2013 edition SCBA breathing air equipment from NFPA/NIOSH, the Contractor will provide delivery of this equipment within a reasonable amount of time after the date of final approval by NFPA/NIOSH. The City agrees to withhold the liquidated damages for the time period involved in this certification process that is beyond control of the Contractor and the City.
 - c. This purchase is funded through a FEMA Assistance to Firefighter (AFG) grant, which has a grant expiration date of March 29, 2014. In the event that this equipment is not delivered on or before the grant expiration date and FEMA AFG does not approve an extension of the expiration date for grant funding, the City reserves the right to terminate this Agreement without compensation to the Contractor due to failure to deliver the specified equipment and a loss of grant funding for the project.
3. The term "Contract Documents" means and includes the following:
 - a) Advertisement for Bids
 - b) Instruction to Bidders
 - c) General Conditions
 - d) EEO Documentation
 - e) Bid including all attachments thereto.
 - f) Bid Bond
 - g) Delinquent Personal Property Tax Affidavit
 - h) Notice of Award
 - i) Agreement
 - j) Specifications and approved Exceptions to Specifications
 - k) Drawings
 - l) Addenda: None
4. The City will pay to the Contractor in the manner and at such times as set forth in the Contract Documents, such amounts as required by this Agreement.
5. City's engagement of the Contractor is based upon the Contractor's representations to the City that the Contractor:
 - has reviewed all documents pertinent to its portion or scope of the Contract and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient;
 - is an organization experienced in and qualified, willing and able to provide equipment of the nature and type necessary to perform its portion or scope of the Work;
 - Is authorized and licensed to do business in Ohio;
 - has the expertise and ability to meet the City's objectives and requirements.
6. The Contractor shall furnish services and labor which expeditiously and economically and properly complete its particular scope of the Work in the manner most consistent with eh City's interests and objectives; in accordance with the Contract Documents, and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

7. The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of the Work conform to applicable Specifications, descriptions instructions, Drawings, data and samples; be new (unless otherwise specified or permitted and without apparent damage; be of quality equal to or higher than that required by the Bid Documents; be merchantable; and free from defects
8. The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.
9. All warranties and guarantees set forth above shall be in addition to all other warranties, express, implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.
10. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. With respect to the intent and interpretation of this Contract, the City and the Contractor agree as follows:
 - (A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.
 - (B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;
 - (C) Nothing contained in this Contract shall create, nor be interpreted to create privity or any other relationship whatsoever between the City and any person except the Contractor;
 - (D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;
 - (E) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";
 - (F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;
 - (G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittal and shall give written notice to the City and the Fire Chief of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the City or the Fire Chief of any shop drawings or other submittal shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Fire Chief to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE City MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made;
 - (H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
 - (2) As between large scale plans and small scale plans, the large scale plans shall govern;
 - (3) As between plans and specifications, the requirements of the specifications shall govern;
 - (4) As between this document and the plans or specifications, this document shall govern.
12. The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:
- (A) Construction of the Project;
 - (B) The furnishing of any required surety bonds and insurance;
 - (C) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;
 - (D) Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the City, in the form and manner required by City, if any, with a copy to the **Fire Chief**.
 - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - (2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;
 - (3) If applicable, consent(s) of surety to final payment;
 - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two copies, each of which shall be deemed an original on the date first written above.

Owner: City of Oberlin, Ohio

By: 
Eric Nofenberg, City Manager

(Seal)

ATTEST:


City Clerk

Contractor: Warren Fire Equipment, Inc.

By: 

Title: President

Address: 6880 Tod Ave Warren, Ohio

Phone: 330-824-3523

(Seal)

ATTEST:


(Secretary, if Corporation)


(Witness)