

City of Fayetteville Staff Review Form

2020-0686

Legistar File ID

9/1/2020

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Andrea Foren

8/12/2020

PURCHASING (160)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution approving a contract for insurance brokerage & consultation services with HUB International through RFP 15-07 for professional services through October 1, 2020 for \$13,000 and a contract extension for October, November, and December 2020 in the amount of \$1,084 per month.

Budget Impact:

1010.1610.1610-5314.00

General Fund

Account Number

Fund

N/A

N/A

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 17,500.00

Funds Obligated \$ -

Current Balance **\$ 17,500.00**

Does item have a cost? Yes

Item Cost \$ 16,252.00

Budget Adjustment Attached? No

Budget Adjustment

Remaining Budget **\$ 1,248.00**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # 54-16

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF SEPTEMBER 01, 2020

TO: Mayor and City Council
THRU: Paul A. Becker, Chief Financial Officer
FROM: Andrea Foren, Purchasing Manager
DATE: August 18, 2020
SUBJECT: **Insurance Broker contract to extend through 12/31/2020**

RECOMMENDATION:

A resolution approving a contract for insurance brokerage & consultation services with HUB International through RFP 15-07 for professional services through October 1, 2020 for \$13,000 and a contract extension for October, November, and December 2020 in the amount of \$1,084 per month.

BACKGROUND:

The City contracts with a broker-of-record for the marketing and placement of the City's professional and law liability, property, and casualty coverage and for providing other insurance-related broker, risk management and consultant services.

In 2015 the City went out for a Request for Proposal (RFP) per RFP 15-07 and selected HUB International.

The original contract with HUB International was executed September 2015 followed by Council approving an additional four years in 2016 through Resolution 54-16.

DISCUSSION:

The annual fee from HUB International is \$13,000 and is budgeted for an October 1 to October 1 cycle. However, the City's property insurance policy is on the same renewal cycle, October 1 – October 1, which creates an unrealistic operational situation to renew the City's property policy at the same time it could experience a broker change. This contract will cover services through October 1, 2020 for \$13,000 and includes a contract extension for October, November, and December in the amount of \$1,084 per month.

This contract is being brought forward to cover 2020 broker fees to extend the contract through 12/31/2020.

The Purchasing Division is currently evaluating scope of services for a new RFP to be solicited this year for services beginning January 1, 2021.

BUDGET/STAFF IMPACT:

Funds exist for this purchase within budget approved by City Council including the contract extension fees.

Attachments:

Signed contract by HUB International for services through 12/31/2020



This contract executed this ____ day of _____, 2020, between the City of Fayetteville, Arkansas, and HUB International. In consideration of the mutual covenants contained herein, the parties agree as follows.

WITNESSETH:

WHEREAS, City has previously determined that it has a need for INSURANCE BROKERAGE & CONSULTATION SERVICES; and

WHEREAS, City, after soliciting competitive proposals for such services pursuant to City of Fayetteville RFP 15-07 (herein after referred to as Request for Proposal or RFP), City has awarded a contract to HUB International in 2015 and via Resolution 54-16; and

WHEREAS, the City has an operational need to offset the insurance brokerage contract from its property insurance renewal cycle, and

WHEREAS, HUB International has represented that it is able to satisfactorily provide these services according to the terms and conditions of the RFP, which are incorporated herein by reference, and the terms and conditions are contained herein; and

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. **Services to be Performed:** HUB International hereby agrees to provide the City with INSURANCE BROKERAGE SERVICES, as requested and more specifically outlined in the RFP, this agreement, and all subsequent official documents that form the Contract Documents for this Agreement. HUB International shall provide, as a minimum, professional services and dedicated personnel necessary to perform the following:

- a. Develop a complete understanding of the City's areas of exposure and consult with City representatives about short and long term solutions.
- b. Evaluate existing insurance contracts, self-retained risk and claims history and make recommendations concerning any changes, modifications, and/or additions in the terms, conditions and coverage limits needed to yield a comprehensive risk management program to protect the interests of the City.

- c. Identify programs, products and insurers capable of meeting the City's insurance needs and prepare specifications for markets capable of quoting for upcoming renewals.
- d. Approach appropriate markets on behalf of the City to obtain pricing with respect of the program adopted by the City. Competitive quotes from well rated insurance carriers will be obtained for each type of risk.
- e. Present for City consideration, in an understandable format, an evaluation of the results of each solicitation, with a comprehensive financial analysis and recommendations for selection of an insurer for each type of risk.
- f. Negotiate on the City's behalf the details of insurance contracts with selected carriers and audit resulting policies for accuracy of coverage, terms and conditions, and compliance with financial arrangements and administrative procedures acceptable to the City.
- g. Provide evaluation, basic training and education relative to loss control, safety, claims management, and related topics in the area of risk management.
- h. Provide assistance in the form of advisory services or written reports as is customarily expected from a professional insurance Broker/Consultant.
- i. Provide claims processing support with insurance carriers for all policies, and produce quarterly written reports with loss runs. Address areas of concern, including the need for training and other preventive measures.
- j. Annually, approximately first week in May, Broker/Consultant will prepare a stewardship report which will include a complete list of insurance in force, an evaluation of the overall insurance program, including recommendations for change and a forecast of market conditions and estimated premium for future budgeting purposes. HUB International assumes no liability in the event of inaccurate forecasts and premium estimates. At the time of the presentation of the stewardship report City personnel and Broker/Consultant will discuss any changes which are appropriate in services to be performed for the succeeding year.

2. **Time of Service:** Services shall be performed in a timely manner, as specified in the RFP.

3. **Compensation:** As compensation for HUB International providing services to the City as described herein, the City shall pay HUB International in arrears, based on the submission of invoices for work completed and properly authorized.

- a. Amount not to exceed \$13,000 for services from October 01, 2019 through October 01, 2020.

b. An amount not to exceed \$1,084 per month for October, November and December 2020 for a total not to exceed amount of \$3,252 for the fourth quarter of 2020.

c. Not to exceed fees are not inclusive of policy premiums, which will be billed separately. Payments will be made within 30 days of receipt of approved invoice.

d. In the event that operations change substantially by either the addition or deletion of other operations or entities or a substantial change in the scope and nature of the City's insurance program, the City will negotiate in good faith to revise compensation upward or downward as appropriate.

e. Broker/Consultant shall disclose commissions received. If commissions exceed agreed-upon compensation hereunder, excess commissions will be returned to the City if permitted by law.

4. **Insurance:** The HUB International shall provide and maintain in force at all times during the term of the services contemplated herein insurance for Workers' Compensation, Commercial General Liability, Automobile Liability, and Errors and Omissions Liability. Such policies shall be issued by companies authorized to do business in the State of Arkansas. Evidence of such coverage is to be submitted with contract approval. Minimum amount for Commercial General Liability and Errors and Omissions Liability is \$1,000,000 aggregate.

5. **Term of Agreement:** Services performed pursuant to this Contract shall expire 12/31/2020.

6. **Amendment of Contract:** This Contract may be amended only by mutual agreement of the parties.

7. **Legal Compliance:** HUB International is responsible for full and complete compliance with all applicable laws, rules, regulations and licensing requirements imposed by any public authority having jurisdiction.

8. **Approval of Agent:** The City reserves the right to require the Broker/Consultant to replace the assigned agent with another agent of the same company if, in the opinion of the City staff, the agent is not rendering or is incapable of rendering the quality of service and cooperation required.

9. **Auditable Records:** The HUB International shall maintain such accounts and records in connection with its performance of services for the City as may reasonably be required by the City. HUB International shall, at any reasonable time during the term and for a period of one year following the completion of work under the contract, afford the City's agents and auditors reasonable facilities and access for examination and audit of its records pertaining to its performance and shall, upon request by the City, produce and exhibit all such records.

10. **Assignment and Subcontracting:** HUB International shall perform this contract. No assignment or subcontracting shall be allowed without the prior written consent of the City. In the event of a corporate acquisition and/or merger, HUB International shall provide written notice to the City within thirty (30) business days of such notice of action or upon the occurrence of said action, whichever occurs first. The right to terminate

this contract, which shall not be unreasonably exercised by the City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the City awarding a proposal to a Proposer, which has disclosed its intent to assign or subcontract in its response to the RFP, without exception shall constitute approval for purposes of this Agreement.

11. **Cancellation:** The City of Fayetteville reserves the right to cancel this Contract, without cause, by giving thirty (30) days' notice to HUB International of the intent to cancel, or with cause if at any time HUB International fails to fulfill or abide by any of the terms or conditions specified.

Failure of the HUB International to comply with any of the provisions of this contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.

In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order or request, as determined by the City.

In the event that sufficient budgeted funds are not available for a fiscal period, the City shall notify HUB International of such occurrence and the Contract shall terminate on the last day of the then current fiscal period without penalty or expense to the City. The City reserves the right to terminate within the thirty (30) day notice because of budgetary issues.

12. **Permits & Licenses:** HUB International shall secure and maintain any and all permits and licenses required to complete this contract.

13. **Minimum Insurance Requirements:** HUB International shall maintain insurance in at least the amounts required in the RFP throughout the term of this contract. HUB International must provide a Certificate of Insurance in accordance with the insurance requirements listed within the RFP, evidencing such coverage prior to issuance of a purchase order or commencement of any work under this contract. HUB International shall ensure that any subcontractors or persons hired by subcontractors maintain the same level of insurance coverage as HUB International.

14. **Indemnification:** HUB International shall indemnify, pay the cost of defense, including but not limited to attorneys' fees, and hold harmless the City from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property by or from the said HUB

International; or by, or in consequence of any neglect in safeguarding the work; or on account of any act or omission, neglect or misconduct of HUB International; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, by-laws, ordinances, order of decree, except only such injury or damage as shall have been occasioned by the sole negligence of the City of Fayetteville. The first ten dollars (\$10.00) of compensation received by HUB International represents specific consideration for this indemnification obligation.

Furthermore, HUB International, in performing its obligations under this contract, is acting independently and the City assumes no responsibility of liability for the HUB International's acts or omissions to third parties, and HUB International shall agree to indemnify and hold harmless, the City, its officers and employees against any and all claims, lawsuits, judgments, costs and expenses for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by HUB International's breach of the terms or provisions of contract, or by any negligent act or omission of HUB International, its officers, agents, employees, or invitee, in the performance of this contract; except that the indemnity specified in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, or employees. In the event of joint and concurrent negligence of both HUB International and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Arkansas, without, however, waiving any governmental immunity available to the City under Arkansas law and without waiving any defense of the parties under Arkansas law. This paragraph is solely for the benefit of HUB International and the City and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

15. **Governing Law & Jurisdiction:** Legal jurisdiction to resolve any disputes shall be Washington County, Arkansas with Arkansas law applying to the case.

16. **Severability:** The terms and conditions of this agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity of legality of the remaining terms and conditions, and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

17. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price, or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

18. **Freedom of Information Act:** Documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, HUB International will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

19. **Documents Comprising Contract:** The contract shall include this Agreement for INSURANCE BROKERAGE SERVICES, as well as the following documents, which are incorporated herein by reference.

- a. City of Fayetteville's Request for Proposal and all of its addenda and attachments;
- b. HUB International's Certificate of Insurance as required, listing the City as an additional insured;
- c. HUB International's Proposal.

If there is a conflict between the terms of this Agreement and the above referenced documents, the conflict shall be resolved as follows: the terms of this Agreement shall prevail over the other documents, and the terms of the remaining documents shall be given preference in their above listed order.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2020.

CITY OF FAYETTEVILLE, ARKANSAS

HUB INTERNATIONAL

LIONELD JORDAN, Mayor

By: Eric Herget

ERIC HERGET VP/SHAREHOLDER
Printed Name & Title

Date Signed: 8.12.2020

ATTEST:

Kara Paxton, City Clerk

Date Signed: _____