



Travis County Commissioners Court Agenda Request

Meeting Date: January 3, 2012

Prepared By/Phone Number: Jorge Talavera, CPPO, CPPB/854-9762;
Marvin Brice, CPPB/854-9765

Elected/Appointed Official/Dept. Head: Cyd Grimes, C.P.M., CPPO

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Consider and take appropriate action on contract with Hawkins, Delafield & Wood LLP for Legal Services to Provide Consultant Services on Feasibility Analysis for New Civil and Family Courthouse. (This item may be taken into Executive Session pursuant to Gov't Code Ann 551.071, Consultation with Attorney)

- Ø **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.
- Ø This contract will provide for Legal Services associated with the project entitled Advisory Team for Feasibility Analysis of Public-Private Partnership for a New Civil and Family Courthouse at 308 Guadalupe Street in Austin, TX.
- Ø Hawkins Delafield & Wood LLP has extensively represented municipal, state and federal governments in P3 and alternative project delivery contracting, and was recommended by Ernst & Young LLP, the team being recommended for contract award for the above referenced Advisory Team services, to provide the required legal services associated with this Project. In addition, any local legal counsel services that may be required will be subcontracted to the Law Firm of Brown McCarroll, LLP, with Nikelle Meade providing the services; and the Law Firm of Jackson Walker LLP.
- Ø The Committee recommends that a contract in the amount of (Not-to-Exceed) \$65,000.00 be awarded to Hawkins Delafield & Wood LLP.
- Ø **Contract Expenditures:** Within the last 12 months \$0.00 has been spent against this contract/requirement.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

Ø **Contract-Related Information:**

Award Amount: \$65,000.00 (Not-to-Exceed)

Contract Type: Professional Consulting Services

Contract Period: Through Completion of Services

Ø **Solicitation-Related Information:**

Solicitations Sent: N/A

Responses Received: N/A

HUB Information: No

% HUB Subcontractor: 0%

Ø **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments:

Ø **Funding Information:**

Purchase Requisition in H.T.E.: TBD

Funding Account(s): Funding to be provided through pending Budget Adjustment.

Comments:

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**CONTRACT BETWEEN TRAVIS COUNTY AND
HAWKINS DELAFIELD & WOOD LLP**

This Contract is entered into this day between the following parties: Travis County, a political subdivision of the State of Texas, ("COUNTY") and Hawkins Delafield & Wood LLP ("CONTRACTOR").

WHEREAS, COUNTY desires to obtain legal services for the benefit of Ernst & Young (Consultant), a consultant advising COUNTY on alternatives for construction of a new Civil and Family Courthouse. CONTRACTOR, paid by the COUNTY, will be advising Ernst & Young ("the Consultant) on the legal permissibility of the potential project delivery alternatives proposed by the Consultant pursuant to Consultant's Professional Services Agreement entered into concurrently herewith; and

WHEREAS, CONTRACTOR has the skill and training to provide the professional legal services.

This Contract is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a Contract for professional services. The CONTRACTOR is an independent contractor to the COUNTY; neither CONTRACTOR nor its employees claim to be employees of the COUNTY nor do they claim any benefits from the COUNTY other than contract payments for services rendered.

1.0 DEFINITIONS

In this Contract,

1.1 "Contract Funds" means all funds paid by COUNTY pursuant to 4.1 of this Contract.

1.2 "Is Doing Business" and "Has Done Business" mean:

1.2.1 Paying or receiving any money or other valuable thing in exchange for personal services or for purchase or use of any property interest, either real or personal, either legal or equitable; or

1.2.2 Loaning or receiving a loan of money, services, or goods or otherwise creating or having in existence any legal obligation or debt;

but does not include:

1.2.3 Any payments, receipts, loans, or receipts of a loan which are less than \$250.00 per calendar year in the aggregate; or

1.2.4 Any retail transaction for goods or services sold to a key contracting person at a posted, published, or marked price available to the general public.

1.3 "Key Contracting Person" means any person or business listed in EXHIBIT 1 to the Affidavit attached to this Contract and marked ATTACHMENT A.

2.0 CONTRACT PERIOD

2.1 Initial Contract Term. This Contract shall continue in full force for the Contract Period which commences upon Commissioners Court approval and terminates upon completion of services. This Contract may be renewed for an additional year by a vote of the Commissioners Court of County.

3.0 CONTRACTOR PERFORMANCE OF CLIENT SERVICES

3.1 Contractor Responsibilities.

During the Contract Period, CONTRACTOR shall advise Consultant on the legal permissibility of the various project procurement alternatives for the delivery of a Civil and Family Courthouse that meets the space needs of the Travis County Civil and Family justice system through 2035 with the space for the feasibility of expansion in the future if it is financially feasible, physically possible, and legally permissible. The projected site for the new Courthouse is the city block owned by Travis County at 300 Guadalupe. Legal permissibility shall be defined as complying with federal, state, and local law governing the actions of a county as a subdivision of the State of Texas or it is reasonably probable that federal, state, or local law can be changed within a reasonable time so that an action does comply with federal, state, or local law. CONTRACTOR shall not begin work until it receives a Notice to Proceed from the County Purchasing Agent. The CONTRACTOR, prior to the Consultant's recommendation to the COUNTY, will work with the Consultant to assure that any options recommended by the Consultant have been reviewed, assessed, evaluated, and approved by the CONTRACTOR as Legally Permissible. CONTRACTOR will prepare a memorandum of law setting forth its analysis and legal opinion as to procurement permissibility. COUNTY acknowledges that CONTRACTOR has made no representations or guarantees as to the success of the work. Legal review of local project and real estate law-related matters, including zoning, planning, taxation, environmental and permitting issues, will be subcontracted out to the Law Firm of Brown McCarroll, LLP, with Nikelle Meade providing the services, and the Law Firm of Jackson Walker LLP.

3.2 Representation and Conflict Waiver. COUNTY acknowledges that by CONTRACTOR'S representing both COUNTY and Consultant a conflict of interest of dual representation may arise. To the extent that conflict exists, and in consideration of the benefits the COUNTY expects to receive from CONTRACTORS expertise, COUNTY waives the conflict.

3.3. Non-Legal Professional Services. CONTRACTOR is not engaged to provide advice with respect to credit standing, financial statements, commercial real estate considerations or other similar financial, technical or other non-legal matters, and owes the COUNTY no duty in respect thereof. COUNTY acknowledges that the Consultant has been engaged to provide professional advice concerning such matters under the Consultant's Professional Services Agreement.

3.4 W-9 Taxpayer Identification Form. CONTRACTOR shall provide COUNTY with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any Contract Funds are payable.

4.0 COUNTY PERFORMANCE

4.1 Maximum Funds. CONTRACTOR will be earning its posted hourly rates for legal services, but subject to a cap of \$525 per hour for any attorney. COUNTY agrees to pay CONTRACTOR, based upon the number of hours worked, but in no event more than \$65,000 (Sixty-Five Thousand) even if the number of hours necessary to complete the services and activities referred to in Section 3.0 of this Contract would otherwise entitle CONTRACTOR to a greater sum.

In addition to the above-mentioned fees for professional legal services, the County will reimburse the CONTRACTOR for out-of-pocket expenses incurred by the CONTRACTOR in connection with his services rendered including travel, telephone, telegraph, postage, reproduction of documents, and similar expenses, and for all items obtained and paid by CONTRACTOR on behalf of COUNTY. These expenses will be reasonable, and will be billed monthly, and must also remain within the above-described cost not-to-exceed.

4.2 COUNTY Approval. COUNTY shall not be responsible for the costs of any services under this Contract that are not performed to COUNTY'S satisfaction, with COUNTY'S approval, which shall not be unreasonably withheld.

4.3 Payment. COUNTY shall pay CONTRACTOR within thirty (30) days of the receipt of a correct invoice completed acceptable to COUNTY. Invoice shall include the date of service, the number of hours, and the service provided. CONTRACTOR may invoice COUNTY upon delivery of the Consultant's final report to COUNTY.

4.4 Prior Debts. COUNTY shall not be liable for costs incurred or performances rendered by CONTRACTOR before or after the Contract Period.

5.0 EXPRESS ACKNOWLEDGMENT

5.1 Applicable Law. The parties expressly acknowledge and agree that COUNTY and CONTRACTOR shall comply with the Constitution of the United States and the State of Texas and all federal, state, county, and city laws, rules, orders, ordinances, and regulations applicable to performance of this Contract.

5.2 Written Agreements. Any and all consents and agreements provided for or permitted by this Contract shall be kept in writing and a signed copy thereof shall be filed with and kept by COUNTY.

5.3 Sole Contract. This document contains the sole and only Contract of the parties hereto relating to their agreement and correctly sets forth the rights, duties, and obligations of

each to the other(s) as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this document are of no force and effect.

6.0 RETENTION AND ACCESSIBILITY OF CLIENT RECORDS

6.1 Records. CONTRACTOR shall maintain all records and documentation for all actions pertaining to this Contract in a readily available state and location until all services are completed and all questions arising from it are resolved satisfactorily or three (3) years after the end of the Contract Period, whichever occurs later.

6.2 COUNTY Access. CONTRACTOR shall give, within limits of the Attorney/Client privilege, the COUNTY, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by CONTRACTOR pertaining to this Contract at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are retained by CONTRACTOR.

7.0 SUBCONTRACTS

7.1 CONTRACTOR shall not enter into any other subcontracts, other than with Brown McCarroll, LLP, and Jackson Walker, LLP, for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from COUNTY.

8.0 BEST EFFORTS

8.1 CONTRACTOR shall use the standard of care expected of an attorney licensed by the State Bar of Texas and practicing law in an urban location, and shall perform with its best efforts to provide COUNTY with a satisfactory result in each case. CONTRACTOR shall have at least one attorney within its organization licensed in the State of Texas and who shall deliver the opinion required in Section 3.0.

9.0 TERMINATION

9.1 Reasons for Termination. COUNTY shall have the right to terminate this Contract, in whole or in part, at any time before the date of termination specified in 2.1 of this Contract with reasonable notice, but in no event longer than thirty (30) days.

9.2 Mutual Termination. Either party has the right to terminate this Contract, in whole or in part, when both parties agree that the continuation of the activities funded under this Contract would not produce beneficial results commensurate with the further expenditure of funds; provided that both parties agree, in writing, upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the Contract to be terminated.

10.0 NON-WAIVER OF DEFAULT

10.1 Non-Waiver. No payment, act, or omission by COUNTY may constitute or be construed as a waiver of any breach or default of CONTRACTOR which then exists or may subsequently exist.

10.2 Reservation of Rights. All rights of COUNTY under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to COUNTY under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

11.0 FORFEITURE OF CONTRACT

11.1 If CONTRACTOR has done business with a Key Person during the 365 day period immediately prior to the date of execution of this Contract by CONTRACTOR, or does business with any Key Person at any time after the date of execution of this Contract by CONTRACTOR and prior to full performance of this Contract, CONTRACTOR shall forfeit all benefits of this Contract and COUNTY shall retain all performance by CONTRACTOR and recover all considerations, or the value of all consideration, paid to CONTRACTOR pursuant to this Contract, provided, however, that this section may be waived by the Travis County Commissioners Court pursuant to Section 32.004(g) of the Travis County Code. CONTRACTOR may utilize ATTACHMENT A for this purpose.

12.0 AMENDMENTS

12.1 Written Amendment. Unless specifically provided otherwise in this Contract, any change to the terms of this Contract or any attachments to it shall be made in writing and signed by both parties. No modification concerning this Contract shall be of any force or effect, excepting a subsequent modification in writing signed by the Party to be charged.

12.2 IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS CONTRACT OR ANY ATTACHMENTS TO IT UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE TRAVIS COUNTY COMMISSIONERS COURT.

13.0 ASSIGNABILITY

13.1 Written Approval. Neither party may assign any of the rights or duties created by this Contract without the prior written approval of the other party. It is acknowledged by CONTRACTOR that no officer, agent, employee, or representative of COUNTY has any authority to assign any part of this Contract unless expressly granted that authority by the Travis County Commissioners Court.

13.2 Binding Contract. This Contract shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Contract.

14.0 ENTIRE AGREEMENT

14.1 Entire Agreement. All oral and written agreements between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.

15.0 LAW AND VENUE

15.1 THIS CONTRACT IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS UNDER THIS CONTRACT SHALL BE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

16.0 SEVERABILITY

16.1 If any portion of this Contract is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

17.0 NOTICES

17.1 Written Notice. Any notice required or permitted to be given under this Contract by one party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address hereinafter specified.

17.2 COUNTY Address. The address of COUNTY for all purposes under this Contract shall be:

Cyd Grimes, C.P.M., CPPO (or her successor in office)
Travis County Purchasing Agent
P.O. Box 1748 Austin, Texas 78767

with copy to:

Honorable David A. Escamilla (or his successor in office)
County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 188.390.5

and:

Roger Jefferies (or his successor in office)
County Executive, Justice and Public Safety
P.O. Box 1748
Austin, Texas 78767

17.3 Contractor Address. The address of the Contractor for all purposes and all notices under this Contract shall be:

Hawkins Delafield & Wood LLP
One Chase Manhattan Plaza
New York, NY 10005

17.4 Change of Address. Each party may change the address for notice to it by giving notice of the change in compliance with 17.0.

18.0 DISPUTE RESOLUTION

18.1 When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or person appointed by a court of competent jurisdiction for mediation as described in the Tex. Civ. Prac. And Rem. Code, 154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in Tex. Civ. Prac. And Rem Code 154.073, unless both parties agree, in writing, to waive the confidentiality.

19.0 INTERPRETATIONAL GUIDELINES

19.1 Computation of Time. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday or Sunday or a day that County has declared a holiday for its employees these days shall be omitted from the computation.

19.2 Number and Gender. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Contract clearly requires otherwise.

19.3 Headings. The headings at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Contract.

20.0 CONFLICT OF INTEREST QUESTIONNAIRE

21.1 If required by Chapter 176 of the Texas Local Government Code, you must file and update a completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751 in accordance with the requirements of that chapter. You should note that the law requires that we provide access to any filed Questionnaire on the official Travis County Internet website. However, the law does not require that we release information for which there is an exception from disclosure under the Texas Public Information Act.

CONTRACTOR:
HAWKINS DELAFIELD & WOOD LLP



Eric S. Peterson, Partner

Date: 12/22/11

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge

Date: _____