



RESOLUTION NO. 20200128-05

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO EXECUTE A CONTRACT FOR CONSTRUCTION OF IMPROVEMENTS WITH LOCKHEED MARTIN FOR BUILDING IMPROVEMENTS TO BUILDING 333

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, Lockheed Martin is working with Red River Army Depot on a project in Building 333; and

WHEREAS, due to the requirements of the work needing to be performed in the building, Lockheed Martin requested building improvements to Building 333; and

WHEREAS, TexAmericas Center has sought, through a competitive process, bids for the project of building improvements to Building 333; and


WHEREAS, Lockheed Martin has agreed to pay for the requested improvements to Building 333 in the amount of \$910,535.17 and all the other terms in the attached Contract for Construction of Improvements.

NOW, THEREFORE, BE IT RESOLVED that by the Board of Directors of TexAmericas Center that the Executive Director/CEO shall be and he is hereby authorized to award the Contract for Construction of Improvements with Lockheed Martin in substantially the same form as attached hereto.

PASSED and APPROVED this 28th day of January 2020.


Boyd Sartin, Chairman of the Board

ATTEST:


Ben King, Secretary

Attached: Contract for Construction of Improvements

**CONTRACT FOR CONSTRUCTION OF IMPROVEMENTS
(BUILDING 333)
FEBRUARY 6, 2020**

STATE OF TEXAS

COUNTY OF BOWIE

This Contract and agreement is entered into by and between **TEXAMERICAS CENTER**, a political subdivision of the State of Texas, hereinafter referred to as **TAC**, and **LOCKHEED MARTIN CORPORATION**, authorized to do business in the State of Texas, hereinafter referred to as **LOCKHEED**, as follows:

RECITALS

WHEREAS, TAC is the Owner and Landlord of certain real estate known as Building 333 upon property acquired by TAC from the United States, pursuant to the provisions of the Base Realignment and Closure Act and which building TAC leases to the United States of America (United States Army's Red River Army Depot, hereinafter referred to as RRAD); and

WHEREAS, under a prime contract with the U.S. Army's Precision Fires Program Office ("Precision Fires"), Lockheed shall be responsible for certain tasks involving warehouse operations and logistic services for equipment owned by Precision Fires, said services to require usage of a portion of Building 333; and

WHEREAS, Lockheed has acquired, or will acquire, from Precision Fires and RRAD the right to occupy and use a portion of Building 333; and

WHEREAS, in order for Lockheed to use the designated portion of Building 333 for its warehouse and logistics operations, it is necessary that certain improvements and modifications be made to said portion of Building 333; and

WHEREAS, the United States of America and RRAD have given their written consent for TAC as the Landlord to make certain modifications to Building 333 to accommodate the warehouse operations and logistic services of Lockheed; and

WHEREAS, TAC and Lockheed agree to make certain modifications to Building 333, such modifications to be made by TAC and/or its subcontractors in accordance with the terms of this agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein recited and other good and valuable consideration, TAC and Lockheed do hereby enter into this Contract (Contract) for Building 333 modifications and do hereby agree as follows:

**I.
WORK TO BE DONE**

1.01. TAC agrees to provide all materials and perform all required services to modify Building 333 in accordance with the Statement of Work attached hereto as **ATTACHMENT 1** of this agreement. The work shall be performed in accordance with the Detailed Plans and Specifications dated December 30, 2019, prepared by Murray, Thomas & Griffin, Inc., Surveyors and Engineers, Texarkana, Texas, which shall be approved in writing by TAC and Lockheed prior to the commencement of any construction. In the event of a discrepancy or conflict between the Statement of Work and the Detailed Plans and Specifications, the Detailed Plans and Specifications shall control.

1.02. Any changes to the Statement of Work and/or to the Detailed Plans and Specifications must be approved by TAC and Lockheed by written change order setting forth in detail the changes to be made prior to any work being performed pursuant to the change order.

**II.
CONTRACT PRICE**

2.01. As consideration for this agreement, Lockheed agrees to pay to TAC for the construction of the above identified improvements and modifications the sum of \$910,535.17. Lockheed shall make an initial payment to TAC in the amount of 10% (\$91,053.52) within twenty (20) days after execution of this agreement.

2.02. Any changes to the Plans and Specifications, or work, in the form of a written change order, shall provide for an adjustment to the Contract Price as set forth in the change order.

2.03. Lockheed shall pay to TAC the Contract Price in monthly draw based on the percentage of completion and materials delivered to the work site. TAC shall monthly submit invoices, bullet construction progress report and TAC approved contractor pay requests and contractor material on-hand invoices delivered to Lockheed Martin site review and within ten (10) days after the end of each month. Lockheed Martin Contract monitor will conduct site visit and validate all completed work within 5 business days of receipt of invoice. Lockheed shall pay said invoices within 20 days of the of the on-site concurrence.

**III.
CONSTRUCTION TIME**

3.01. TAC agrees to build, construct and complete the above described improvements within 120 days from general contractor's start date; provided, however, a reasonable allowance shall be made in the event delays occur because of unseasonably bad weather, strikes, inability to obtain materials and supplies over which TAC has no control, or inability to access the construction site by TAC or its subcontractors due to the actions or limitations imposed by RRAD.

**IV.
DELIVERY OF MATERIALS AND SUBCONTRACTS**

4.01. TAC and/or its subcontractors will have materials used in the construction delivered to the site. Lockheed shall be responsible for lost or stolen materials due to the fact that the work site is located within the premises of the leased facility controlled by RRAD and Lockheed. Any lost or stolen materials must be replaced at the cost and expense of Lockheed unless covered by insurance.

4.02. TAC may subcontract to perform any and all of the work required by this agreement; however, TAC shall be fully responsible for the workmanship and materials provided by subcontractors.

4.03. TAC shall be fully responsible to pay its subcontractors and to receive a written release of any and all liens from the subcontractor upon completion of its work.

**V.
PAYMENT AND PERFORMANCE BONDS**

5.01. TAC shall require its subcontractors to provide a payment and performance bond to TAC in accordance with the requirements of applicable Texas law. The Bond shall be provided in accordance with the requirements of Chapter 2253 of the Texas Government Code.

**VI.
INSURANCE**

6.01. TAC shall require its subcontractors to provide the following insurance coverage:

- A. Statutory Worker's Compensation and Employers Liability Insurance in the amount of \$1,000,000.00 for all of its Employees to be engaged in work on the project under this Contract;
- B. Bodily Injury and Property Damage General Liability Insurance for claims for damages for personal injury, including accidental death, as well as from claims of property damage, which may arise from operations under the subcontract and the amount of such insurance shall not be less than:
 - 1. Bodily Injury: \$1,000,000.00 for any one person and \$2,000,000.00 for any one accident;
 - 2. Property Damage: \$250,000.00 for any one accident and \$500,000.00 for all accidents;
 - 3. Automobile Liability Insurance covered third party bodily injury and Property damage in a minimum of \$1,000,000.00 per occurrence limit.
 - 4. The above policies shall include LOCKHEED as additional insured

6.02. TAC shall take out and furnish and maintain during the life of this Contract Builder's Risk Insurance in a sufficient amount to cover all materials against theft, loss or damage, but not less than \$458,144.28. This policy shall include LOCKHEED as loss payee

6.03. Indemnification by Subcontractors. TAC shall require that its subcontractors defend, indemnify, and hold harmless LOCKHEED MARTIN, its officer, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any intentional or grossly negligent act or omission of TAC's subcontractors, their officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

VII. RECEIPT AND RELEASES

7.01. Upon completion of the work, TAC shall furnish Lockheed proper receipts and releases from any and all materialmen from whom any material is obtained by TAC or its subcontractors for use in said improvements, and from all subcontractors to the end that no liens would be fixed upon the licensed premises by a materialman or subcontractor.

VIII. CONTRACT EXECUTED BEFORE PERFORMANCE BEGUN

8.01. This Contract is executed, acknowledged, and delivered before labor has been performed and before any material has been furnished for the construction of the improvements.

IX. CONTRACT REPRESENTATIVES

9.01. TAC hereby designates as its Contract Representative and address for notices pursuant to this agreement the following:

Scott Norton
Executive Director/CEO
TEXAMERICAS CENTER
107 Chapel Lane
New Boston, Texas 75570

9.02. Lockheed hereby designates as its Contract Representative and address for notices pursuant to this agreement the following:

LOCKHEED
Mary-Jo Napoli
5600 W Sand Lake Road
Orlando, FL 32819

TAC to email invoices and back up to following email addresses:

Mary-jo.napoli@lmco.com

Ronald.d.sexton@lmco.com

Dennis.truelove@lmco.com

9.03. Only the designated Contract Representatives have authority to make changes to this Contract. All amendments must be identified as such in writing and executed by the Contract Representatives.

X.

MISCELLANEOUS

10.01. Disputes. TAC and Lockheed agree to negotiate in good faith and effort to resolve any dispute related to this agreement that may arise between them during the course of execution of the work. If the dispute cannot be resolved by negotiations, the dispute shall be submitted to mediation before resort to litigation. If the need for mediation arises, a mutually acceptable mediator shall be chosen by the parties who shall share the cost of mediation services equally. During the negotiations and/or mediation of any dispute between TAC and Lockheed, execution of the work shall proceed unless the dispute relates to a design specification which prevents continuation of construction. Failure to pay a disputed invoice or charge until resolution of a dispute is not and shall not be ground to suspend or terminate work.

10.02. Controlling Law and Venue for Litigation. This Contract and any manner arising out of or related to this Contract, shall be governed by the laws of the State of Texas without regard to its conflicts of laws provisions. All litigation arising out of disputes under this Contract shall be filed and maintained in the District Court of Bowie County, Texas. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under, or in connection with this Contract.

10.03. Time is of the Essence. It is agreed that time is of the essence of this agreement and each and every provision hereof.

10.04. Independent Contractor Relationship. TAC is an independent contractor in all its operations and activities hereunder.

10.05. Inspection and Acceptance. Lockheed may inspect all work at reasonable times and places. No such inspection shall relieve TAC of its obligations to furnish and warrant all work in accordance with the requirements of this Contract. If TAC or its subcontractors delivers non-confirming work, Lockheed may, in addition to any other remedies available at law or at equity, (1) accept all or part of such work at an equitable price reduction; or (2) reject such work; or (3) require TAC and/or its subcontractors, at TAC's or the subcontractor's costs, to make all repairs, modifications, or replacements at the direction of Lockheed necessary to enable such work to comply in all respects with Contract requirements.

10.06. Access to Site. Lockheed shall insure that RRAD provides reasonable access during normal business hours to TAC and its subcontractors and materials suppliers to the work site. Any delays required or imposed by RRAD, such as limitations upon certain days of the week, such as Fridays when RRAD generally does not work, shall result in an equivalent extension of time for completion of the work.

10.07. Warranty. TAC warrants that all work furnished pursuant to this Contract shall strictly conform to the Detailed Plans and Specifications provided by Murray, Thomas & Griffin Surveyors and Engineers and be free from defects in material and workmanship. This warranty shall begin upon final completion of the work and extend for a period of one year. If any non-confirming work is identified within the warranty period, TAC, at Lockheed's option, shall promptly repair, replace or reperform the work at TAC's expense.

10.08 Improvements. Lockheed and TAC understand and agree that upon the occurrence of any such event in which Lockheed no longer requires the usage of Building 333 in order to support Precision Fires, any changes made to Building 333 pursuant to this Contract remain the property of TAC, and Lockheed is under no obligation to restore Building 333 to the condition in which it existed prior to the execution of this Contract.

10.09. Assignment. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successor and permitted assigns. This agreement may not be assigned by either party hereto without the prior written consent of the other party.


10.10. Contract Document. This Contract consists of this agreement, ATTACHMENT 1 (Statement of Work) and the Detailed Plans and Specifications of the work to be prepared by Murray, Thomas & Griffin Surveyors and Engineers as approved by the parties and ATTACHMENT 2 (FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A UNITED STATES DEPARTMENT OF DEFENSE PRIME CONTRACT). In the event of conflict between Attachment 2 and any other portion of this Contract, Attachment 2 shall control. TAC shall include in all its subcontracts the provisions set forth in Attachment 2.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract effective as of the date of the last signature.

LOCKHEED MARTIN CORPORATION

TEXAMERICAS CENTER

By: _____ Digitally signed
Name: Napoli, Mary-Jo by Napoli, Mary-
Title: _____ Jo
Date: Mary-Jo Date: 2020.02.10
12:23:40 -05'00'

By: 
Name: Scott Norton
Title: Executive Director/CEO
Date: 2/18/2020

