

ORDINANCE NO. 99-22 AC CMS

AN ORDINANCE ACCEPTING THE BID OF MCSTAY ENGINEERED PRODUCTS OF CLEVELAND, OHIO, FOR THE PURCHASE OF BUTTERFLY VALVES AND ACTUATORS FOR THE WASTE WATER TREATMENT DIVISION OF THE PUBLIC WORKS 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 McStay Engineered Products of Cleveland, Ohio, for the purchase of butterfly valves and actuators for the Waste Water Treatment Division of the Public Works 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 accordingly, said bid being in the amount of \$43,940.10.

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.

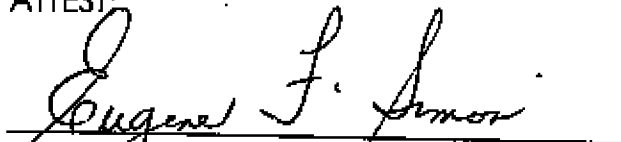
SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to accept a bid prior to its expiration date",

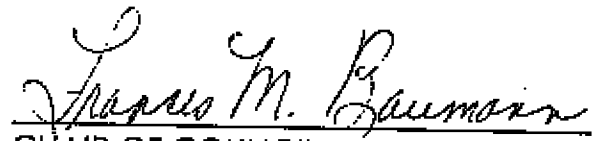
and shall take effect immediately upon passage.

PASSED: 1st Reading - March 15, 1999
2nd Reading - April 5, 1999 (E)
3rd Reading -

ATTEST:


CLERK OF COUNCIL

POSTED: April 6, 1999


CHAIR OF COUNCIL

EFFECTIVE DATE: April 6, 1999

NOTICE TO PROCEED

To: ~~McStay Engineered Products~~

Date: May 3, 1999

7325 Fair Oaks Road

Project: **Butterfly Valves**

Cleveland, Ohio 44146

You are hereby to commence WORK in accordance with the Agreement dated April 14, 1999 on or before May 6, 1999 and you are to complete the WORK within 90 consecutive calendar days thereafter. The date of completion of all WORK is, therefore, August 6, 1999.

Owner: City of Oberlin, Ohio

By:

Robert G. DiSpirito
Robert G. DiSpirito, City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____

McSTAY Engineered Products this 12 day of May 19 99.

By:

Title:

William McStay
President

NOTICE OF AWARD

To: McStav Engineered Products Company

7325 Fair Oaks Road

Cleveland, Ohio 44146

The City of Oberlin, Ohio, having considered the Bid submitted by you for **Butterfly Valves** in response to the Advertisement for Bids dated 2/2/99 and in the amount of \$43,940.10 does hereby notify you that your

Bid has been accepted by City Ordinance No. 99-22

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

None

Delivery shall be on or before 90 calendar days following

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 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:

Title: City Manager Date: 4/14/99

Acceptance of Notice of Award

Receipt of the above Notice of Award is hereby acknowledged by

this 30 day of

By:

Title: President

AGREEMENT

This Agreement, made this 14 day of April, 1999, by and between the City of Oberlin, Ohio, hereinafter called the "City", acting herein through its City Manager and

McStay Engineered Products, doing business as

(a corporation) (a partnership) (an individual) in the City of Cleveland

County of Cuyahoga, 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 with the terms of the Contract Documents.
2. The following variations from the Contract Documents and or options have been agreed to:

None

3. The term "Contract Documents" means and includes the following:

- a) Advertisement for Bids
- b) Instruction to Bidders
- c) General Conditions
- c) EEO and MBE Documentation
- d) Bid including all attachments thereto.
- e) Bid Bond
- f) Delinquent Personal Property Tax Affidavit
- g) Notice of Award
- h) Agreement (with Legal & Fiscal Officers' Certificates)
- i) Specifications
- j) Addenda:

No. _____, dated _____, 19____.

No. _____, dated _____, 19____.

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.

AGREEMENT (pg 2)

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 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 the 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

AGREEMENT (pg 3)

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 Director of Public Works 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 Director of Public Works 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 Director of Public Works 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;

AGREEMENT (pg 4)

- (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 Director of Public Works:
 - (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;

AGREEMENT (pg 5)

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

City of Oberlin, Ohio

(Seal)

By:

Robert DiSpirito
Robert DiSpirito, City Manager

ATTEST:

Eugene F. Lerner
City Clerk

Contractor:

McStay Engineering Products Co.

By:

W. B. McStay Sr.

Title:

PRESIDENT

Address:

W. B. McSTAY SR.

MEPCO

7325 Fair Oaks Rd.

Cleveland, OH 44146

(Seal)

ATTEST:

Phone:

(440) - 939-7208

(Secretary, if Corporation)

Cathleen Kurta
(Witness)

Cathleen Kurta

Notary Public, State of Ohio

My Commission Expires Sept. 12, 2000

Recorded in Portage County

CITY OF OBERLIN, OHIO

FISCAL OFFICER'S CERTIFICATE

Project Identification: **Butterfly Valves**

I, Kelly E. Clark, Auditor hereby certify that I am the qualified and acting fiscal officer of the City of Oberlin, Ohio, and that the amount of money, to wit \$ 43,940.10, required to meet the cost of the attached Agreement between the City of Oberlin and McStay Engineered Products (Contractor) has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

Date 4/19 1999

Kelly E. Clark
Kelly E. Clark, City Auditor

LEGAL OFFICER'S CERTIFICATE

Project Identification: **Butterfly Valves**

The foregoing Agreement between the City of Oberlin, Ohio, (City) and McStay Engineered Products (Contractor) is approved as to form.

Date 4/19/99

Eric B. Severs
Eric Severs, City Solicitor