

RESOLUTION No. 2007-138-645

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AWARDING A BID IN THE AMOUNT OF \$329,000.00 TO THERMA SEAL ROOF SYSTEMS, INC., FOR ROOF REPLACEMENTS TO THE POLICE AND PUBLIC WORKS BUILDINGS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT FOR THIS PURPOSE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on April 11, 2007, the City Council authorized the purchase of property to house the Police Department and the Public Works Department, and

WHEREAS, an architect hired by the City, inspected the roofs of the buildings and determined that the roofs needed to be replaced, and

WHEREAS, City staff prepared specifications for the replacement of the roofs of the Police Department and Public Works Department buildings, and

WHEREAS, the bids were advertised on August 17, 2007, and

WHEREAS, four bids were received and publicly read on September 19, 2007, and

WHEREAS, City staff is recommending that the City Council authorize the City Manager to negotiate a contract with Therma Seal Systems, Inc., the apparent low bidder, to complete roof replacements on both buildings,

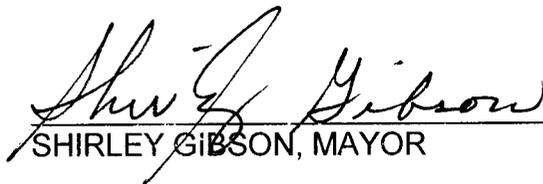
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AWARD OF BID AND AUTHORIZATION: The City Council of the City of Miami Gardens hereby awards a bid in the amount of \$329,000.00 to Therma Seal Roof Systems, Inc., to replace the roofs of the City's Police Department and Public Works Buildings. Further, the City Council authorized the City Manager to negotiate and enter into a contract with Therma Seal Roof Systems, Inc., for this purpose.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON SEPTEMBER 25, 2007.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilwoman Pritchett
SECONDED BY: Councilman Bratton

VOTE: 5-1

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Oscar Braynon, II	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Out of town
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Sharon Pritchett	<input type="checkbox"/> (Yes)	<input checked="" type="checkbox"/> (No)
Councilman André Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman Oscar Braynon II
Councilman André Williams

Agenda Cover Page

Date: September 26, 2007

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source: **Building Bond**

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:
Danny Crew, City Manager

Public hearing

Ordinance

1st Reading

Advertising requirement: Yes No

RFP/RFQ/Bid # **06-07-029 Roof Replacement of City Buildings**

Quasi-Judicial

Resolution

2nd Reading

Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AWARDING A BID IN THE AMOUNT OF \$329,000.00 TO THERMA SEAL ROOF SYSTEMS, INC., FOR ROOF REPLACEMENTS TO THE POLICE AND PUBLIC WORKS BUILDINGS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT FOR THIS PURPOSE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary

On April 11, 2007, City Council authorized the purchase of property to house the Police Department and the Public Works Department. The City's Architectural firm inspected the roofs of both buildings, identified leaks and recommended the roofs be replaced.

In order to expedite usage of the building and to ensure that the leaking sections of the roofs do not destroy the renovations currently being completed in the Police building, staff determined that both roofs should be replaced as soon as possible.

Analysis:

City staff prepared specifications for the roof replacement of both buildings. The bid was advertised on August 17, 2007. A broadcast notice was issued to 1114 suppliers. A mandatory pre-bid meeting was held August 22, 2007, eleven potential bidders attended. Four bids were received and publicly read on September 19, 2007.

**J-3) CONSENT AGENDA
RESOLUTION
THERMA SEAL ROOF**

The bids were evaluated for compliance with the specifications and the company's ability to complete the roof replacements within the required time frame. Based on the evaluation, the apparent low and responsive bidder is Therma Seal Systems, Inc. located in West Palm Beach, Florida . Reference and background evaluations were conducted and found favorable.

Recommendation:

We recommend that the City Council approve the attached resolution authorizing the City Manager to negotiate and execute a contract with Therma Seal Roof Systems, Inc., located in West Palm Beach, Florida, in the amount of \$329,000.00 for roof replacement to the Police and Public Works Buildings.



City of Miami Gardens
 1515 N.W. 167th Street: Bldg. 5 Suite 200
 Miami Gardens, Florida 33169

Procurement Department

Tabulation Sheet
ITB#06-07-029 Roof Replacement of City Buildings
September 19, 2007 @ 2:00 p.m.

Item	Thermal Seal Roof Systems, Inc. WPB, FL	Complete Building Maint., Pompano Bch, FL	Industrial Roof Repairs, Ft. Laud, FL	Advanced Roofing, Ft. Laud., FL**
Design & Mobilization	\$10,000.00	\$33,400.00	\$16,000.00	\$86,700.00
Site Work	\$5,000.00	\$33,400.00	\$137,200.00	\$64,800.00
Metals	\$5,000.00	\$10,000.00	\$4,000.00	\$6,200.00
Wood & Plastics	\$5,000.00	\$18,000.00	\$7,000.00	\$8,400.00
Thermal & Moisture Protection	\$294,000.00	\$226,700.00	\$205,000.00	\$376,491.00
Finishes	\$10,000.00	\$1,750.00	\$1,000.00	\$2,700.00
Mechanical	Inc *	\$8,000.00	\$21,568.00	\$24,950.00
Electrical	Inc.*	\$3,000.00	\$2,000.00	\$3,100.00
Total base bid	\$329,000.00	\$334,250.00	\$394,568.00	\$573,341.00
Gypsum panel	\$6.00/sq. ft.	\$19.00/sq.ft.	\$5.85/sq.ft.	\$17.50/sq.ft.
Alternate bid (rigid Insulation board)	\$275,500	\$246,250.00	\$319,568.00	\$498,441.00

* Clarification was requested regarding Mechanical & Electrical charges – costs for M & E is included in Thermal & Moisture Protection costs

**Advanced Roofing Inc. bid submittal was received before 12:00 and held in City Clerk's office.

CITY OF MIAMI GARDENS
Roof Replacement of City Buildings

THIS CONTRACT made as of this 10 day of OCT, 2007 by and between Therma Seal Roof Systems, Inc., hereinafter referred to as the CONTRACTOR, and the CITY OF MIAMI GARDENS, FLORIDA, a Florida municipal corporation, hereinafter referred to as the CITY.

WITNESSETH, that whereas, the CITY has awarded to the CONTRACTOR the Work of performing certain construction:

NOW, THEREFORE, the CITY and the CONTRACTOR, for consideration hereinafter named, agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

1.1 Enumeration of Contract Documents:

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of the following:

- (1) This Agreement.
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s).
- (5) Notice of Award and Notice to Proceed.
- (6) Invitation to Bid and the Specifications prepared by the CITY (Exhibit 1).
- (7) CONTRACTOR's Response to the CITY's Invitation to Bid No. ITB#06-07-029 dated September 17, 2007(Exhibit 2).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Manager (or designee).
- b. This Agreement dated Oct. 19, 2007 and any attachments.
- c. Exhibit 1.
- d. Exhibit 2.
- e. Exhibit 3.

1.2 Conflict, Error or Discrepancy:

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY in writing at once and before proceeding with the Work affected shall obtain a written interpretation or clarification from CITY.

1.3 Representation of CONTRACTOR:

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

ARTICLE 2. SCOPE OF WORK

The CONTRACTOR hereby agrees to furnish all of the materials, tools, equipment, labor, services, incidentals and everything necessary to perform; and shall perform, all of the Work, herein referred to as Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 CONTRACTOR shall be issued a Notice of Award by the CITY. CONTRACTOR shall commence scheduling activities and permit applications within five (5) calendar days after receipt of the Notice of Award. The Notice to Proceed and Purchase Order will not be issued until CONTRACTOR'S submission to CITY of all required documents including, but not limited to: Performance and Payment Bonds, Insurance Certificates fully executed Contract.

3.1.1 The receipt of all necessary permits by CONTRACTOR and acceptance of the full construction schedule in accordance with general terms and conditions section, submittal schedule and schedule of values is a condition precedent to the issuance of the Notice to Proceed to mobilize on the Project site and commence with the Work. The CONTRACTOR shall submit all necessary documents required by this provision within **fifteen** (15) calendar days of the issuance of Notice of Award.

3.2 The Work must begin within ten (10) calendar days from Notice to Proceed or the date fixed in the Notice to Proceed, whichever is later, and shall be carried on at a rate to insure its substantially completed within one hundred twenty (120) calendar days from the issuance of the Notice to Proceed, completed and ready for final payment in accordance with Article 6 within one hundred fifty (150) days from the date certified by CITY as the date of Substantial Completion.

3.3 Upon failure of CONTRACTOR to substantially complete the WORK, herein referred to as Substantial Completion, within the specified period of time, plus approved time extensions, if any, CONTRACTOR shall pay to CITY the sum of Two Hundred Dollars (\$200.00) for each calendar day after the time specified in Section 2.2 above, plus any approved time extensions, for Substantial Completion. After Substantial Completion should CONTRACTOR fail to complete the remaining Work within the time specified in Section 2.2 above, plus approved time extensions, if

any, for completion and readiness for final payment, CONTRACTOR shall pay to CITY the sum of One Hundred Dollars (\$100.00) for each calendar day after the time specified in Section 2.2 above, plus any approved extensions, if any, for completion and readiness for final payment. These amounts are not penalties, but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages which the CITY will suffer as a result of the CONTRACTOR'S failure to perform and that will be obviate a formal resolution concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract as required hereunder.

The above-stated liquidated damages shall apply separately to each portion of the Project for which a time for completion is given.

3.4 CITY is authorized to deduct liquidated damages from monies due to CONTRACTOR for the Work under this Contract.

3.5 CONTRACTOR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by the Architect/Engineer in administering the construction of the WORK beyond the completion date specified above, plus approved time extensions, if any. Architect/Engineer construction costs shall be pursuant to the contract between CITY and Architect/Engineer, a copy of which is available upon request of the CONTRACTOR. All such costs shall be deducted from the monies due CONTRACTOR for performance of WORK by means of unilateral credit change orders issued by CITY, as costs are incurred by Architect/Engineer and agreed to by CITY.

ARTICLE 4. COMPENSATION

CITY shall pay CONTRACTOR as full compensation for the all material, services, labor and performance, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown in the Contract Documents, the sum of Three Hundred Twenty-Nine Thousand Dollars (\$329,000.00).

ARTICLE 5. PROGRESS PAYMENTS

CONTRACTOR may make Application for Payment for Work completed, at intervals of not more than once a month. However, the CITY shall not pay more than ninety percent (90%) of the total Contract Price as progress payments. The CONTRACTOR'S application shall show a complete breakdown of the Project components as dictated by the CITY, including an updated Schedule of Values showing the quantities completed and the amount requested, together with such supporting evidence as may be required by the CITY. CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY as required by the General Conditions and a release of liens relative to the Work which is the subject of the

Application. Each Application for Payment shall be submitted in triplicate to the CITY. The CITY shall make payment to the CONTRACTOR within thirty (30) business days after approval by the CITY of CONTRACTOR'S Application for Payment and submission of an acceptable updated progress schedule.

Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until Final Completion and acceptance by the CITY in accordance with the terms and conditions stipulated in the Contract Documents.

The CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- a) Defective Work not remedied.
- b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
- c) Failure of CONTRACTOR to make payments properly to Sub-Contractors or for material or labor.
- d) Damage to another CONTRACTOR not remedied.
- e) Liquidated damages, as well as costs incurred by the CITY for extended construction administration.

When the above grounds are removed or resolved or CONTRACTOR provides a surety bond or a consent of Surety, satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 6. ACCEPTANCE AND FINAL PAYMENT

Upon receipt of written notice from CONTRACTOR that the Work is complete and ready for final inspection and acceptance, CITY shall, within ten (10) calendar days, make an inspection thereof. If CITY finds the Work acceptable, the requisite documents have been submitted, the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, the Architect/Engineer and CITY'S Representative will submit a statement stating such to the CITY Manager.

Before the Final Payment, CONTRACTOR shall deliver to CITY a complete waiver of lien(s) or release of all lien(s), as applicable, arising out of this Contract, or receipts in full for all Work; and an Affidavit certifying that all suppliers and Sub-Contractors have been paid in full, and that all other indebtedness connected with the Work has been paid.

The CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- A. Defective Work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
- C. Failure of CONTRACTOR to make payments properly to Sub-Contractors or for material or labor.
- D. Damage to another CONTRACTOR not remedied.
- E. Liquidated damages and costs incurred by CITY for extended construction administration.

When the above grounds are removed or resolved satisfactorily to the CITY, payment may be made.

Final payment constituting the entire unpaid balance of the Contract sum shall be paid by CITY to the CONTRACTOR within thirty (30) days after completion of all Work, Contract fully performed and a final certificate for payment has been issued by the CITY'S representative.

ARTICLE 7. MISCELLANEOUS

7.1 Conflict: Where there is a conflict between any provision set forth within the Contract Documents and a more stringent state or federal provision which is applicable to this Project, the more stringent state or federal provision shall control.

7.2 Independent Contractor: CONTRACTOR is an independent contractor under this Contract. Services provided by CONTRACTOR pursuant to this Contract shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of the CITY. This Contract shall not constitute or make the parties a partnership or joint venture.

7.3 Qualifications: CONTRACTOR, and the individual executing this Contract on behalf of the CONTRACTOR, warrants to the CITY that the CONTRACTOR is a Florida (corporation sole proprietorship, etc.) in good standing, and that the CONTRACTOR has all the required licenses and certifications of competency required by the State of Florida and the County of Miami-Dade to perform the Work herein described. CONTRACTOR shall insure that all Sub-Contractors have all required licenses and certifications of competency required by the State of Florida and the County of Miami-Dade to perform the Work herein described.

7.4 Entire Contract – Modification: No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Contract, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Contract contains the entire understanding of the parties. No modifications

hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Contract is executed. If any term in the CONTRACTOR'S proposal appears to be in direct or apparent conflict with the Contract, then the terms of the Contract shall control.

7.5 Third Party Beneficiaries: Neither CONTRACTOR nor CITY intend to directly or substantially benefit a third party by this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract. Therefore, the parties agree that there are no third-party beneficiaries to this Contract and that no third-party shall be entitled to assert a claim against either of them based upon this Contract.

7.6 Notices: All notices required in this Contract shall be sent by certified mail, return receipt requested and, if sent to the CITY shall be mailed to:

City of Miami Gardens
Attn: City Manager
1515 NW 167th Street, Suite 200
Miami Gardens, FL 33169

With a Copy to: City Attorney
C/O City of Miami Gardens
1515 NW 167th Street, Suite 200
Miami Gardens, FL 33169

And if sent to the CONTRACTOR shall be mailed to:

Name: Therma Seal Roof Systems, Inc.
Address: 1011 Fairfield Drive
Address:
City, State & Zip: West Palm Beach, FL 33407
Contact Person: Linda Herndon

Fed. ID# 72-1546117
Telephone # 561-721-9921
Fax # 561-721-9922

Title Accts. Rec.

7.7 Assignment and Performance: Neither this Contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONTRACTOR shall not subcontract any portion of the Work required by this Contract except as authorized in the General Conditions. CONTRACTOR represents that all persons delivering the services required by this Contract have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Work and to provide and perform such services to CITY'S satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of CONTRACTOR'S performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

7.8 Materiality and Waiver of Breach: CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and

important to the formation of this Contract and, therefore, is a material term hereof. CITY'S failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

7.9 Severance: In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective, unless CITY or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

7.10 Applicable Law and Venue: This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **By entering into this Contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. CONTRACTOR shall specifically bind all Sub-Contractors to the provisions of this Contract.**

7.11 Enforcement Costs: If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses and court costs, including appellate fees incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

7.12 Amendments: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the CITY and CONTRACTOR.

7.13 Prior Contracts: This document incorporates and includes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Contracts or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Contracts, whether oral or written. It is further

agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 6.11 above.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as follows:

WITNESSES:

Jan David Kertue

CONTRACTOR:

By: [Signature]

Print Name: Dave Wikel

Title: President

ATTEST:

Ronetta Taylor
City Clerk

CITY OF MIAMI GARDENS

[Signature]
Mayor

APPROVED AS TO FORM: .

CITY Attorney

Dated:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as follows:

WITNESSES:

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

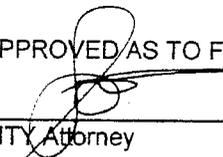
ATTEST:

CITY OF MIAMI GARDENS

City Clerk

Mayor

APPROVED AS TO FORM:



CITY Attorney

Dated:

Roof Replacement Contract