



UPSHUR COUNTY COMMISSIONERS COURT
DILMER, TEXAS

Sept. 15, 1986

Commissioners Court met in Special Session with all members present except J. W. Meadows, Commissioner Pct. #2.

Motion by David Loyd seconded by Gaddis Lindsey to approve the unpaid bills. Motion carried. Copy not recieved.

Motion by David Loyd seconded by Gaddis Lindsey to approve the minutes of Aug. 26, 1986, Sept. 5, 1986 and Sept. 8, 1986. Motion carried.

Motion by Paul Davis seconded by David Loyd to canvass the election returns. Motion carried.

Motion by David Loyd seconded by Gaddis Lindsey to accept correction in Pct. #12 (Ewell) from 31 votes to 33 votes for Edd Hargett. Motion carried.

Motion by Gaddis Lindsey seconded by Paul Davis to approve the official count of votes. Motion carried.

Motion by David Loyd seconded by Gaddis Lindsey to approve a contract with Air Masters Test and Balance Engineers for \$2,253.00. Motion carried. Copy attached.

Court went into Executive Session.


COUNTY JUDGE


COMMISSIONER PCT. #1

COMMISSIONER PCT. #2


COMMISSIONER PCT. #3


COMMISSIONER PCT. #4



THE R. E. HABLE COMPANY

(214) 874-8201
P. O. DRAWER 650
CORSIANA, TEXAS 75110

September 9, 1986

Commissioners Court of Upshur County
County Courthouse
P.O. Box 730
Gilmer, Texas 75644

Attention: The Honorable Judge Everett Dean

Reference: Upshur County Justice Center
AIR MASTERS TEST AND BALANCE ENGINEERS

Dear Judge Dean:

Enclosed is a contract to Air Masters generated by the changes in the smoke removal system. A change order to Air Masters would not be approved by Ed Esquivel, because it exceeds 25% of the original contract amount. This contract is less than \$5,000, so does not require the public bid.

This contract requires court approval.

Sincerely,

THE R. E. HABLE COMPANY

William Carter / lit

William Carter
Project Manager

WC/bt

enc.

cc: Gene Kottke

CONTRACT #15990
(Non-Bonded)

Lump Sum Subcontract Agreement

This Agreement made this 28th day of August, 1986, by and between AIR MASTERS TEST AND BALANCE ENGINEERS / 4744 Dixie Garden Drive-Shreveport, La. 71105 hereinafter called Subcontractor and The Upshur County Commissioners Court, Gilmer, Texas, hereinafter called the Owner.

WITNESSETH: That Subcontractor and the Owner in consideration of the mutual promises herein contained, agree as follows:

1. Subcontractor agrees to furnish and pay for all materials, labor, scaffolding, equipment, tools, applicances, licenses, permits and everything necessary for the proper completion of the work described in paragraph 2 hereon, for a Upshur County Justice Center, Gilmer, Texas hereinafter called Owner, in accordance with the General Conditions, Special Conditions and Supplementary General Conditions of the contract and in accordance with the drawings and specifications prepared by Hobbs, Wiginton, Fawcett hereinafter called the Architect; all of which (hereinafter referred to as "Contract Documents"), form a part of this Agreement between the Subcontractor and the Owner.

2. Subcontractor and the Owner agree that the materials to be furnished and the work to be done (hereinafter referred to as the "Work") by Subcontractor are:

AIR CONDITIONING AND AIR TESTING

Air Conditioning balancing and air flow testing as outlined by Magill-Cloyd requirements dated 7/2/86.

The contractor is to haul off the job site all trash generated by his activities.

All items shown on plans and referred to in addendums pertaining to these sections of the specifications.

The above will include all items and services necessary for and reasonably incidental to the proper completion of the work.

3. The Contract Price to be paid by the Owner to Subcontractor shall be:

~~TWO THOUSAND TWO HUNDRED FIFTY-THREE AND NO/100-----~~ (\$ 2,253.00)
subject, however, to additions and/or deductions as provided in this Subcontract. On or about the twenty-fifth of each month, Subcontractor shall submit to the Owner in the form required, a written requisition for payment showing the aggregate value of the work performed (and materials suitably stored), through the last day of the preceding month from which there shall be deducted retainage of ten percent (10 %) or such aggregate value, all previous payments made under prior requisitions, the aggregate amount of all payments made by the Owner to others on behalf of Subcontractor and all other amounts which the Owner is entitled to retain, subject to approval by the Owner and the Architect of the amount of the valuation of the work stated in each requisition. The Owner shall pay Subcontractor the amount of the approved value of the work less the amount deducted therefrom as provided above. The Owner may withhold payments due Subcontractor pending determination by the Owner of the proper application of all previous partial payments and Subcontractor agrees to render all necessary assistance to Owner in making such determination. Prior to its first monthly requisition, Subcontractor shall submit a detailed estimate breakdown showing the subdivision of the contract price into its various parts to be used for checking Subcontractor's monthly requisition for payment. This estimate breakdown shall be subject to the Owner and Architect's approval. The balance of the contract price shall be paid to Subcontractor upon (a) satisfactory completion of all of Subcontractor's work, (b) acceptance thereof by the Owner, (c) furnishing to the Owner satisfactory evidence that all labor and material accounts of Subcontractor have been paid in full. Subcontractor agrees to hold all payments received hereunder as a trust fund for the payment of all obligations incurred by Subcontractor in connection with the work. No payment to Subcontractor shall operate as an approval of Subcontractor's work or materials, or any part thereof.

3-A. The Owner proposes to pay all or a portion of this Agreement with certificates of obligations (and/or claims and accounts representing an undivided interest in said certificates), which certificates (and/or claims and accounts) are to be authorized, issued and delivered in accordance with the provisions of Article 2368a.1, V.A.T.C.S. The certificates (and/or claims or accounts) will be delivered to the Subcontractor as work is performed, and the Owner has made arrangements for such certificates to be transferred and assigned to a financial institution () at their face value (no accrued interest) for cash. The Subcontractor has heretofore elected and does hereby elect to transfer and assign all certificates of obligation (and/or claims and accounts) issued and delivered to the Subcontractor by the Owner for work performed and furnished under this agreement.

4. Subcontractor agrees to commence the work when directed by the Owner and to complete the work within ^{as required} days from date of this agreement. On receipt of written notice from the Owner, Subcontractor shall cease performance of the work or portions thereof and shall resume performance on receipt of like notice. Subcontractor agrees to diligently and continuously prosecute the work and to coordinate the work with other work being done on the project by other trades, so that the Owner shall not be delayed by any act or omission of Subcontractor in completion of the general contract within the time specified in the contract documents. If Subcontractor shall delay the material progress of the work and as a result thereof the Owner shall become liable for damages or shall incur additional costs, Subcontractor shall indemnify the Owner on account of any such damages and additional costs.

5. No alterations shall be made in the work as shown or described by the contract documents except on the written order of the Owner, and when so made the value of the work or materials added or omitted shall be computed and determined by the Subcontractor, subject to the written approval and acceptance by the Owner, and the amount so determined shall be added to or deducted from the contract price. Subcontractor shall have no claim for additional work unless such work has been done in pursuance of a written order from the Owner. In case of disagreement as to adjustment, Subcontractor shall proceed with performance of the alterations pending the determination of such adjustment.

6. Subcontractor shall effectually secure and protect the work and shall bear and be liable for, and shall repair and replace, all loss and damage of any kind which may happen to the work at any time prior to the final completion and acceptance thereof from any cause whatsoever and the Owner will not in any manner be responsible for any such loss or damage. Subcontractor shall indemnify and save harmless the Owner against loss or expense by reason of the liability imposed by law upon the Owner for damages because of bodily injuries including death at any time resulting therefrom accidentally sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of, or in consequence of the performance of the work whether such injuries to persons or damages to property are due or claimed to be due to any negligence of Subcontractor, the Owner, its or their employees or agents or any other person.

Subcontractor shall take out, maintain and pay for insurance during the period covered by this Subcontract, through agents, in such amounts as set forth in the specifications. Companies shall be approved by the Owner. If Subcontractor shall fail to deliver such Certificate of Insurance to the Owner within forty-eight (48) hours after demand and in any event prior to commencement of the work on the project site, the Owner may obtain such insurance for Subcontractor and pay the premiums thereon and Subcontractor shall repay the Owner on demand, any sum or sums paid therefore, under this Subcontract. Every policy of insurance required hereunder shall provide for giving to the Owner ten (10) days' prior written notice of the cancellation thereof.

Any policy of insurance covering Subcontractor's own tools, plant and facilities against loss by physical damage shall include an endorsement providing that the underwriters waive their rights of subrogation against the Owner.

7. Subcontractor shall not let, assign or transfer this Subcontract or any part hereof, or any interest therein, or any amounts due or to become due hereunder, without the written consent of the Owner.

8. Subcontractor will pay all social security, other taxes and contributions imposed upon it as an employer in connection with the performance of this Subcontract, and will furnish evidence, when required by the showing that all such payments required to be made have been paid. Subcontractor shall pay all local, state and federal taxes in connection with the work and charges for all utility services, including water and power, used by Subcontractor in the performance of its work.

9. Payments otherwise due may be withheld by the Owner on account of defective work not remedied, claims filed, reasonable evidence indicating probability of filing of claims or liens, failure to Subcontractor to make payments properly to its subcontractors or for material or labor or a reasonable doubt that the Subcontract can be completed for the balance then unpaid. If the said causes are not removed on written notice, the Owner may pay the cost of same at Subcontractor's expense by the use of such withheld payments or otherwise.

10. Subcontractor will save and keep the building or buildings referred to in this Subcontract and the lands upon which they are situated, free from all mechanic's liens and all other liens by reason of its work or of any materials or other things used by it in the work, and does hereby indemnify the Owner against any loss, damage, expense or claim arising out of Subcontractor's failure to keep such building or buildings free of liens. If Subcontractor fails to remove any lien by bonding it or otherwise the Owner may retain sufficient funds, out of any money due or thereafter to become due to Subcontractor to pay the same.

11. Subcontractor shall, at its own cost, apply for and obtain all permits required in connection with the work. In performing the work, Subcontractor shall comply in every respect with all state, federal and municipal laws, codes, ordinances and regulations relating thereto, including without limitation, the Fair Labor Standards Act. Subcontractor does hereby agree to hold the Owner harmless from any loss or expense arising out of any violation of any such law, code or regulation.

12. If by any of the contract documents referred to in paragraph 1 above, it is required that temporary buildings or facilities shall be furnished by the Owner for the use of the Architect or their representatives at the site of the work, the labor, materials, equipment and fixtures of the same general kind or character as that required to be furnished by Subcontractor pursuant to paragraph 2 above, shall also be furnished by Subcontractor for such temporary buildings or facilities. The contract price specified in paragraph 3 includes compensation for such additional labor, materials, equipment and fixtures.

13. Subcontractor will clean up and haul away all debris occasioned by the work done by it hereunder and will leave the building and premises clean insofar as the work performed under this agreement is concerned. If, after 24 hours' notice by the Owner's representative to Subcontractor's representative at the site of the work, Subcontractor has not diligently proceeded with the clean up as outlined in this paragraph, then the Owner has the right to proceed with the clean up work at Subcontractor's cost and expense.

14. Subcontractor shall submit to the Owner within ^{as required} days after execution of the Subcontract, complete shop drawings, data, catalogue cuts and/or samples as required by the contract documents. Approval of any such drawings, data, catalogue cuts and/or samples shall not relieve Subcontractor of any responsibility for execution of the work in accordance with the requirements of the contract documents.

15. Subcontractor shall provide Payment and Performance bonds on the form prescribed by and ~~with the amount of \$25,000~~ ^{the amount of \$25,000} in this agreement, ~~if the amount of the bond is less than \$25,000~~ ^{if the amount of the bond is less than \$25,000} and in lieu of furnishing a Payment and Performance bonds, Subcontractor agrees that no money shall be paid by Owner to Subcontractor under this agreement until completion and acceptance of all work to be performed and furnished hereunder.

16. If Subcontractor at any time refuses or neglects to supply adequate and complete supervision or a sufficiency of properly skilled workmen or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any agreement for the benefit of its creditors or fail to pay promptly its obligations or if a receiver is appointed for Subcontractor or its assets, or if Subcontractor be adjudged a bankrupt, or fail in the performance of any of the agreements on its part contained herein, the Owner shall have the option, after 48 hours' written notice to Subcontractor, to provide any such labor or materials and to deduct the cost thereof from any money due or thereafter to become due from the Contractor to Subcontractor. The Contractor shall also be at liberty to terminate the employment of Subcontractor on said work and to enter upon the premises and take possession of all materials or appliances, of any kind whatsoever, thereon, and to employ any other person or persons to finish the work and to provide the materials therefore; and in case of such discontinuance of the employment of Subcontractor, Subcontractor shall not be entitled to receive any payment under this Subcontract which might otherwise be due it, until the work shall be finished, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by the Owner in finishing Subcontractor's work, such excess shall be paid by the Owner to Subcontractor, but if such expenses shall exceed such unpaid balance Subcontractor shall pay the difference to the Owner. The expense incurred by the Owner shall include all costs of finishing the work including all obligations incurred by Subcontractor, any damages incurred through the default of Subcontractor and all costs or expense incurred by the Owner. The rights of the Owner provided by this paragraph shall not be exclusive of any other rights or remedies.

17. Subcontractor will cooperate with the Owner and other Subcontractors or separate contractors whose work might interfere with Subcontractor's work and will participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Owner of any such interference.

18. Subcontractor shall within 24 hours after receiving written notice from Owner, proceed to take down all portions of the work condemned by the Architect or the Owner, and shall make good at its own cost, all work of others damaged or destroyed thereby and replace all such condemned work with proper work. In case of the failure of Subcontractor to promptly remove or replace any portion of the work as aforesaid, the Owner shall have the right itself or through others, to take down and remove the same and to purchase and install new materials in replacement thereof and the cost thereof together with the cost of making good all other work destroyed or damaged by such removal and replacement, shall be borne by Subcontractor and shall be paid to the Owner on demand or may be deducted by the Owner from any payments due or to become due to Subcontractor.

19. Subcontractor agrees to indemnify and save harmless the Owner and his agents against all damages which they or either of them may sustain by reason of anything to be supplied hereunder being covered by a patent not owned by Subcontractor, and at the expense of Subcontractor to defend any action brought against the Owner founded upon the claim that any such thing or any part thereof infringes any such patent.

20. Subcontractor shall remove, replace and/or repair at its own expense and at the convenience of the Owner, any workmanship, materials and equipment furnished hereunder with respect to which defects shall appear, and any equipment furnished hereunder which shall fail to develop ratings, capacities or characteristics required by the contract documents, at any time within a period of one year after acceptance of the work or within such longer period thereafter as may be provided in the contract documents. Subcontractor shall also pay all costs necessary to remove, replace and/or repair any other work which may be damaged in removing, replacing or repairing any portion of the work.

Subcontractor shall execute such separate guarantees for the benefit of, and enforceable by, the Owner as may be required by the contract documents.

21. Subcontractor expressly waives any claim for damages on account of any delay, obstruction or hindrance regardless of the cause of such delay, obstruction or hindrance.

22. Subcontractor agrees to abide by and comply with all procedure rules and regulations with regard to non-discrimination issued or to be issued by Equal Employment Opportunity Commission or Executive Order, insofar as they may apply to the work covered by this agreement.

23. All negotiations and agreements prior to the date of this agreement not included herein are hereby voided.

24. This Subcontract shall bind the executors, administrators, successors and assigns of the parties hereto.

25. No provision contained in this Subcontract shall create or give to third parties (other than the Owner) any claim or right of action against the Owner or Subcontractor beyond such as may legally exist in the absence of such provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner:

By J. B. Hill, Jr.
J. B. Hill, Jr., County Clerk

Everett Dean
Everett Dean, County Judge

Gaddis Lindsey
Gaddis Lindsey, Commissioner 1

J. W. Meadows, Commissioner 2

David Lloyd
David Lloyd, Commissioner 3

Paul Davis
Paul Davis, Commissioner 4

AIR MASTERS TEST AND BALANCE ENGINEERS

Subcontractor

By Hennis Fisher PRESIDENT
Name Title