

PORT ST. LUCIE CITY COUNCIL

COUNCIL ITEM 7G
DATE 11/14/11

AGENDA ITEM REQUEST

Meeting Date: November 14, 2011

Public Hearing ___ Ordinance ___ Resolution ___ Motion X

Item: Contract # 20120014 - Waive the Bidding for Good Cause shown, Chapter 35.06: Authorize participation in the State of Florida State Term Contract with W.W. Grainger, Inc. for Maintenance, Repair and Operating (MRO) supplies. The contract effective dates are September 2, 2011 – February 28, 2014.

Recommended Action:

Waive the Bidding for Good Cause Shown, Chapter 35.06, Authorize participation in the State of Florida State Term Contract with W.W. Grainger, Inc. for Maintenance, Repair and Operating (MRO) supplies as approved budget allows for all city departments.

Exhibits: Department memo attached [] yes [X] no
Memo to Waive the Bidding
State of Florida State Term Contract with W.W. Granger, Inc.– Facilities (MRO) Maintenance, Repair and Operating supplies.

Summary Explanation/Background Information:

The State Purchasing Division recently issued a single award contract to W.W. Grainger, Inc. for-Maintenance, Repair and Operating (MRO) supplies. The State also developed a custom Florida-specific Market Basket, and negotiated additional aggressive pricing for high usage products specific to Florida customers. Authorizing use of the negotiated pricing is cost effective and in the best interest of the City.

Purchase (X) is a replacement Purchase (X) was budgeted

Annual Estimated Expenditure: As per approved budgets for all City Departments.

Director of OMB concurs with award: CL City Manager concurs with award: JAB

Submitted by: **Jesus Merejo**
Title: Director, Utility Systems Department

Date Submitted: November 8, 2011

RECEIVED
NOV 09 2011
City Manager's Office

MEMORANDUM

To: City Council

From: Jerry A. Bentratt, City Manager

Date: November 9, 2011

Re: **Waive Bidding Process**

The Utility Department is requesting that the Sealed Bid requirement be waived and approve contracting with W.W. Granger, Inc. for supplies needed to repair and maintain the various systems staff is responsible for. This a State of Florida Contract. Staff feels this will give the City the best possible pricing on the products needed in their daily operations.

Under chapter 35.06, it is recommended by this office, that the City Council waive the bidding process for use of existing contracts. Please advise if any further information is needed.

JAB:dkp

**State of Florida Maintenance, Repair and Operations (MRO)
Single Award Full Catalog Contract # 450-000-11-ACS**

**Facilities Maintenance • Safety • Electrical • Lighting & Ballasts • HVAC
Air Filters • Material Handling • Motors • Plumbing • Power Tools • Janitorial**

As the State of Florida provider of facility maintenance supplies, we offer you an extensive selection of products, value added services and technical expertise you can rely on. Your contract entitles you to special benefits and discounts, including:

Contract Benefits

- **Keepstock® Inventory Solutions** help reduce procurement costs. www.grainger.com/keepstock
- **900,000 items in stock for next-day delivery**
- **Special Orders Beyond the Catalog**
- **Over 50,000 Safety and Emergency Preparedness items**
www.grainger.com/emergency
- 24-hour emergency support
1-800-CALL-WWG
- \$1 Billion dollars inventory nationwide
- \$44 Million dollars Florida inventory in 24 Branches and Jacksonville Distribution Center
- Local sales representatives, local branches
- Prepaid freight on all shipments

State of Florida dedicated Grainger site
24/7 online ordering -
www.grainger.com/stateofflora

Contract Discounts (Off Grainger each price)

| <u>Category</u> | <u>Discount</u> |
|----------------------------------|------------------------|
| • Grainger Catalog | 13% Minimum |
| • Air Filters | 43% |
| • Batteries & Flashlights | 21% |
| • Cleaning | 33% |
| • Electrical & Equipment | 18% |
| • Fasteners | 28% |
| • Hand Tools | 28% |
| • HVAC | 18% |
| • Lamps, Ballasts & Fixtures | 48% |
| • Material Handling | 18% |
| • Motors & Accessories | 31% |
| • Outdoor Garden Supplies/Equip. | 15% |
| • Paint & Accessories | 15% |
| • Plumbing | 18% |
| • Pneumatic Tools | 15% |
| • Power Tools & Accessories | 23% |
| • Safety | 23% |
| • Security | 23% |
| • Welding & Soldering | 18% |

Contract # 450-000-11-ACS Effective Dates

September 2, 2011 - February 28, 2014

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE (WSCA)
State of Nevada Contract No. 1862: Facilities MRO

ALTERNATE CONTRACT SOURCE NO. 450-000-11-ACS (WSCA No. 1862 - Facilities
MRO - W.W. Grainger, Inc.)

WHEREAS, The State of Florida (the "State") Department of Management Services (the "Department") is authorized by Section 287.042(16) F.S. to evaluate contracts let by the Federal Government, another state, or a political subdivision and, when determined in writing to be cost effective and in the best interest of the State, to enter into agreements authorizing agencies (as defined by s. 287.012(1) F.S.) to make purchases under such contracts, and;

WHEREAS, to Section 287.056, F.S. agencies and eligible users (as that phrase is defined in Rule 60A-1.005, F.A.C.) may purchase commodities and contractual services from purchasing agreements established by the Department, and;

WHEREAS, the Department has evaluated the Western States Contracting Alliance Contract No. 1862, Facilities MRO, awarded to W. W. Grainger, Inc. ("Contractor"), together with any amendments and exhibits thereto, (hereinafter the "Price Agreement"), and hereby acknowledges in writing that authorizing use of the Price Agreement is cost-effective and in the best interest of the State.

NOW THEREFORE, the Department enters this purchasing agreement for the purpose of authorizing and regulating the use of the Price Agreement by state agencies and other eligible users.

A. Scope

1. Through this purchasing agreement (hereinafter the "Participating Addendum") state agencies and other eligible users (as defined by Rule 60A-1.005, F.A.C.) (hereinafter referred to as "Eligible Users" or "OEUs") may make purchases from the Price Agreement. The terms and conditions contained in this Participating Addendum shall apply to all transactions between the Contractor and the Eligible User, and shall control in the event of any conflict with the Price Agreement.

2. The attached State Term Contract Commodities List contains State Contracts procured pursuant to Section 287.056(1), F.S. and other contracts entered into such as RESPECT, pursuant to Section 413.036, F.S., and PRIDE Enterprises, pursuant to Section 946.515, F.S. Agencies shall, and eligible users may, purchase commodities from the attached State Term Contract Commodities List.

B. Changes

1. This Participating Addendum shall become effective on the last date signed below and shall have a term that is coterminous with the Price Agreement, unless terminated earlier pursuant to the Price Agreement, this Participating Addendum, or Florida law. In addition to the rights contained in the Price Agreement, the Department reserves the

right to terminate this Participating Addendum, effective upon notice, for Contractor failure to comply with the provisions of this Participating Addendum, including but not limited to the transaction fee provisions of Paragraph B.3., and the provisions of Section 287.058(l)(a) through (f), F.S. as required by Paragraph B.5.

2. In order to procure products or services hereunder, Eligible Users shall issue purchase orders referencing "Alternate Contract Source No. 450-000-11-ACS (WSCA No. 1862 - W.W. Grainger)". Eligible Users are responsible for reviewing the terms and conditions of this Participating Addendum and the Price Agreement. Eligible Users must follow their applicable statutes, laws, rules, ordinances, codes, policies, and procedures in the purchase of goods or services under this Participating Addendum. Unless otherwise provided by Florida law, statute, rule, or this Participating Addendum, the Department will not implement any additional restrictions on any Eligible User to purchase off of this Participating Addendum. Neither the Department nor the Western States Contracting Alliance is a party to any purchase order authorized by or issued under this Participating Addendum.

3. In order to complete any transaction between the Eligible User and the Contractor, the Contractor must be registered in MyFloridaMarketPlace. Rule 60A-1.031, F.A.C., is hereby incorporated by reference.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(23), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to subsection 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The vendor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) are returned to the vendor through no fault, act, or omission of the vendor. Notwithstanding the foregoing, a Transaction Fee is nonrefundable when an item is rejected or returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the vendor in default. VENDORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

4. The following data must be reported electronically to the Department on a calendar quarterly basis using a Contract Sales Summary form supplied to the contractor by the Primary Contact shown in Paragraph C below. The electronic report shall include:

- Contractor's Name
- Reporting Period
- Total dollar value of purchases per quarter separated by State Agency and Eligible User totals
- Excel report itemizing each purchase for the period that includes columns for the following information: manufacturer's name, agency name, product number, item description, product group number (if applicable), unit of measure, quantity, manufacturer list price, percentage discount taken and final purchase price.

Failure to provide quarterly reports, including no sales, within thirty (30) calendar days following the end of each quarter, or annual EXCEL™ line item reports within thirty (30) calendar days, may result in the default proceeding and/or termination of this contract.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor, and supplied without prompting or notification by the Primary Contact. The Contractor will submit the completed Contract Sales Summary forms by email to the Primary Contact as stipulated. The Primary Contact shall distribute at the time of contract formation, in electronic format, the Contract Sales Summary form to be used by the Contractor.

The Contractor shall report to the Department the amount of spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this contract.

Transaction Fee Report: The Contractor is required to submit monthly Transaction Fee Reports in electronic format. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website (located at <http://dms.mylorida.com/mfhip>). Assistance is also available with the Transaction Fee Reporting System from the MyFloridaMarketPlace Customer Service Desk at feeprocessing@mvfloridamarketplace.com or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

5. WSCA Category Discounts and Florida Market Basket (FL MB): In consideration of the State issuing Contractor a single, full catalog, WSCA contract award and allowing the contracts on the State Term Commodities List to expire by their terms, with the exception of the PRIDE and RESPECT contracts, and in lieu of rebates and incentives offered as part of Contractor's WSCA contract, Contractor has agreed to apply an additional 3 percent discount to both the WSCA Categories (18) and all additional categories offered by Contractor. To the extent that the State issues any other companies a WSCA Contract 1862 award over the term of the WSCA contract, the State will waive the right to the additional 3% discount set forth in this section and the pricing will revert to the pricing as set forth in Contractor's WSCA Contract 1862. The Contractor shall provide a dedicated website link that provides access to FL MB items. The FL MB will consist of commodities with high volume purchases and high dollar volume spend based on the 80/20 rule (80% of the contract spend comes from 20% of the products) and to include OEU spend. On a quarterly basis, sales reports shall be reviewed to determine high volume purchased items. Items determined by the Department to be high volume purchases shall be added to the FL MB and competitively priced at an amount agreed upon by amendment and signed by both parties. Low volume purchased items may be removed from the FL MB based on approval of the Contract Administrator. To the extent that the State or the Department determines to rebid the commodity contracts listed on the State Term Contract Commodity List after they expire by their terms, the State will waive their right to the customized high usage State of Florida market basket for the items in that specific commodity contract being rebid.

6. Contractor and the Department shall work to develop a joint marketing strategy that shall communicate the benefits of the Price Agreement and this Participating Addendum to all State Agencies and OEUs. Contractor and Department shall conduct Quarterly Business Reviews to discuss contract performance, future goals, mutual objectives, non-compliant agency spend, among other issues or matters.

7. The provisions of Section 287.058(l)(a), (c), and (f), F.S. are hereby incorporated by reference. If the transaction involves contractual services, the provisions of Section 287.058(l)(b), (d), and (e), F.S. are also incorporated by reference.

8. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Contractor shall comply with Sections 11.062, F.S. and 216.347, F.S., prohibiting use of funds to lobby the Legislature, Judiciary, or state agencies.

9. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Contractor shall comply with Section 247 of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, disability, marital status, or veteran's status.

10. Payment shall be made in accordance with Section 215.422, F.S. Interest penalties for late payment are available subject to the provisions in Section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.

11. The exclusive venue of any legal or equitable action that arises out of or relates to this Participating Addendum shall be the appropriate State court in Leon County, Florida; in any such action Florida law shall apply and the Contractor waives any right to a jury trial that it may have.

12. The Department, at its sole discretion, may unilaterally amend the Primary Contact name and their contact information in Paragraph C and the Subcontractors information in Paragraph D of this Participating Addendum during the term of this Participating Addendum. Any amendment shall be contained in a separate document affixed to this Participating Addendum.

13. If an additional ordinance, rule, or other local governmental authority' requires additional contract language before an Eligible User can make a purchase from this Participating Addendum, in lieu of this Participating Addendum the Eligible User is responsible for signing a separate Participating Addendum with the Contractor.

14. Intellectual Property: The parties do not anticipate that any intellectual property will be developed as a result of this Participating Addendum. However, any intellectual property developed, at the request of the Department, as a result of this Participating Addendum will belong to and be the sole property of the state. This provision will survive the termination or expiration of the contract.

15. Preferred Price: In accordance with Chapter 2010-151, Laws of Florida, Section 48(2), the Contractor is required to submit, at least once during each year of the Contract, an Affidavit from an authorized representative of the Contractor attesting that the Contractor is in compliance with the following preferred pricing provision: Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

16. Termination for Convenience: The Department, by written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

17. Employment Eligibility Verification: Pursuant to the State of Florida, Office of the Governor, Executive Order Number 11-02 entered on January 4, 2011, Contractor will utilize the U.S. Department of Homeland Security's E-Verify system by December 31, 2011 to verify the employment eligibility of: (a) all persons employed during the term of the Agreement by the Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Agreement. Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by the Contractor to perform employment duties within Florida within 3 business days after the date of hire. Contractor must initiate verification of each person (including subcontractors) assigned by the Contractor to perform work pursuant to the Agreement within 90 calendar days after the date of execution of this contract or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.

18. Electronic Invoicing: At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.

19. In executing this agreement, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), F.S., Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.

C. Primary Contact

The primary contact for the Department is:

Greg Hill
Purchasing Analyst
4050 Esplanade Way
Tallahassee, FL 32399-0950
Phone: 850-922-1214, Fax: 850-414-6122
E-mail: Greg.Hill@dms.mvflorida.com

D. Subcontractors

The following subcontractor(s) are authorized to perform services: NONE.

This Participating Addendum and the Price Agreement set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Price Agreement shall not be added to or incorporated into this Participating Addendum or the Price Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Price Agreement shall prevail and govern in the case of any such inconsistent or additional terms. In addition, the terms of this Participating Addendum shall prevail and govern in the case of any terms and conditions that are inconsistent with, or contrary to the terms of the Price Agreement.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by the parties below.

State of Florida
Department of Management Services
Timothy Gibney
Chief Procurement Officer &
Director of State Purchasing

Approved as to form and Legality
by the Department General Counsel's Office

By _____ Date

Timothy Gibney 9/02/2011
Date

Contractor: WW. Grainger, Inc.

Signature

Rick Lopez
Print Name

Sr. Government Manager
Title

9/02/2011
Date

STATE TERM CONTRACT COMMODITIES LIST

All commodities available in Alternate Contract Source No. 450-000-11-ACS (WSCA No. 1862 - Facilities MRO - W.W. Grainger) may be purchased through this agreement. Political Subdivisions may utilize the full contract benefits under WSCA contract 1862. State agencies pursuant to Section 287.056, F.S. and other contracts entered into such as RESPECT pursuant to Section 413.036, F.S. and PRIDE Enterprises pursuant to Section 946.515, F.S shall utilize state procurement guidelines. Agencies shall purchase commodities from the following State Term Contract Commodities List.

| STATE TERM CONTRACT | CONTRACT class/group # |
|--|------------------------|
| Floor Maintenance Machines, Commercial | 365-001 |
| Furniture: Educational/Institutional | 420-420 |
| Furniture: Library | 420-590 |
| Furniture: Office and Files | 425-001 |
| Tools: Hand Held & Hand Held Power Tools | 445-001 |
| MRO: Lamps and A/C Filters | 450-000 |
| MRO: Electrical Equipment | 450-000 |
| Liners: Can, Plastic, Disposable | 485-060 |
| Office and Educational Consumables | 618-000 |
| Paper: Tissues and Towels | 640-002 |
| Construction, Industrial, Agricultural, & Lawn Equipment | 760-000 |
| PRIDE | See Contract |
| RESPECT | See Contract |