

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 2, 2009

SUBJECT: Contractor Selection - FY09 Guaranteed Energy Savings Contract

ATTACHMENTS: Yes

1. Excerpts from Johnson Controls' Statement of Qualifications
2. Johnson Controls' Project Development Agreement

SUMMARY OF REQUEST:

As a part of Strategic Plan 1.1F to Develop and Implement an Energy Policy and Plan, Engineering staff solicited qualified firms to perform the FY09 Guaranteed Energy Savings Contract (GESC). As detailed in the September 19, 2007 presentation to the Board of Commissioners, this contract will identify and construct improvements to our facilities that will generate energy savings which in turn will at a minimum pay for the improvements. Important to note, the selected contractor will verify and guarantee that the savings pay for the improvements or they will be required to pay for the difference. Also important to note, is that this process is regulated by the NC Local Government Commission.

In accordance with NC General Statutes, staff advertised a Request for Qualifications (RFQ). Staff also posted the RFQ on the County's website. Only firms vetted with the State Energy Office were eligible to submit qualifications. The RFQ's were received by November 17, 2008 and Johnson Controls was the only firm having submitted qualifications.

A detailed review of the Johnson Controls was conducted by staff based on the criteria established within the RFQ. While Johnson Controls was the only submitting firm, their qualifications represent a firm highly qualified to successfully perform the contract. In addition, Johnson Controls is currently and successfully contracted with Henderson County for maintenance contracts. The tentative investigation by Johnson Controls suggests that there is over \$3,500,000 in energy savings available over the next 15 years. The cost of the improvements to get these savings is just over \$2,200,000. Also, considering the interest expense, the net savings to the County is estimated at over \$500,000 over the 15 year project. For reference, the County's energy budget is approximately \$500,000 for electricity / gas and \$800,000 for gasoline / diesel. The executive summary and table of contents from the Statement of Qualifications are attached and a complete copy is available from the County Engineer. Also, the Environmental Advisory Committee reviewed the SOQ and during its January 8, 2009 meeting voted unanimously to recommend selection of Johnson Controls.

Upon approval of Johnson Controls as the most qualified contractor, staff will negotiate a Contract and present it to the Board at a future meeting. At the request of Johnson Controls and with approval of the Board, the County Engineer will execute the attached Project Development Agreement. This Agreement represents both organizations commitment to the GESC. Also, it represents the County's willingness to compensate Johnson Controls for the extensive efforts in developing a Contract should the County arbitrarily discontinue its commitment.

BOARD ACTION REQUESTED:

Authorize the selection of Johnson Controls as the most qualified contractor to conduct the FY09 Guaranteed Energy Saving Contract and authorize the County Engineer to execute the Project Development Agreement.

Suggested Motion:

I move that the Board authorize the selection of Johnson Controls as the most qualified contractor to conduct the FY09 Guaranteed Energy Savings Contract, authorize the County Engineer to execute the Project Development Agreement, and direct staff to negotiate a Contract for the Board's approval.

B. EXECUTIVE SUMMARY

Responses shall include an abstract on the information presented in the proposal and contractor's unique qualifications and services. Response must include a statement of guarantees and other actions taken to minimize County risk related to this project.

The entire Johnson Controls team is pleased to submit our response to provide a **superior** performance-based facility solution for Henderson County. We believe our solution will enhance staff comfort and safety, maximize the efficiencies and performance of the County's facilities, and provide significant financial value to Henderson County.

Based upon Johnson Controls' record of performance, demonstrated reliability and the sound financial guarantees we offer, Henderson County can be confident that a partnership with Johnson Controls will result in a financially sound, innovative technical solution that is outcome based.

By selecting Johnson Controls, Henderson County will receive systems, service and solutions that provide the **best value and greatest degree of confidence** that the results will be achieved.

Henderson County has already accomplished a tremendous amount of work in recognizing the need and areas to focus on to improve conservation of resources. In the Henderson County Government Resource Conservation Plan July 2008 Progress Report, the County listed vehicle fuel consumption, building energy consumption reduction, and behavioral modification as key areas of focus. Johnson Controls, Inc. has tried to incorporate most of the aspects of these goals into this RFP Response to work hand in hand with the County to achieve these goals and to help with a plan for the future. At the same time, we recognize the need to conserve the limited financial resources of the County and to work within a framework of not increasing the tax burden to the citizens of Henderson County.

With all the competing priorities for scarce capital funds, Henderson County has a tremendous opportunity to utilize all the tools of performance contracting to improve efficiency of facilities. Based on our experience and observations of Henderson County, we feel confident that the following benefits can be realized from a Johnson Controls performance contract:

- County-wide facility improvements that yield significant energy and operational savings.
- Utilization of new technology to reduce long-term operational expense.
- Working closely with locally operated businesses in Henderson County.
- Customized service and training that maximizes your work force productivity.
- Achievement of over \$3,900,000 million in energy and operational savings over 15 years.
- A performance guarantee that assures Henderson County that *planned* benefits becomes *actual* benefits.

When selected as your Performance Contract partner, we will work closely with your staff to formalize a solution to meet your desires and needs. We will work with you to move Henderson County facilities to Energy Star status where feasible.

"Johnson Controls] has been a solid business partner to the City of Charleston and is an organization that stands by its commitments with quality and integrity."

-Stephen A. Bedard
CFO, City of Charleston

Johnson Controls is a pioneer in utilizing performance contracting as a tool to improve the efficiency of customer facilities and infrastructure through cost savings that are guaranteed. Since the mid-1970s, Johnson Controls has entered



into more than 1,400 performance contracts. As evidence of our commitment to helping our clients, Johnson Controls holds over \$3 billion in performance-based contracts currently in force, representing approximately 800 projects around the country. In North Carolina, Johnson Controls has implemented approximately half of all performance contracts authorized under NCGS 143-64.17. Included in this list is Cumberland County Government, located in Fayetteville as well as numerous school systems, colleges and municipalities.

The bottom-line for Henderson County is to do everything possible to increase efficiency and achieve additional dollars from operations without the need for tax increases or competing for limited capital dollars in the County's budget.

It is critical for the County to have confidence not only in the ability of its Selected Partner to provide the technical and consulting expertise to deliver on its promises over the contract period, but also to have the financial strength to back up its guarantee. Johnson Controls is not only the market leader in performance contracting including pioneering utility performance contracting in the United States, but also has over 120 years in the facilities business and over 30 years in the performance contracting business. We will remain a vital part of the North Carolina marketplace for many years to come. Our **value** is manifested in having the best expertise, innovation, financial strength, and long term dependability. By choosing Johnson Controls, you can have the confidence that your guaranteed project outcomes will be realized throughout the contract term. We would be honored to be your business partner in this endeavor.

The overall Self
Funding project we
propose provides:

- **\$2,233,268** in technology improvements, and building upgrades.
- Energy savings over 15 years of **\$3,570,383**
- New mechanical, control and lighting equipment.
- Utilization of Solar and LED lighting.
- Yearly Training.

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ATTACHMENTS

- A: Johnson Controls Team Resumes
- B: Sample Contract
- C: JCI 'Fact Sheet'
- D: Annual Report



Performance Contracting Project Development Agreement Between

Henderson County
1 Historic Courthouse Square
Hendersonville, NC 28792

AND

Johnson Controls, Inc.
633-104 Hutton Street
Raleigh, NC 27606

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls, Inc. (JCI) and the Henderson County to develop a Performance Contract. This agreement will provide the basis of the scope of the PDA, the obligations of both parties, the financial metrics to be met and intended outcomes and timeline. Johnson Controls, Inc. (JCI) and the Henderson County agree as follows:

1. Evaluation Study

JCI agrees to undertake a detailed evaluation study of potential cost reducing strategies, including operational efficiencies, and equipment efficiency improvement strategies to Henderson County facilities and infrastructures. The County agrees to provide its complete cooperation in the conduct and completion of project development. JCI will provide to the County a written Contract which will include recommendations regarding the following Facility Improvement Measures (FIM):

Preliminary Facility Improvement Measure Summary Table																							
	Facility Improvement Measures	Administration	911	Human Resources	Courthouse	Edneyville Library	Main Library	Garage & Rescue Squad	EMS Main	EMS Garage	Human Services	Sheriff Administration	Day Reporting	Sheriff Evidence Bldg	Spectrum Youth	Animal Shelter	Cooperative Extension	Maintenance Shop & Offices	Historic Courthouse	Jackson Park Office	Stoney Mtn. Activity Center	Travel & Tourism	Detention Center
1	Lighting System Improvements																						
2	Water Conservation Measures																						
3	Domestic Hot Water System Upgrades																						
5	HVAC Equipment Replacement & Upgrades																						
6	Controls Upgrades																						
7	Electric Hand Dryers to Eliminate Paper Towel Use																						
8	Waste Management and Trash Compactors																						
9	Telecommunication And Information Technology																						
11	Utility Rate Analysis and Supply Side Measures																						
12	Personal Computer Energy Management																						
13	High Efficiency Transformers																						
14	Vending Machines Energy Management Controls																						
15	Building Envelope Improvements																						
17	Solar PV and Solar Thermal																						
18	Solar Daylight Harvesting Automatic Controls																						
21	Solar Golf Carts																						
22	Alternative Fuel																						
		<div><div></div> = Proposed FIM recommended for implementation</div> <div><div></div> = Optional FIM recommended for consideration</div> <div><div></div> = FIM considered, aplicability to be determined</div> <div><div></div> = FIM not applicable to this site</div>																					

At a minimum, the contract will include:

- A list of the specific improvements and operational efficiency measures that JCI proposes to install.
- A complete description of the operating and maintenance procedures that JCI believes can reduce operating costs of the system.
- A projection of the operating costs that will be saved.
- An estimate of the improved system accuracy and resulting increased billable usage projections resulting from the equipment and procedures recommended.
- A detailed project implementation schedule.
- Explanation of measurement and verification procedures, jointly developed by JCI and the County, used to determine billable usage increase associated with the written performance assurance
- A comprehensive plan for the ongoing support services, education and training for staff and consumers.
- Cost and description of ongoing services provided by JCI and jointly developed with the County to maintain equipment and systems installed by JCI.
- Implementation costs.
- Financial impact projection.

2. Records and Data

During the evaluation study, the County will furnish to JCI upon its request, accurate and complete data concerning current costs, budgets, facilities requirements, future projected loads, facility operating requirements, collective bargaining agreements, *et cetera*. JCI will provide a separate document outlining the required information and the County shall make every effort to provide that information within five days of request.

3. Preparation of Performance Contracting Project Agreement

Within thirty (30) days after the submission to the County of the contract described under paragraph 1 of this Agreement, JCI will prepare and submit to the County a Performance Contracting Project Agreement to implement the improvements and operational efficiency measures, procedures, and services identified in the contract that could reduce the County's overall operating expense and improve operating conditions in the system. This Performance Contracting Project Agreement shall be prepared on standard JCI contract forms, copies of which will be made available to the County. The Performance Contracting Project Agreement shall provide a written savings guarantee in accordance with the enabling legislation.

4. Price and Payment Terms

The County agrees to pay to JCI the sum of \$85,000 within sixty (60) days after the County has received the documentation described under paragraph 1 of this Agreement. However, the County will have no obligation to pay this amount if any of the conditions listed below are met:

- A. JCI and the County agree to enter into the implementation Agreement as outlined in Section 3 within sixty (60) days after the County has received the documentation described under paragraph 1 of this Agreement. The costs for the Study will be transferred to the total cost of the implementation Contract and shall be subject to the payment terms outlined in the Contract.
- B. The project fails to meet the financial impact described in Section 1 or meet the requirements outlined in the applicable enabling legislation.
- C. The project benefits do not offset the cost of the project with a payback period of 15 years or less. Project benefits shall include, but not be limited to utility cost avoidance, negotiated utility rate reductions, operating and maintenance cost avoidance, and potential utility measurement accuracy increases.

5. Implementation Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others under their direction to work diligently toward meeting the following timeline:

Commence detailed evaluation study	1/27/2009
Complete detailed evaluation study and present to County	04/2009
Finalize performance contract with County	05/04/2009

County approves performance contract with JCI	5/4/2009* - based on LGC
Commence implementation of performance contract	TBD

*Approval by County will be contingent upon LGC approval

These timeframes are preliminary and may be modified by subsequent work plans approved by the parties.

6. Indemnity

JCI and the County agree that JCI shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of JCI. Both JCI and the County agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents. Neither JCI nor the County will be responsible to the other for any special, indirect, or consequential damages.

7. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine (9) months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

8. Confidentiality

This agreement creates a confidential relationship between JCI and the Henderson County. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

JCI and the Henderson County understand that this is a confidential project and agree to keep and maintain confidentiality regarding its undertaking of this project. JCI shall coordinate its services only through designated Henderson County representatives and shall provide information regarding this project to only those persons approved by the Henderson County. JCI will be notified in writing of any changes regarding the designated Henderson County representative(s).

9. Miscellaneous Provisions

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between JCI and the County and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the County. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

JOHNSON CONTROLS, INC.	HENDERSON COUNTY
By	By
Signature	Signature
Title	Title
Date	Date