
MEMO

APPROVED
4/3/2023



DATE: March 29, 2023
FROM: Matney M. Ellis
Procurement Director
TO: Board of County Commissioners
SUBJECT: Agreement – Schneider Electric

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners on behalf of the Tulsa County Building Operations and Schneider Electric for a variety of services to assist Tulsa County reduce energy and operating cost at the Tulsa County Courthouse through March 31, 2024 for a fee of \$18,101.00 as further described in the attached.

Respectfully submitted for your approval and execution.

MME / jdf

SUBMITTED FOR: The April 3, 2023 BOCC meeting agenda.

CMF# 20230466

APPROVED
4/3/2023

2023

Tuesday, Mar 14

Service Agreement

Tulsa County Courthouse

CMF# 20230466

Client Services

Schneider Electric aims to be your preferred advisor for all building-related opportunities and to drive lifelong value through a superior energy services relationship.

We offer a variety of services to meet your current and future needs.

Contact Your Performance Manager for More Information

Life Is On



Service Agreement Details

Schneider Electric has assembled a specialized team to provide a variety of services to assist you in reducing your energy and operating costs, while maintaining the highest levels of occupant comfort, safety and productivity. This service agreement will be effective from April 1, 2023 to March 31, 2024 and includes the following services:

24/7 Remote Energy Management Support

Schneider Electric will provide 75 hours of remote energy management support to Tulsa County Courthouse. This time can be used for any of the following activities including scheduling, system adjustments, on-demand remote energy management system training or remote technical support. Assistance with technical questions or issues can be provided through the PASS Support Line, which allows Tulsa County Courthouse to access a very high level of technical support very quickly. While troubleshooting technical concerns is critical to day to day operation, Schneider Electric also provides support as a trusted resource for dealing with energy concerns, sequence of operations modifications, and reviewing of possible building modifications. Having access to this level of expertise allows Tulsa County Courthouse to make informed decisions and minimize the common pitfalls encountered by facilities groups.

During normal business hours (7am-6pm, M-F, CST), the PASS Line is typically manned and answered in person. After hours, and at times when call volumes prohibit answering in person, messages left on the PASS Line typically receive a response within four hours. The enclosed PASS Line support pricing is based on support of existing Schneider Electric Energy Management Systems at the time of this contract.

On-Site Support

Schneider Electric's on-site presence will consist of 4 site visits per year, each averaging 8 hours per visit. A site visit can be scheduled at the request of Tulsa County Courthouse and can encompass a variety of services provided by Schneider Electric including but not limited to system troubleshooting, energy consulting, customer training, or full building efficiency analyses. Each site visit will be documented in a report indicating the findings, the steps taken towards any issue resolutions, and outlining a plan for further improvement. Site visits are critical for ensuring the complete reliability and efficiency of your energy management system as they can provide solutions not possible remotely, while also providing an additional learning platform for the site personnel. The length of each site visit may vary depending upon the needs of that particular visit. Schneider Electric and Tulsa County Courthouse will work to schedule a mutually acceptable date for each visit.

Database Protection

In order to provide Tulsa County Courthouse with peace of mind, Schneider Electric will make semi-annual system database backups. These backup sets will be stored both locally and on off-site Schneider Electric servers. This service ensures limited downtime for Tulsa County Courthouse in the event of a critical failure of the energy management system database. Should a system restore be required, the database will be restored from the most recent backup.

Service Agreement Details

Special Service Pricing

Tulsa County Courthouse will receive reduced rate pricing for on-site service. Any on-site service beyond the included on-site support will be billed at an hourly rate discounted 15% from the current Schneider Electric Energy & Sustainability Services hourly service rates.

Additionally, Tulsa County Courthouse will receive a discounted mileage rate and preferential parts pricing available only to Schneider Electric - Energy & Sustainability Services contract holders. Note - This applies to service and support provided by Schneider Electric - Energy & Sustainability Services only; other branches/contractors may not honor this Special Pricing. This is subject to State of Oklahoma Title 61 spending limitations.

Remote Project Management

We at Schneider Electric believe in the utmost transparency in the services we are offering. All of the services listed above are delivered with excellence thanks to coordination efforts that take place within our office. Project management is not necessarily a portion of this service agreement that will be apparent but it is absolutely critical to the effectiveness and timeliness of the solutions we provide.

Service Agreement Acceptance

This offer for a Service/Support Agreement (parts not included) is valid for a period not to exceed 90 days. Acceptance of this offer does not automatically cancel any existing contracts between Tulsa County Courthouse and Schneider Electric Energy Solutions. ~~This agreement will automatically renew annually.~~ Either Tulsa County Courthouse or Schneider Electric can cancel this contract at any time prior to renewal or within 30 days after the renewal date.

The total amount of this service agreement: \$18,101

We would appreciate your signature in the space provided below as your acceptance of this agreement.

Proposal Offered By:

Shawn Davies

Date:

March 14, 2023

APPROVED AS TO FORM/ LEGALITY
Andrew Mihelich
ASSISTANT DISTRICT ATTORNEY
Andrew C. Mihelich

APPROVED
By Andrew Mihelich at 9:17 am, Mar 29, 2023

Customer Signature:

Kelly Dunkerley

Name in Print: *Kelly Dunkerley*
Attest: _____

Kelly Dunkerley

Title:

Chairman

Date:

4/3/2023

Schneider Electric Signature:

Shawn Davies

Name in Print: _____

Shawn Davies

Title:

Performance Assurance Consultant

Date:

03/24/2023



Service Request Pricing Details

In addition to preferred pricing on parts and materials, customers who have an active contract with Performance Assurance Support Services enjoy reduced labor rates. Labor rates vary based on whether service occurs during regular hours, overtime hours, or weekends and holidays. Regular working hours are considered to be between 7 AM and 6 PM, Monday through Friday. Non-warranty service expenses are as follows:

In Contract Labor Pricing Details

	Regular Hours	Overtime Hours	Weekend/Holiday
Technician	\$160	\$240	\$320
Programmer/Sequence Modification	\$190	\$285	\$380
Project Manager/Energy Auditor	\$225	\$338	\$450

Out of Contract Contract Labor Pricing Details

	Regular Hours	Overtime Hours	Weekend/Holiday
Technician	\$188	\$282	\$376
Programmer/Sequence Modification	\$224	\$336	\$448
Project Manager/Energy Auditor	\$265	\$398	\$530

Travel Pricing Details

Travel to the Site	Airfare + Car Rental	OR	\$0.85 per Mile
Cost Per Night Out of Town			\$185 per Night

Minimum Part and Labor Charges

There is a \$300 minimum on all part orders. There is a 3 hour minimum labor charge for on-site service occurring during normal working hours and a 4 hour minimum for on-site service occurring outside of regular business hours. There is a 2 hour minimum labor charge for phone or remote support service occurring during regular working hours and a 3 hour minimum outside of regular working hours.

Travel Time Charges

Travel time to the site is included in the labor charges for service. This is the actual time required for roundtrip travel to the site from the Schneider Electric office during regular hours.

Project Team Contact Information

Performance Manager

The Performance Manager is your energy management partner to ensure the projects success and to assist you with achieving your energy savings and performance objectives. They consistently evaluate the projects performance and communicate opportunities for improvement. This is your primary contact for questions or concerns related to the project's performance or if you are interested in additional services.

Shawn Davies

Email: Shawn.Davies@SE.com

Phone: 918-200-4194

Project Support

In order to achieve sustained performance, it is critical that you and your staff have a path for quick resolution of issues and support. Client Services has designated personnel experienced in highly responsive support of the operations and maintenance of the building automation systems. For critical after-hours issues, please leave a message and your phone call will be returned in less than 4 hours.

Support Line

Email: PASS.Support@SE.com

Phone: 1 (800) 274-5551

Hours: Monday - Friday, 7 am - 6 pm Central

Client Services Team Leader

Ryan Born

Email: ryan.born@se.com

Phone: 610-621-9570

Terms and Conditions of Sale

This quotation and any exhibits and attachments hereto (collectively, "Agreement") and any information contained herein, is the property of Schneider Electric Buildings Americas Inc. ("Seller") and shall constitute proprietary and confidential information unless given to a public entity and required by law to be public information. The party to whom this quotation is addressed ("Buyer") acknowledges the confidential nature of this Agreement and agrees to take all commercially reasonable and necessary precautions to ensure the confidential treatment of this Agreement and all information contained herein. ~~This Agreement will not be used, copied, reproduced, disclosed or otherwise disseminated or made available, directly or indirectly, to any third party for any purpose whatsoever without the prior written consent of Seller.~~ The parties agree to be bound by the following terms and conditions.

1 Quotations and Acceptance. The quotation is based solely on the bid documents, which consist of the project drawings, specifications and/or instructions of the Buyer only modified by written agreement or Seller objection. Significant deviations between the actual conditions and circumstances of the work and those specified in the bid documents shall be cause for an adjustment in work scope, price and time allowed for performance. Written quotations shall be valid for no more than thirty (30) days from the date of issue, unless specifically stated otherwise herein. Buyer may accept the quotation by signing and returning a copy to Seller or by returning ~~Buyer's own written instrument or order expressly acknowledging the quotation and terms set forth herein, provided, however, Seller hereby gives notice of its objection to any different or additional terms or conditions contained or referenced in Buyer's order, which will be of no force or effect except as may be expressly agreed to by Seller in writing. It is the intent of the parties that these Terms and Conditions of Sale shall govern the sale of goods delivered and services performed. Upon acceptance, this Agreement constitutes the entire understanding between the parties respecting the goods or services delineated herein and supersedes all prior oral or written understandings or representations relating to such goods or services. This Agreement may not be discharged, extended, amended or modified in any way except by a written instrument signed by a duly authorized representative of each party.~~ Seller assumes that the Subcontract Agreement offered will contain terms that are substantively similar to the AIA provisions that are in accordance with the provisions of the prime contract, including any supplements. Upon award, Seller assumes that contract provisions will be reviewed and negotiated in good faith to reach a mutual acceptance of both parties.

2 Payment. Absent a contrary provision herein, Buyer will pay Seller monthly progress payments on a net thirty (30) days basis from date of invoice for materials delivered (or stored at an off-site storage facility) and services performed, less any retained reserve which will be mutually agreed upon in writing by the parties. The aggregate amount of any such retained reserves shall be paid by Buyer to Seller within thirty (30) days after the date of substantial completion. ~~If Seller provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date.~~ All invoices due and payable to Seller, less any applicable retained reserve, shall accrue interest at a compounded per annum rate not to exceed 1½% per month (18% per annum) or the maximum rate permitted by law. Acceptance and endorsement by Seller of an instrument for less than the full amount which Seller claims to be due shall not be deemed to be an admission of payment in full and any conditions to the contrary which are noted on such an instrument shall not be binding on Seller. If Buyer does not pay Seller, through no fault of Seller, within seven (7) days from the time payment was due, Seller may, without prejudice to any other remedy it may have, upon seven (7) additional days' written notice to Buyer, stop its work until payment of the amount owing has been received and the contract sum shall be equitably adjusted for reasonable costs of shutdown, delay and startup or in the alternative Seller may terminate this contract for material breach and all monies due Seller for services performed and materials delivered shall be paid upon demand. Seller shall be entitled to recover from Buyer all costs for collection, including reasonable attorneys' and professionals' fees. To the extent payments are received and as required by law, and upon Buyer's request, Seller will furnish mechanics lien waivers as the work progresses.

Seller reserves a security interest in any goods sold to the extent of the invoiced amount to secure payment of Buyer's obligation. In event of payment default, Seller may repossess such goods and a copy of the invoice may be filed with appropriate authorities as a financing statement to event or perfect Seller's security interest in the goods. At Seller's request, Buyer will execute any necessary instrument to perfect Seller's security interest.

Terms and Conditions of Sale

3 Price and Taxes. The price for the goods and services hereunder are those shown on the face of this Agreement. The price of this Agreement does not include sales, use, excise, duties or other similar taxes, unless otherwise expressly provided herein. Any taxes (other than taxes due on Seller's net income) that are payable hereunder shall be the responsibility of Buyer. If applicable, Buyer shall provide Seller a copy of any appropriate tax exemption certificate for the state(s) into which the goods are to be shipped.

4 Changes and Claims. All materials and labor furnished hereunder shall be in accordance with shop drawings submitted by Seller and approved by Buyer. Any changes in the work as set forth in approved shop drawings, or from the scope of work as described herein, will require a written change order submitted to Seller by Buyer. An equitable adjustment will be made in the contract price or delivery dates or both, and this Agreement will be modified accordingly in writing. The cost or credit to Buyer for performance of such change order shall be determined by mutual written agreement prior to the commencement of any work under such change order. Buyer shall notify Seller promptly in writing of any circumstances arising from the performance of the work herein described which reasonably may be anticipated to result in a claim or back charge to Seller. Upon Seller's receipt of such notification, Seller shall have five (5) working days in which to remedy such circumstances and to avoid the imposition of such claim or back charge. Seller will not be liable for any claim or back charge where Seller has not been notified in the manner as set forth above.

5 Access and Overtime. This Agreement is based upon the use of straight time labor only during regular working hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Seller's holidays). If Buyer requests Seller to perform any work outside of regular working hours, overtime and other additional expense occasioned thereby will be charged to and paid by Buyer. If Seller's work is to be performed on the project site, Buyer will afford unrestricted access to Seller and its employees and agents to all work areas.

6 Damage or Loss to Equipment. In the case of equipment not to be installed by or under supervision of Seller, Seller shall not be liable for damage to or loss of equipment after delivery of such equipment to the point of shipment. In the case of equipment to be installed by or under supervision of Seller, Seller shall not be liable for damage or loss after delivery by the carrier to the site of installation; ~~if thereafter, pending installation or completion of installation or full performance by Seller, any such equipment is damaged or destroyed by any cause whatsoever, other than by the fault of Seller, Buyer agrees to promptly pay or reimburse Seller an amount equal to the damage or loss which Seller incurs as a result thereof, in addition to or apart from, any and all other sums due or to become due hereunder.~~

7 Delays. Buyer shall prepare all work areas so as to be acceptable for Seller's work required hereunder. Buyer acknowledges that the contract sum is based upon Seller being able to perform the work in an orderly and sequential manner, as Seller so determines. If Seller's performance is delayed, interfered with, suspended, or otherwise interrupted, in whole or in part, by Buyer, other contractors on the project site, or by any other third party or by any act within the power and/or duty of Buyer to control, then Buyer agrees that it will be liable to Seller for all increased costs and damages which Seller incurs as a result thereof. Furthermore, if Seller is delayed at any time in the progress of the work by any act or neglect of Buyer, or by any separate contractor employed by Buyer, or by changes ordered in the work or by labor disputes, fire, delay in transportation, adverse weather conditions, casualties, or any other causes beyond Seller's control, then the time for completion of the work shall be extended for a period equal to the time lost by reason of such delay.

DISCLAIMER: Buyer acknowledges that the prevailing COVID-19 epidemic/pandemic and the evolving situation surrounding the same may trigger stoppages, hindrances and/or delays in Schneider's (or its subcontractors' or suppliers') ability or capacity to perform the contracted work and/or to produce, deliver, install or service any applicable products, irrespective of whether such stoppages, hindrances and/or delays are due to measures imposed by authorities or deliberately implemented by Schneider (or its subcontractors or suppliers) as preventive or curative measures to avoid harmful contamination or exposure of Schneider's (or its subcontractors' or suppliers') employees. Buyer therefore recognizes that such circumstances shall be considered as a cause for excusable delay and shall not expose Schneider to contractual sanctions (including without limitation delay penalties, liquidated damages or other damages) or termination for default.

Terms and Conditions of Sale

8 **Warranty.** Seller warrants to Buyer that all tangible articles manufactured by Seller will be free of defects in workmanship and material and that the work performed will be of good quality and will conform to the requirements of the bid documents. If the article is installed by Seller, Seller's sole obligation under this warranty shall be to provide, without charge, parts and labor necessary to remedy defects which appear within twelve (12) months from the date of beneficial use or occupancy, as applicable. If Seller provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date. If article is not installed by Seller, the warranty period shall be within twelve (12) months of shipment of said article. Warranty claim must be made to Seller in writing within such twelve (12) month period. All transportation charges incurred in connection with the warranty for equipment not installed by Seller shall be borne by Buyer. Seller warrants that for equipment furnished and or installed, but not manufactured by Seller, Seller will extend the same warranty terms and conditions which Seller receives from the manufacturer of said equipment.

This warranty is the sole and exclusive warranty given with respect to any articles delivered or services performed by Seller. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty is subject to proper installation of the articles (if installation is not performed by Seller or authorized subcontractors of the Seller) and maintenance and storage of the articles in accordance with the specifications and directions supplied by Seller. This warranty does not apply to any defect, malfunction or failure caused by repairs made by other than or without the consent of Seller or the article has been subject to abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Seller's control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, freeze-ups, labor disputes, differences with workmen, riots, explosions, vandalism, or malicious mischief, nor to defective associated equipment or use of the articles with equipment for which they were not sold. All of Seller's obligations under this warranty will immediately terminate and be of no further force or effect if all or any part of the purchase price (including any installment payment) with respect to any article covered by this warranty is not paid to Seller when due. If cause of defect is found not to be Seller's responsibility, standard rates for repair or replacement and labor shall apply.

9 **Limitation of Liability.** In no event, except for instances of fraud, willful injury to persons or property, or other circumstances covered by 15 O.S. Sec 212, will Seller's total aggregate liability in warranty or contract exceed the contract price paid for the specific product or service that gives rise to the claim excluding third party claims for personal injury, death or property damage or as may be required by law. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10

Laws and Permits. Seller shall comply with all applicable federal, state, and local laws and regulation and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Buyer. This contract shall be interpreted and governed under and in accordance with the laws of the jurisdiction in which the goods are delivered or services are performed without regard to its choice of law provisions.

11

Disputes. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by good faith consultation and negotiation. If those attempts fail, either party shall provide written notice within thirty (30) days to the other to mutually agree on an arbitration process. If a process is not agreed upon within thirty (30) days, final and binding arbitration in accordance with the then current Construction Industry Arbitration Rules of the American Arbitration Association shall commence and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in the federal, state or municipal courts serving the county in which the project is located unless the parties mutually agree otherwise. The prevailing party shall recover all reasonable legal costs and attorney's fees incurred as a result, which shall be promptly paid by the non-prevailing party. Any dispute or demand for arbitration must be commenced within one (1) year after the cause of action has accrued. Nothing herein shall limit any rights Seller may have under construction mechanic or materialmen lien laws. Seller shall have the right to suspend affected services pending resolution of disputes.

Terms and Conditions of Sale

- 12 **Insurance.** The parties, unless self-insured, shall each maintain insurance coverage including without limitation, Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles, and Commercial General Liability covering public liability and property damage with limits generally required for its respective industry with not less than \$1,000,000 minimum coverage per occurrence. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the project and services are being performed. No credit will be given or premium paid by Seller for insurance afforded by others.
- 13 **Clean Up.** Seller agrees to keep the job site clean of debris arising out of its operations. Buyer shall not back charge Seller for any costs or expenses for clean up or otherwise without prior written notice and Seller's written consent.
- 14 **Severability.** The invalidity or unenforceability of any provision herein shall in no way affect the validity or enforceability of any other provision.