



Legislation Text

File #: 22-0662, Version: 1

Contract Request Template (Contracts; IGAs; Leases)

Date Submitted: 5-30-22

**Requesting Agency: General Services
Division:**

**Subject Matter Expert Name: Kami Johle
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Phone Number:**

Item Title & Description:

(Do not delete the following instructions)

*These appear on the Council meeting agenda. Initially, the requesting agency will enter a 2-3 sentence description. Upon bill filling, the City Attorney's Office should enter the title above the description (the title should be in **bold** font).*

*Both the title and description must be entered between the red "title" and "body" below. Do **not** at any time delete the red "title" or "body" markers from this template.*

A resolution approving a proposed Amendatory Agreement between the City and County of Denver and McKinstry Essention, LLC for services related to the purchase of energy conservation measure equipment for various City-owned buildings.

Amends the Energy Performance Agreement with McKinstry Essention, LLC to add one (1) year for a new end date of 12-31-2026 and to change the term and payment structure for the implementation of energy conservation measures at City buildings. No change to agreement amount (GENRL-202263189-02). The last regularly scheduled Council meeting within the 30-day review period is on 7-11-22. The Committee approved filing this item at its meeting on 6-7-22.

Affected Council District(s) or citywide? Citywide

Contract Control Number: GENRL-202263189-02

Vendor/Contractor Name (including any "DBA"): McKinstry Essention, LLC

Type and Scope of services to be performed:

This agreement is for services associated with the purchase energy conservation measure implementation equipment in 23 city buildings throughout the city.

Location (if applicable): Various City-owned buildings (1245 Champa, City and County Building, various CPD, various Fire Stations, various Safety Facilities, Denver Crime Lab, Lindsey-Flanigan Courthouse, Denver Animal Shelter, Rose Andom, Elections Building, etc.)

WBE/MBE/DBE goals that were applied, if applicable (construction, design, Airport concession contracts): 18%

Are WBE/MBE/DBE goals met (if applicable)?

Is the contract new/a renewal/extension or amendment? Amendment

Was this contractor selected by competitive process or sole source?

For New contracts

Term of initial contract:

Options for Renewal:

How many renewals (i.e. up to 2 renewals)?

Term of any renewals (i.e. 1 year each):

Cost of initial contract term:

Cost of any renewals:

Total contract value council is approving if all renewals exercised:

For Amendments/Renewals Extensions:

Is this a change to cost/pricing; length of term; terms unrelated to time or price (List all that apply)? Length and terms

If length changing

What was the length of the term of the original contract? 12-6-2021 through 12-31-2025

What is the length of the extension/renewal? 12 months

What is the revised total term of the contract? 12-6-2021 through 12-31-2026

If cost changing

What was the original value of the entire contract prior to this proposed change?

What is the value of the proposed change?

What is the new/revised total value including change?

If terms changing

Describe the change and the reason for it (i.e. compliance with state law, different way of doing business etc.)

This amendment will realign of the lease-equipment schedule with work occurring in the field; correct the date of completion of measurement and verification services to December 31, 2026; and correct two property physical addresses.



Executive Summary

Resolutions to amend 1) the Energy Performance Agreement with Ameresco, Inc. for the purpose of changing the scope of work for services related to the implementation of energy conservation measures at City buildings, 2) the Energy Performance Agreement with McKinstry Essention, LLC for the purpose of changing the term and payment structure for services related to the implementation of energy conservation measures at City buildings, and 3) the Energy Conservation Measure Equipment lease purchase agreement for the purpose of modifying the lease purchase agreement.

Background:

On December 13, 2021, the City and County of Denver executed Energy Performance Agreements for services related to the purchase of energy conservation measure implementation in 45 city buildings throughout the city. The energy conservation measures were awarded to two Energy Services Companies: Ameresco, Inc. and McKinstry Essention, LLC. Energy Performance Agreements are a strategy to reduce energy use in existing buildings per the Strategic Energy Plan for City and County of Denver Municipal Facilities 100% Renewable Electricity Goal. The strategy prioritizes large buildings with high energy-use intensity (EUI). Energy Conservation Measure recommendations were reviewed by the Denver Energy Office and building stakeholders, and a final list of Energy Conservation Measures for implementation was agreed upon by both parties. The equipment was purchased through a capital lease purchase agreement with JP Morgan Chase, payments for which will be made from utility savings. Additional funding to support the direct purchase of equipment and required professional services will be from the Climate Protection Fund and Annual Capital Improvement Program.

Proposed Amendments:

Ameresco: We are modifying the scope of work to the Ameresco Contract based on end-use customer feedback. The fabric pool cover and “live energy modeling” components of the scope of work have been removed and substituted with LED lighting replacements. These modifications to the scope of work are not expected to significantly change the expected energy savings. The cost reduction is \$367,279 with an add back of about \$260,359. This leaves a net cost reduction to the equipment under the lease agreement of \$101,997, and these funds will be applied directly to the lease agreement to balance that offset. The EPC non-equipment costs will be reduced by \$13,923 and applied to the Owner’s Contingency for unforeseen conditions and minor adjustments. Final costs related to the work outside the capital lease are to be determined.

Impacts: The reduced scope and cost necessitate revised exhibits/schedules to the Energy Performance Contract previously approved by City Council. The Lease Agreement will be impacted by modifying the Certificates of Acceptance. The Certificates of Acceptance (repayment schedule) will also be modified to accurately reflect actual acceptance of work in the field.

McKinstry: The original Lease Agreement draw schedule was based on progress payments, rather than specific equipment related to completed delivery and install of projects. The Lessor only authorizes payments made upon acceptance of completed projects. In this amendment, we are replacing the Lease Agreement draw schedule and making other minor, no-

cost corrections. This replacement draw schedule and added Certificates of Acceptance allow for the release of payments upon completion and acceptance of projects. There are other minor changes to the performance contract that include address corrections and extending the contract completion date to allow for completion of Measurement and Verification of savings portion of the work, as detailed below.

Term

- Amended to align with the 3-year post-construction measurement and verification process.
- Original: December 13, 2021 - December 31, 2025
- Amended: December 13, 2021 - December 31, 2026

Address Changes

- Police Academy Solar to 2155 N. Akron Way, Denver, CO 80238
- Police Traffic Operations Solar to 3381 Park Avenue West, Denver, CO 80216

Impacts: The schedule of values will be revised to replace the original, which will reflect whole, complete projects rather than payments based on partial completion. Other minor changes are not expected to have significant impacts. There are no changes in the scope of work, or contract value.

JPMorgan Chase - Lessor: Due to the amendments referenced above, the original Equipment delivery schedules for both Ameresco and McKinstry and the equipment list for Ameresco are no longer accurate.

Impacts: An administrative change to three lease purchase agreement exhibits lead by the adjustments to the ESCO contracts. There is no change to the cost of the lease and the \$101,997 delta due the change in scope of the Ameresco contract will be applied to the lease rental payments, in accordance with the lease purchase agreement.

For more details on the amendments, please see the accompanying Lease Purchase and Energy Performance Contract Resolution Requests.