

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. 2024-0590

FRANKLIN COUNTY RESOLUTION NO. 2024 - 223

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF RATIFYING THE PURCHASE AND INSTALLATION OF FIVE (5) HVAC UNITS FROM APOLLO SHEET METAL, INC., D/B/A APOLLO MECHANICAL CONTRACTORS FOR THE BENTON-FRANKLIN JUVENILE JUSTICE CENTER

WHEREAS, the Benton Franklin Juvenile Justice Center has had five (5) different HVAC units either stop working or in need of major repairs or replacement to continue to properly heat and cool the facility; and

WHEREAS, on August 13, 2024, pursuant to Benton County Procurement, Leasing & Contracting Policy, Section 1.6.1 and RCW 39.04.280(1)(c)(e) & 2(b) the Benton County Administrator declared an emergency relating Benton Franklin Juvenile Justice Center HVAC mechanical systems failure; and

WHEREAS, Purchase Agreement has been prepared and signed by our Deputy Prosecuting Attorney, Benton County Deputy Administrator, David Bond, Apollo Mechanical Contractors Representative, and by Rocky Mullen, Franklin County Commissioner on behalf of the County, to allow the purchase and installation of five (5) HVAC units in the amount of \$103,080, excluding WSST; NOW, THEREFORE

BE IT RESOLVED, that the Chairs or Chair Pro Tems of the Board of Benton and Franklin County Commissioners hereby are authorized to sign on behalf of their respective county, the Agreement between Benton County and Apollo Mechanical Contractors for a consideration amount not to exceed \$103,080, excluding WSST; and

DATED this 10th day of September 2024

BENTON COUNTY BOARD OF COMMISSIONERS

DocuSigned by:

Jerome Delvin

Chairman of the Board

Michael Alvarez Absent

Commissioner

DocuSigned by:

Will McKay

Commissioner

Constituting the Board of County Commissioners, Benton County, Washington

Attest: DocuSigned by:

Marilyn Flores

Clerk of the Board

DATED this 25 day of September 2024

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Rocky Mullen

Chairman of the Board

Chris Quillen

Commissioner

Steph

Commissioner

Constituting the Board of County Commissioners, Franklin County, Washington

Attest:

Emilia

Clerk of the Board

DECLARATION OF EMERGENCY

IN THE MATTER OF DECLARATION OF EMERGENCY IN BENTON COUNTY, WAIVING COMPETITIVE BIDDING REQUIREMENTS REGARDING SEVERE FAILURE OF MULTIPLE HVAC MECHANICAL SYSTEMS AT THE BENTON FRANKLIN JUVENILE JUSTICE CENTER

WHEREAS, the Benton Franklin Juvenile Justice Center has had five (5) different HVAC units either stop working or in need of major repairs or replacement to continue to properly heat and cool the facility; and

WHEREAS, the HVAC systems are vital to the facilities operation to hold Court proceedings, and housing of Juvenile offenders; and

WHEREAS, on August 13, 2024, pursuant to Benton County Procurement, Leasing & Contracting Policy, Section 1.6.1 and RCW 39.04.280(1)(c)(e) & 2(b) the County Administrator declared an emergency relating Benton Franklin Juvenile Justice Center HVAC mechanical systems failure; and

WHEREAS, the emergency declaration is needed to waive formal competitive bidding requirements and award all necessary contracts to address the emergency situation;

NOW THEREFORE, it is hereby declared:

1. A state of emergency is declared due to the severe failure of the five (5) HVAC Mechanical Systems at the Benton Franklin Juvenile Justice Center.
2. The failure of five HVAC units was unforeseen and present a real danger and threat to the operations of the Department. The Juvenile Justice Center houses and provides basic needs such as food and medical for individuals that may be sensitive to temperatures and medical conditions that are exacerbated by the unusually warm temperatures. The lack of conditioning of the space puts a strain on staff, visitors, detainees interrupting the proper performance of essential courtroom and Juvenile functions.
3. Pursuant to RCW 39.04.280(2)(b) the County Administrator or written Designee is Authorized to sign the Public Works Contract and any additional paperwork necessary to complete the installation and procurement of the new HVAC units pursuant to the Declaration of Emergency. The signed contract will be brought back to the Board after execution for ratification.

Dated this 13th day of August 2024.


Jerrod MacPherson, County Administrator

DECLARATION OF EMERGENCY

IN THE MATTER OF DECLARATION OF EMERGENCY IN FRANKLIN COUNTY, WAIVING COMPETITIVE BIDDING REQUIREMENTS REGARDING SEVERE FAILURE OF MULTIPLE HVAC MECHANICAL SYSTEMS AT THE BENTON FRANKLIN JUVENILE JUSTICE CENTER

WHEREAS, the Benton Franklin Juvenile Justice Center has had five (5) different HVAC units either stop working or in need of major repairs or replacement to continue to properly heat and cool the facility; and

WHEREAS, the HVAC systems are vital to the facilities operation to hold Court proceedings, and housing of Juvenile offenders; and

WHEREAS, on August 13, 2024, pursuant to Benton County Procurement, Leasing & Contracting Policy, Section 1.6.1 and RCW 39.04.280(1)(c)(e) & 2(b) the County Administrator declared an emergency relating Benton Franklin Juvenile Justice Center HVAC mechanical systems failure; and

WHEREAS, the emergency declaration is needed to waive formal competitive bidding requirements and award all necessary contracts to address the emergency situation;

NOW THEREFORE, it is hereby declared:

1. A state of emergency is declared due to the severe failure of the five (5) HVAC Mechanical Systems at the Benton Franklin Juvenile Justice Center.
2. The failure of five HVAC units was unforeseen and present a real danger and threat to the operations of the Department. The Juvenile Justice Center houses and provides basic needs such as food and medical for individuals that may be sensitive to temperatures and medical conditions that are exacerbated by the unusually warm temperatures. The lack of conditioning of the space puts a strain on staff, visitors, detainees interrupting the proper performance of essential courtroom and Juvenile functions.
3. Pursuant to RCW 39.04.280(2)(b) the County Administrator or written Designee is Authorized to sign the Public Works Contract and any additional paperwork necessary to complete the installation and procurement of the new HVAC units pursuant to the Declaration of Emergency. The signed contract will be brought back to the Board after execution for ratification.

Dated this 15 day of August 2024.


Eric B. Johnson, Interim County Administrator

**BENTON COUNTY
PUBLIC WORKS CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the state of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "**COUNTY**"), and **APOLLO SHEET METAL, INC. dba APOLLO MECHANICAL CONTRACTORS**, a corporation organized under the laws of the state of Washington with its principal offices at 1119 West Columbia Drive, Kennewick, WA 99336 (hereinafter "**CONTRACTOR**").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions and the following documents:

- a. Exhibit A -Proposal - dated August 8, 2024;
- b. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts.

2. DURATION OF CONTRACT

The term of this Contract shall begin on August 12, 2024, and shall expire on January 31, 2025. The **CONTRACTOR** shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

- a. The **CONTRACTOR** shall provide and install five (5) new HVAC Units at the Juvenile Detention Facility. A detailed description of the services to be performed by the **CONTRACTOR** is set forth in Exhibit A, "Proposal", which is attached hereto and incorporated herein by reference.
- b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, **CONTRACTOR** shall inform **COUNTY** of that fact and shall coordinate with **COUNTY** to complete the work in conjunction with the other contractor. In the event that the requested work requires, under state or local law, the issuance of a building or other permit, **CONTRACTOR** shall be

responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

- c. Upon completion of services, CONTRACTOR shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY's Contract Representative, or his or her designee, prior to the CONTRACTOR leaving the work site. c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- d. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- e. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- f. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name: David Bond
Address: 1119 W. Columbia Drive
Kennewick, WA 99336
Phone: (509) 586-1104
Email: david.bond@apollomech.com

b. For COUNTY:

Name: Robert Blain
Address: 7122 W. Okanogan Place, Bldg E#210
Kennewick, WA 99336

Phone: (509) 736-2704
Email: procurement@co.benton.wa.us

5. COMPENSATION

- a. For the services performed under this Contract, the CONTRACTOR shall be paid a fee of one-hundred three thousand and eighty dollars (\$103,080.00), excluding W.S.S.T., in accordance with Exhibit A, "Proposal", which is attached hereto and incorporated herein by reference.
- b. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov/> and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via <https://secureaccess.wa.gov/> and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with <https://secureaccess.wa.gov/>.
- c. The CONTRACTOR may invoice the COUNTY for filing fees paid to the Washington State Department of Labor and Industries for filing one Statement of Intent to Pay Prevailing Wages per year and one Affidavit of Wages Paid per site visit when billable work is performed.
- d. No payment shall be for any work performed by CONTRACTOR, except for work identified and set forth in this Contract.

6. INVOICING

- a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.
- b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work

contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov> and then forward a copy of the statement to the COUNTY's Contract Representative.

- c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) calendar days after receiving the invoice.
- d. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (i.e. that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) calendar days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4) (a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

8. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.
- b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.
- c. The CONTRACTOR'S obligations hereunder shall include, but

are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR or the CONTRACTOR'S employees, agents, or subcontractors. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR'S compensation, and have been mutually negotiated by the parties.

9. **INSURANCE**

The CONTRACTOR shall obtain and maintain continuously the following insurance:

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all state of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

- b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability

coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury, and property damage, which may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Injury
\$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR'S commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR must provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 8. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident
\$1,000,000 Policy Limit for Disease
\$1,000,000 Each Employee for Disease

- c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR

from claims that may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

d. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and appointed officers, officials, employees, and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.
2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.
4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are

completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

e. Verification of Coverage and Acceptability of Insurers:

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the state of Washington that have an A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) calendar days prior written notice to the COUNTY. Any insurance or self-

insurance maintained by the COUNTY or its elected and appointed officials, employees, or agents shall be excess of the CONTRACTOR'S insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.
3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY'S Contract Representative referenced in Section 4.
4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager at the following address: Benton County Risk Manager, 7122 W. Okanogan Pl., Ste. E330, Kennewick, WA 99336.

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. PROVIDED that the CONTRACTOR may elect, in lieu of the bonds, to allow the COUNTY to retain ten percent (10%) of the contract amount either for a period of thirty (30) calendar days after the date of final acceptance, or until all necessary releases from the Washington State Department of Revenue, the Washington State Department of Labor and Industries, and the Employment Security Department have been received and any liens filed under chapter 60.28 RCW have been settled, whichever is later. Proof of the performance and payment bonds, or written notification of the CONTRACTOR'S desire to elect the alternative to the bonds (described above), must be received by COUNTY within ten (10) calendar days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of

this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.
- d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required for the performance of work under this Contract by federal, state, or local law that is now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative or designee.

13. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the County upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

14. CHOICE OF LAW AND JURISDICTION

This Contract has been and shall be construed as having been made and delivered within the state of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the state of Washington, both as to its interpretation and performance.

15. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

16. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) calendar days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.
- b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines in its sole discretion that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) calendar days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically,

at a minimum, the prevailing wages set out in Exhibit B, which is attached hereto and incorporated herein by reference, shall be paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTY prior to subcontractor commencing any work on the project. This schedule of prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. DEBARMENT CERTIFICATION

The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any state or federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify the Contact designated as the representative to the County of this Contract if, during the term of this Contract, the Contractor becomes debarred. The County may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term of this Contract.

19. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, or the presence of any sensory, mental, or physical disability.

20. DISPUTES

Disputes over the CONTRACTOR's performance shall be promptly

addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

21. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

The CONTRACTOR shall perform the services under this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior written consent of the COUNTY.

22. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

23. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4 of this Contract. Notice may also be given by e-mail, using the e-mail addresses set forth in Section 4 of this Contract, with the original to follow by regular mail. Notice shall be deemed effective three (3) calendar days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

24. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the state of

Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

25. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR regarding the work performed under this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend any regularly scheduled purge schedule.

26. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

27. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, provisions for: indemnification; insurance; non-waiver; inspection of books and records; choice of law; compliance with laws; litigation hold;

and the Public Records Act.

28. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

29. LICENSED TO DO BUSINESS IN WASHINGTON STATE

The CONTRACTOR warrants, represents, and agrees that it is duly licensed to conduct business in the state of Washington as contemplated by this agreement. Should CONTRACTOR not be licensed to conduct business in the state of Washington, this agreement shall be null and void.

30. Signatures in Counterpart.

By signing below, the Parties consent to conduct this transaction by electronic means, and expressly agree that this Agreement can be signed in counterpart via original or electronic signature. The Parties further agree that a copy of the fully executed Agreement shall have the same force and effect as the original.

- This section was intentionally left blank -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective upon signature of both parties.

Date: 8/20/2024

Date: 8/28/2024

BENTON COUNTY

DocuSigned by:

Matt Rasmussen

63857762F1FA406

Matt Rasmussen, Benton County
Deputy Administrator

**APOLLO SHEET METAL, INC DBA
APOLLO MECHANICAL CONTRACTORS**

Signed by:

MITCH RITCHFORD

058251000305405

Signature

Approved as to Form:

Vice President

Title:

Signed by:

LeeAnn Holt

00A0908887BE478

LeeAnn Holt, Civil Deputy
Prosecuting Attorney

Dale Hollandsworth

PRINTED NAME

FRANKLIN COUNTY

Eric Johnson

Eric Johnson, Franklin
County Administrator

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective upon signature of both parties.

Date: 8/20/2024

Date: _____

BENTON COUNTY

**APOLLO SHEET METAL, INC DBA
APOLLO MECHANICAL CONTRACTORS**

DocuSigned by:

Matt Rasmussen

6046F70E1FA196
Matt Rasmussen, Benton County
Deputy Administrator

Signature

Approved as to Form:

Vice President

Title:

Signed by:

LeeAnn Holt

6046F70E1FA196
LeeAnn Holt, Civil Deputy
Prosecuting Attorney

Dale Hollandsworth

PRINTED NAME

FRANKLIN COUNTY

Rocky Mullen

ROCKY MULLEN
CHAIR OF COUNTY COMMISSIONERS

Exhibit A

Apollo

— MECHANICAL CONTRACTORS —

Facility Services

BENTON CO. JUV. JUSTICE CNTR*

HVAC IMPROVEMENTS

Proposed Project Agreement

Date:

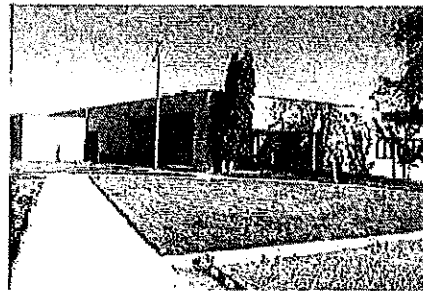
8/8/2024

Proposal Number:

FS08824

Prepared for:

BENTON CO. JUV. JUSTICE CNTR*
5606 W. CANAL PLACE STE 106
KENNEWICK, WA 99336



Prepared by:

David Bond

509-586-1104

david.bond@apollomech.com



MECHANICAL CONTRACTORS

PROJECT PROPOSAL

Company
Apollo Facility Services
1119 W. Columbia Dr.
Kennewick, wa 99336
Ph: 509-586-1104

Remit To
Apollo Mechanical
Contractors
PO Box 7287
Kennewick, WA 99336

Proposal Date: 8/8/2024
Proposal Number: FS08824

Bill To Identity
BENTON CO. JUV. JUSTICE CNTR*
5606 W. CANAL PLACE STE 106
KENNEWICK, WA 99336

Agreement Location
BENTON CO. JUV. JUSTICE CNTR*
5606 W. CANAL PLACE STE 106
KENNEWICK, WA 99336

OUR PROPOSAL INCLUDES:

- Remove WSHP 9 & 10 and replace with inverter HP & matching air handlers
Transition to existing duct work
Piping disconnect and cap
Materials
Electrical
Labor
Start-up
.....\$54,073.00

- Remove and replace Number 1,6 and 12 with new WSHP'S
Transition to existing duct work
Piping
Materials
Electrical
Labor
Start-up
.....\$ 49,007.00


WARRANTY: Our warranty on work performed is one (1) year, parts and labor.

TOTAL COST.....\$103,080.00



— MECHANICAL CONTRACTORS —

Contractor


Signature (Authorized Representative)

David Bond

Name (Print/ Type)

509-586-1104

Phone

8/8/2024

FS08824

Date

Proposal #

DocuSigned by:

Customer - Benton County


E865F702F1FA405...

Signature (Authorized Representative)

Matt Rasmussen

Name (Print/ Type)

Deputy County Administrator

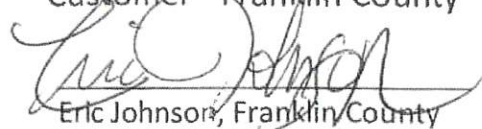
Title

8/20/2024

Date

PO#

Customer - Franklin County



Eric Johnson, Franklin County
Administrator

SEPTEMBER 25, 2024

Dated



MECHANICAL CONTRACTORS

Contractor


Signature (Authorized Representative)
David Bond
Name (Print/ Type)

509-586-1104
Phone

8/8/2024 FS08824
Date Proposal #


DocuSigned by:
Customer - Benton County

E85CF762F9FA405
Signature (Authorized Representative)

Matt Rasmussen
Name (Print/ Type)

Deputy County Administrator
Title

8/20/2024
Date PO#

Customer - Franklin County

ROCKY MULLEN
CHAIR OF BOARD OF COMMISSIONERS

8-26-2024
Dated

EXHIBIT B

State of Washington
Department of Labor & Industries
Prevailing Wage Section
PO Box 44540, Olympia, WA 98504-4540
360-902-5335

Public contract awarding agencies are required by RCW 39.12.030 to include a provision stating the required prevailing rate(s) of wage in the bid and contract specifications for public works. Historically, this has required inclusion of a list of such rates in the specifications. Labor & Industries looked at how to allow an additional option within the law and rule.

Bid specifications may provide the required prevailing wage rate information in this alternate format:

The Department of Labor & Industries prevailing wage rate website is <http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm>

The publication date to use is August 19, 2024.

The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Public Works Department, 102606 Wiser Parkway, Kennewick, WA Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Public Works Department will mail a hard copy of the wage rates upon request. We can be reached at (509)786-5611 or (509)736-3084 or by email at publicworks@co.benton.wa.us

Commissioners' Agenda Action Sheet



Meeting Date: September 10, 2024
Subject: Resolution to replace HVAC units at BFJJC
Presenter: N/A
Prepared By: Rosa Garcia, Senior Secretary
Reviewed By: Tim Markham
PA Review: **Approved: Yes** **Denied: No** **N/A: No**
(If denied, include reasoning)

Type of Agenda Item: Consent Agenda

Summary / Background Information

In August 2024 five (5) HVAC units at the Benton-Franklin Counties Juvenile Justice Center suffered major failure and are in need of repairs or replacement. The HVAC systems are vital to the facilities operation to hold Court proceedings, and housing of Juvenile offenders.

A Declaration of Emergency was approved by Benton and Franklin County Administrators to waive formal competitive bidding requirements and award all necessary contracts to address the emergency situation. Due to the need to expedite the replacement of HVAC units, the Juvenile Justice Center solicited a quotation from Apollo Sheet Metal, Inc., d/b/a Apollo Mechanical Contractors to replace and install five (5) HVAC units with new units in the amount of \$103,080, excluding W.S.S.T.

Fiscal Impact

Amount not to exceed \$103,080, excluding W.S.S.T.

Recommendation

Move to approve as part of the Consent Agenda.

Suggested Motion

Motion to approve signed Public Works Contract with Apollo Mechanical Contractors.

Signatures Required on Agreements/Contracts

Resolution