



MEMORANDUM

Baldwin Public Library

DATE: November 29, 2022

TO: Thomas M. Markus, City Manager

FROM: Rebekah Craft, Library Director

SUBJECT: RFP for Construction Management Firm for Phase 3: Front Entrance and Circulation Area Expansion and Renovation Project

INTRODUCTION:

Since 2016, the Baldwin Public Library has been executing a three-phase plan to make improvements to the Library building. After reviewing the three bids received on October 19, 2022 and interviewing each of the applicants, the Library Board recommends that the City Commission approve PCI Dailey to complete the construction management services for this project.

BACKGROUND:

Upon completion of design development drawings for the proposed Phase 3 expansion and renovation, the Library worked with Merritt Cieslak Design (MCD) to create an RFP for construction management services.

MCD recommends using a Construction Manager (CM) for the project construction to help keep project costs within the set budget, to find the best subcontractor for each task, and to benefit from the Construction Manager's expertise of the best construction methods to keep costs within the set budget.

In the selection process for the CM, the CM is given the project budget (a.k.a. the total amount not to exceed) and provides a fixed percentage fee for their services. This helps to guarantee that the project itself comes in at or below the budget set by the Owner. Actual costs are accumulated competitively and visibly, and when the project is complete, the Owner pays only those costs plus the construction manager's fee. This fee will not change if a project goes over the projected cost or finishes early, unless the CM receives prior authorization from the Owner. All financial aspects of the project are handled in an "open book" manner so that the team (including Owner, Architect, and Contractor (OCA)) are all aware of how the money is being spent and when.

After review by the City Attorney and approval by the Library Board and City Commission, I issued the RFP on the Michigan Inter-Governmental Trade Network (MITN) on September 20, 2022 for *Construction Management Services for The Expansion and Renovation of the Front Entrance and Circulation Area of the Baldwin Public Library* ([weblink to RFP](#)). Eight people attended the pre-bid meeting held on September 28, 2022. Three firms submitted bids for the project and each bid fell within the project budget:

<i>Company Name</i>	<i>Construction Management Fee (% of total construction cost)</i>	<i>Staffing</i>
Frank Rewold and Sons	3.40%	\$265,900
McCarthy & Smith	2.80%	\$185,000
PCI Dailey	2.50%	\$161,200

Special meetings were held on November 14 and November 21, 2022 to interview each firm that submitted a bid. During the meetings, each firm was given 60 minutes to respond to 14 pre-written questions from the Library Board.

At its regular meeting on November 21, 2022, the Library Board selected PCI Dailey as the most responsive and responsible bidder with the lowest price. PCI Dailey was the general contractor for the first two phases of the Library’s expansion and renovation projects. Phase 1 was completed on time and under budget. Phase 2 was completed under budget and PCI Dailey worked through Phase 2’s COVID-19 interruptions with professionalism. Below is the relevant excerpt from the draft minutes of the meeting:

Motion to approve the hiring of PCI Dailey for construction management services for the Front Entrance and Circulation Area of the Baldwin Public Library, to be paid out of account 977.0000 (Capital Outlays – Building Improvements). Payment will be based on the bid submittal from October 19, 2022, with a construction management fee of 2.5% of the Guaranteed Maximum Price, to be determined once all subcontract bids are received.

1st Mark

2nd Rock

Yeas: Mark, Rock, Rumble, Suhay, and Wheeler.

Nays: None.

Absent and excused: Pisano.

The motion was approved unanimously.

LEGAL REVIEW:

The City Attorney reviewed the RFP and has no concerns as to the form and content. The proposal from PCI Dailey was regular in every respect and no interlineations, excisions, or special conditions were made or included in the RFP format by the respondent.

FISCAL IMPACT:

The construction management fees for the Phase 3 project have been included in the Phase 3 Expansion and Renovation budget. The construction management fees will be paid using the Library’s existing voter-approved millage. A budget amendment will need to be made at the end

of this fiscal year to move money from the Library's fund balance to the Library's General fund to pay for expenses incurred in this fiscal year.

For future sustainability, the project will include an underground water detention system that meets City of Birmingham standards and will help to catch and store water from both the proposed addition and from the 2020 Youth Room addition.

SUMMARY:

The Library Board respectfully requests that the Birmingham City Commission consider and approve the award of the construction management contract for the expansion and renovation of the Front Entrance and Circulation area of the Baldwin Public Library to PCI Dailey.

WEB LINKS:

- [November 14, 2022 Approved Special Board Meeting Minutes](#)
- [November 21, 2022 Draft Special Board Meeting Minutes](#)
- [Bid submission from PCI Dailey](#) (34 pages)

ATTACHMENTS

- Agreement and required insurance
- Cost Proposal
- Bidder's Agreement
- Iran Sanctions Act Vendor Certification Form

SUGGESTED COMMISSION ACTION:

Make a motion to approve the hiring of PCI Dailey for construction management services for the Front Entrance and Circulation Area of the Baldwin Public Library, to be paid out of account 977.0000 (Capital Outlays – Building Improvements). Payment will be based on the bid submittal from October 19, 2022, with a construction management fee of 2.5% of the Guaranteed Maximum Price, to be determined once all subcontract bids are received.

AGREEMENT
**For Construction Management Services for the Expansion and Renovation of
Front Entrance and Circulation Area of Baldwin Public Library**

THIS AGREEMENT is entered into this 5 day of December, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and PCI Dailey (name of party) a Michigan corporation, whose address is 21717 Republic St., Oak Park, Michigan 48237, (hereafter referred to as Construction Manager) and the foregoing shall collectively be referred to as the parties.

WHEREAS, the City of Birmingham, in conjunction with the Baldwin Public Library desires having a construction management company to coordinate the expansion and renovation of the Front Entrance and Circulation Area of the Baldwin Public Library, based on the design development drawings dated August 1, 2022, and in connection therewith has requested proposals for the Construction Management Services for the Expansion and Renovation of the Front Entrance and Circulation Area of Baldwin Public Library; and

WHEREAS, Construction Manager has qualifications that meet the project requirements and has provided a response and cost proposal to perform construction management for the expansion and renovation of the Front Entrance and Circulation Area of the Baldwin Public Library.

NOW, THEREFORE, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

1. **MUTUALLY AGREE:** It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform construction management for the expansion and renovation of the Front Entrance and Circulation Area of the Baldwin Public Library, based on the approved design development drawings dated August 1, 2022, and the Construction Manager's cost proposal dated October 19, 2022 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. (attached hereto as Attachment "A").
2. **TERM:** This Agreement shall have a term of two (2) years from the date stated above. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Construction Manager shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the materials prepared by the Construction Manager through such date.
3. **TERMS OF PAYMENT:** The Construction Manager will invoice monthly for all labor supplied and work completed. In no event shall invoices be submitted

more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

4. Construction Manager shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. INSURANCE SUBMISSION REQUIREMENTS: The Construction Manager has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Construction Manager throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Construction Manager acceptance of the terms of this Agreement.

6. CONFIDENTIAL AND OR PROPRIETARY INFORMATION: The Construction Manager acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Construction Manager recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Construction Manager agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Construction Manager shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Construction Manager further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. INDEPENDENT Construction Manager: The Construction Manager and the City agree that Construction Manager is acting as an independent contractor with respect to the Construction Manager's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Construction Manager nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither

the City nor Construction Manager shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Construction Manager shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

8. COMPLIANCE WITH LAWS: Construction Manager agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Construction Manager is subject, Construction Manager hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS: Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement, or at the City's option, the City may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Construction Manager, either by offset to any amounts due and owing Construction Manager for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Construction Manager agrees and understands that its engagement is at will and may be terminated by the City Manager for any cause or no cause.

10. INDEMNIFICATION: To the fullest extent permitted by law, the Construction Manager and any entity or person for whom the Construction Manager is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the Construction Manager including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its

elected or appointed officials, employees, volunteers or others working on behalf of the City.

11. STANDARD INSURANCE REQUIREMENTS:

The Construction Manager shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: Construction Manager shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

For Sole Proprietorships: Construction Manager shall complete and furnish to the City prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. Commercial General Liability Insurance: Construction Manager shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Construction Manager Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Additional Insured: Commercial General Liability, as described above, shall include an endorsement stating the following **Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.** This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

D. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Construction Manager will provide services that are customarily subject to this type of coverage.

E. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Construction Manager shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

F. Proof of Insurance Coverage: Construction Manager shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 4) If so requested, Certified Copies of all policies mentioned above will be furnished.

G. Maintaining Insurance: Upon failure of the Construction Manager to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

12. WRITTEN NOTICES: Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: Rebekah Craft, Library Director

Construction Manager:
PCI Dailey
21717 Republic St.
Oak Park, MI 48237
Attn: Stephen R. Dailey

13. COVID: The Construction Manager shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, any Construction Manager's staff who will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Construction Manager staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Construction Manager is unable to comply, this violation of safety protocols will constitute a breach of contract by the Construction Manager.

14. AMENDMENTS: No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

15. WAIVER OF BREACH: No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

16. COMPLETE AGREEMENT: The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Construction Manager agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Construction Manager shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

17. DIRECT OR INDIRECT INTEREST: If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Construction Manager, the City shall have the right to terminate this Agreement without further liability to the Construction Manager if the disqualification has not been removed within thirty (30) days after the City has given the Construction Manager notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or

partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

18. FAILURE TO PERFORM. If Construction Manager fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

19. LEGAL PROCEEDINGS: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in a federal or state court with jurisdiction over Oakland County, Michigan.

20. RESPONSE TO REQUESTS FOR PROPOSALS: The Construction Manager shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated October 19, 2022, to the City's Request for Proposals dated September 20, 2022 (attached hereto as Attachment "D"). In the event of a conflict in any of the terms of this Agreement and the Construction Manager October 19, 2022 response, the terms of this Agreement shall prevail.

21. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the parties hereto agree to be bound by the above terms and conditions, and Construction Manager, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Construction Manager

By: _____

Its: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this _____ day of _____, 20____, before me personally
appeared _____, who acknowledged that with authority on behalf of
_____ to do so he/she signed this Agreement.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

CITY OF BIRMINGHAM:

By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham, City Clerk

APPROVED:

Thomas M. Markus, City Manager
(Approved as to substance)

Rebekah Craft, Library Director
(Approved as to substance)

Mary M. Kucharek, City
Attorney
(Approved as to form)

Mark A. Gerber, Finance Director
(Approved as to Financial
Obligation)

ATTACHMENT E - COST PROPOSAL

For Construction Management Services for the Expansion and Renovation of Front Entry and Circulation Area of Baldwin Public Library

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work shall be itemized by a dollar amount based on the Phases and elements included in this Request for Proposal as follows:

COST PROPOSAL	
ITEM	BID AMOUNT
Construction Management Fee	2.5% of the Cost of the Work = \$86,000
General Conditions/Staffing*	\$161,200
TOTAL BID AMOUNT	\$ 247,200

* A line-item breakdown of General Conditions and staffing costs may be included with the proposal

SRD (initial) The Construction Manager is expected to enter into agreement with the City of Birmingham using AIA Document A133-2019 “Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price” and A201-2019 “General Conditions of the Contract for Construction.”

Firm Name PCI Dailey

Authorized signature  Date Oct 19, 2022
 Stephen R. Dailey, Vice President

