

AI-5898

10.A.

Operation border star phase 2

CC REGULAR

Date: 10/09/2007

Submitted By: Joel Rivera, CONSTABLE PCT. #1

Submitted For: Joel Rivera

Department: CONSTABLE PCT. #1

6958
Constable Pct. 1

Information

CAPTION

Discussion and approval for participation in Operation Border Star which provides reimbursement for overtime salary and mileage for patrol throughout the patrol area. The operation is an intelligence driven operation and is similar to Operation Wrangler. Overtime is to include the chief deputies, deputies, and constable clerk.

BACKGROUND

Grant from Governor's Office

Approx. \$ 40,000.00

No in-kind match

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Dina Trevino	10/03/2007 03:07 PM	APRV
2	Rey Salazar	Rey Salazar	10/04/2007 11:30 AM	APRV
3	Auditor's Office		10/04/2007 04:32 PM	NEW
Form Started By: Joel Rivera			Started On: 10/03/2007 02:43 PM	
Final Approval Date: 10/04/2007				

Original

Contract No.: BSOC-OP-BS-053

INTERLOCAL COOPERATION CONTRACT

STATE OF TEXAS

COUNTY OF TRAVIS

10/20/08

This Contract is entered into by and between the parties shown below as contracting parties pursuant to the authority granted in and in compliance with Chapter 791 (the Interlocal Cooperation Act) of the Texas Government Code.

I. PARTIES

This Interlocal Cooperation Contract ("Contract") is made and entered into between:

- A. The RECEIVING AGENCY: The Division of Emergency Management (GDEM), a division of the Office of the Governor. GDEM, as the Project Manager, administers this project designated as the Border Security Enhancement Operations and makes all operational and administrative decisions.
- B. The PERFORMING AGENCY: Hidalgo County Constables Office, Precinct 1 of Hidalgo County, a local political subdivision of the State of Texas.

II. OVERVIEW

- A. The State of Texas plans to organize and deploy state agency and local government law enforcement personnel and equipment to participate in a project to enhance border security along the Texas-Mexico border by supplementing the border security efforts of Federal agencies. This project is designated as the "Border Security Enhancement Operations (BSEO)" project. The RECEIVING AGENCY has received a federal grant and State funds to plan, coordinate, and carry out this project.
- B. Local governments and law enforcement agencies have been requested to participate in this project as PERFORMING AGENCIES. Representatives of cooperating local and state agencies will assist in planning a series of joint border security operations that will be conducted for a limited period in specific areas. The RECEIVING AGENCY will reimburse certain operational expenses, described in The section herein entitled "Reimbursement Guidance," incurred by the PERFORMING AGENCY for project activities using state and grant funds awarded for this purpose. The purpose of this Contract is to set forth the terms and conditions under which GDEM, as the RECEIVING AGENCY, will provide funding to reimburse the PERFORMING AGENCY for its expenses relating to this project.

III. DEFINITIONS

Terms not defined in this Contract or by relevant statutes shall be given their ordinary meanings.

IV. GOVERNING LAW

This Contract is entered into pursuant to Texas Government Code Chapter 791 and is subject to the laws and jurisdiction of the State of Texas and shall be construed and interpreted accordingly.

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V. VENUE

The parties agree that the venue for any suit arising from the interpretation or enforcement of this Contract shall be Travis County, Texas.

VI. SCOPE OF CONTRACT

- A. The PERFORMING AGENCY agrees to provide one or more representatives to take part in planning joint state-local border security operations in which it will participate and to take part in the post-operation review of such operations.
- B. The RECEIVING AGENCY agrees to reimburse the PERFORMING AGENCY for allowable actual expenditures, as described in The section herein entitled "Reimbursement Guidance," incurred during border security operations conducted as part of this project.
- C. The PERFORMING AGENCY agrees and understands that the determination of allowable expenditures under this agreement will be made by the RECEIVING AGENCY at its sole discretion according to the applicable grant funding guidance.

VII. REPORTING REQUIREMENTS

- A. The PERFORMING AGENCY agrees to submit periodic progress reports according to the format and schedule provided by the RECEIVING AGENCY.

VIII. COMPLIANCE WITH LAW

The PERFORMING AGENCY understands and agrees that it will comply with all local, Texas and federal laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Contract.

IX. REIMBURSEMENT PROCEDURES

- A. The PERFORMING AGENCY agrees to:
 - 1. Submit all requests for reimbursement of eligible expenses, as described in The section herein entitled "Reimbursement Guidance," for each field operation to the RECEIVING AGENCY as soon as possible, but no later than 45 days after the end of the operation.
 - 2. Utilize the BSEO reimbursement forms provided by the RECEIVING AGENCY and include required supporting documentation as described in the section herein entitled "Reimbursement Guidance."
- B. Expenses incurred for activities conducted prior to or after scheduled field operations of this project are not reimbursable.
- C. The RECEIVING AGENCY will make a good faith effort to process all reimbursement requests submitted in accordance with this Contract within thirty (30) working days from the date of receipt.

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X. CONTRACT AMOUNT

The total amount of this contract shall not exceed \$72,982.76.

XI. LITIGATION AND IDEMNITY

- A. Each party may participate in the defense of a claim or suit related to the subject matter of this Contract, but no costs or expenses shall be incurred for any party by the other party without written consent.
- B. To the extent authorized by law, the PERFORMING AGENCY agrees to indemnify and hold harmless the RECEIVING AGENCY against any claims, suits, actions, damages and costs of every nature or description arising out of or resulting from the performance of this Contract, and the PERFORMING AGENCY further agrees to satisfy any final judgment awarded against the PERFORMING AGENCY or the RECEIVING AGENCY arising from the performance of this Contract, provided said claim, suit, action, damage, judgment, or related cost is not attributed by the judgment of a court of competent jurisdiction to the sole negligence of the RECEIVING AGENCY.
- C. It is the agreement of the parties that any litigation involving the parties to this Contract may not be compromised or settled without the express consent of the RECEIVING AGENCY, unless such litigation does not name the RECEIVING AGENCY as a party.

XII. LIABILITY

- A. Each party to this Contract agrees that it shall have no liability whatsoever for the actions and/or omissions of the other party's employees, officers, or agents, regardless of where the individual's action and/or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees, officers, and agents; however, such responsibility is only to the extent authorized by Texas law. Where injury or property damage result from the joint or concurring acts and/or omissions of the parties, any liability shall be shared by each party in accordance with the applicable Texas law, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.
- B. Pursuant to Section 421.062 of the Texas Government Code and to the extent it applies, the parties are not responsible for any civil liability that arises from furnishing a service related to a homeland security activity, as defined by Section 421.001 of the Texas Government Code, while acting under this Contract.

XIII. CONTRACT MODIFICATION

No modifications, amendments or supplements to, or waivers of, any provision of this Contract shall be valid unless made in writing and signed by both parties.

XIV. SEVERABILITY

If any provision of this Contract or the application of any provision to any party or circumstance is held by a final judgment or order of a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be fully severable. This Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof,

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and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

XV. MULTIPLE COUNTERPARTS.

This Contract may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes collectively, one Contract. But, in making proof of this agreement, it shall not be necessary to produce or account for more than one such counterpart.

XVI. EFFECTIVE DATE OF CONTRACT

This Contract shall be in effect from 2 October 2007, and shall terminate on 2 December 2007, with performance periods for reimbursement of 2 October 2007 through 23 October 2007; and 14 November 2007 through 2 December 2007.

XVII. TERMINATION

- A. Either party, upon thirty days written notice to the other party, may terminate this Contract prior to the date specified above.
- B. Either party may terminate this contract if the other party neglects or fails to perform or observe any of its material obligations herein, and such default continues for thirty (30) days following receipt of written notice of such default.
- C. Notwithstanding any other Contract provisions, the parties hereto understand and agree that the obligations of the RECEIVING AGENCY under this Contract are contingent upon the availability of state appropriation or federal grant funding to meet the RECEIVING AGENCY'S liabilities hereunder. If these funds become unavailable to the RECEIVING AGENCY, the RECEIVING AGENCY may immediately terminate this Contract without penalty to, or any liability whatsoever on the part of the RECEIVING AGENCY, the State of Texas and the United States.

XVIII. BREACH OF CONTRACT

The Texas Government Code, Chapter 2260, prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. If and to the extent Chapter 2260 applies to this contract, the contractor shall comply with the requirements of Chapter 2260 and the DPS administrative rules adopted pursuant to Chapter 2260.

XIX. NOTICE

Any notice required or permitted under this Contract shall be directed to the respective parties at the addresses shown below. Notice is effective upon receipt or three days after deposit in the U.S. mail, whichever occurs first.

For the RECEIVING AGENCY:
Gisela Ryan-Bunger, Operations Section Administrator
Governor's Division of Emergency Management
P.O. Box 4087, Austin, Texas 78773-0224.

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For the PERFORMING AGENCY:
Hidalgo County Constables Office, Precinct 1
1902 Joe Stephens Suite 303
Weslaco, TX 78596

XX. AUDIT

The RECEIVING AGENCY reserves the right to audit the PERFORMING AGENCY'S records and documents regarding compliance with this Contract. The PERFORMING AGENCY is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the parties have complied with the applicable laws. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State of Texas directly under this Contract or indirectly through a subcontract under this Contract. Acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

XXI. RECORDS RETENTION

The PERFORMING AGENCY must keep all records and documents regarding this Contract for the term of this Contract and for four (4) years after the termination of this Contract.

XXII. NON-INCORPORATION CLAUSE

This Contract constitutes the entire agreement between the parties with regard to the matters made the subject of this agreement. There are no verbal representations, inducements, or agreements between the parties. No rights or obligations shall be implied.

XXIII. HEADINGS

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

XXIV. NO JOINT ENTERPRISE

The RECEIVING AGENCY is associated with the PERFORMING AGENCY only for the purposes and to the extent set forth herein, and with respect to the performance hereunder. The PERFORMING AGENCY is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any relationships of an employer-employee or principal-agent, or to otherwise create any liability for the RECEIVING AGENCY whatsoever with respect to the indebtedness, liabilities, and obligations of the PERFORMING AGENCY or any other party.

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XXV. OTHER TERMS & CONDITIONS

- A. The purpose of the specific grant and state appropriation this Contract is to support the enforcement of Texas law. Immigration enforcement is a federal issue and therefore not eligible for reimbursement under this Contract.
- B. To the extent applicable, the PERFORMING AGENCY shall comply with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations). (Federal Assurance)
- C. To the extent applicable, the PERFORMING AGENCY shall comply with Texas Government Code, Chapter 783, 1 Tex. Admin. Code §5.141 *et. seq.*, and the State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart B, § . 14.
- D. The PERFORMING AGENCY acknowledges that OGO/OGT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which the RECEIVING AGENCY purchases ownership with Federal support. The RECEIVING AGENCY has agreed to consult with SLGCP regarding the allocation of any patent rights that arise from, or are purchased with, Homeland Security funding. The PERFORMING AGENCY agrees that all publications created with funding under Homeland Security grant shall prominently contain the following statement: "This Document was prepared under a grant from the Office of Grants and Training, United States Department of Homeland Security. Point of view or opinions expressed in the document are those of the authors and do not necessarily represent the official position or policies of U.S. Department of Homeland Security."
- E. The PERFORMING AGENCY shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). This clause only applies to contracts exceeding \$100,000.)
- F. The PERFORMING AGENCY shall comply with mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

XXVI. REIMBURSEMENT GUIDANCE

- A. The RECEIVING AGENCY will reimburse the PERFORMING AGENCY for the following expenses incurred in participating in authorized operational activities of this project.

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Reimbursement will be processed through the Texas Department of Public Safety as authorized by the General Appropriation Act, 80th Legislature, Article V.

1. Personnel Expenses

- a. The RECEIVING AGENCY will reimburse OVERTIME expenses for eligible PERFORMING AGENCY full-time personnel participating in this project. For purposes of this Contract, project overtime is defined as the time a participant works on this project during a seven-day period, beginning on Sunday and ending on the following Saturday, after completing 40 hours of regular duty during the same period. Any paid sick leave and vacation days shall be considered as regular duty. The project overtime rate shall be 1.5 times the employee's normal hourly rate of pay.
- b. The RECEIVING AGENCY will reimburse the PERFORMING AGENCY for salary costs for augmentees (part-time or reserve personnel) activated to participate in this project at their regular rate of pay. In the case of reserve deputies or police reserves, reimbursement is limited to the compensation authorized by city councils or county commissioners courts pursuant to §141.007 and §152.075 of the Local Government Code.
- c. Backfill costs for permanent personnel participating in these operations and personnel expenses for elected officials are not eligible for reimbursement. Overtime for administrative personnel is not eligible for reimbursement.
- d. Reimbursements for personnel costs will be limited to the RECEIVING AGENCY approved number of personnel for each project field operation.

2. Travel, Lodging, & Per Diem Expenses

- a. Travel, lodging, and per diem costs will be reimbursed for personnel who reside more than 50 miles from their project duty station.
- b. Travel costs will be reimbursed only for personnel who are required by the PERFORMING AGENCY to drive their privately owned vehicles to or from their project duty station. Reimbursement will be at the state mileage reimbursement rate of 48.5 cents per mile for travel to and from the project duty station.
- c. Reimbursement for travel to the field operations area in government vehicles should be claimed as an operating expense; see Operating Expenses below.
- d. Lodging expense will be reimbursed at the state rate, which is the lesser of actual expense or \$85 per night. Copies of lodging receipts must be provided with reimbursement requests.
- e. Meal expenses will be reimbursed at the actual cost of meals, not to exceed \$36 per day. Meals may not be claimed as expenses if they are provided at no cost by a governmental entity or a volunteer group.

3. Operating Expenses

- a. The following operating costs incurred during project field operations may be reimbursed:
 - i. Operating costs for vehicles at the rate of 48.5 cents a mile;
 - ii. The cost of fuel and lubricants for aircraft, boats, generators, and similar equipment;
 - iii. The cost of consumables, such as flashlight and radio batteries, film, flares, and first aid supplies. The cost of ammunition is not reimbursable;

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- iv. The cost of minor emergency repairs, such as tire repair or fan belt replacement, to vehicles or equipments being used in project operations, limited to a maximum of \$150 per repair; and,
- v. Costs for rentals of equipment or services critical to success of the project and that have been pre-approved by the RECEIVING AGENCY. See details below.

- b. Reimbursements for the PERFORMING AGENCY'S operating expenses will be limited to eligible costs for the number and types of equipment approved by the RECEIVING AGENCY for use in each project operation during the planning phase.

B. Equipment Purchases and Rentals

1. This is not an equipment acquisition program and expenses incurred to purchase equipment are not reimbursable.
2. Equipment rental expenses, except those specifically authorized by the RECEIVING AGENCY during the operational planning process conducted prior to field operations, are not reimbursable. Approved equipment rental expenses should be claimed as operating costs.

C. Reimbursement Requests

1. Claims for reimbursement of expenses must be supported by documentation that proves the expense has been incurred or paid. Appropriate documentation includes:
 - a. Personnel expenses: copies of paychecks, official payroll rosters, or payroll reports that show the amount paid to individuals for which reimbursement is requested;
 - b. Lodging expense: copy of hotel or motel bill;
 - c. Operating expense for vehicles: vehicle use logs showing the unit number, dates of use, and daily mileage; and,
 - d. Other operating expenses: itemized receipts & paid invoices that include the date of purchase and describe the items purchased. Receipts that simply state the total paid cannot be accepted.
2. Reimbursement requests should be submitted as soon as required documentation has been collected and compiled and required reimbursement forms have been completed, but no later than 45 days after the end of a BSEO operation.
3. Reimbursement requests should be sent to:

By mail:

Gisela Ryan-Bunger, Operations Section Administrator
Governor's Division of Emergency Management
P.O. Box 4087, Austin, Texas 78773-0224.

By courier:

Gisela Ryan-Bunger, Operations Section Administrator
Governor's Division of Emergency Management
5805 North Lamar Blvd, Austin, Texas 78753-0224.

XXVII. SIGNATORY AUTHORITY

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The undersigned signatory for the agency that is a party to this Contract hereby represents and warrants that he/she is an officer of the organization for which he/she has executed this Contract, and that he/she has full and complete authority to enter into this Contract on behalf of the agency.

Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

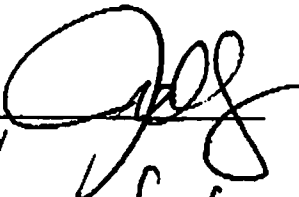
RECEIVING AGENCY certifies that it has the authority to request the services described above by the authority granted in §§ 421.002 and 418.041 of the Texas Government Code and Executive Order RP 32 (Jan. 28, 2004).

PERFORMING AGENCY further certifies that it has the authority to perform the services described above.

The undersigned parties do bind themselves to the faithful performance of this Contract.

RECEIVING AGENCY


Division of Emergency Management,
A division of the Office of the Governor



Jack Colley
Chief
Date: 10/24/07

PERFORMING AGENCY

Hidalgo County Constables Office, Precinct 1



Authorized Signature
Title: County Judge
Date: 10/15/07

AMENDMENT NO. 1 TO
INTERLOCAL COOPERATION CONTRACT
BSOC-OP-BS-053
BORDER SECURITY OEPRATIONS

WHEREAS, the Governor's Division of Emergency Management (GDEM) the RECEIVING AGENCY and the Hidalgo County Constable's Office, Precinct 1, the PERFORMING AGENCY desire to execute Amendment No. 1 to amend the Interlocal Cooperation Contract.

GDEM and the PERFORMING AGENCY hereby agree as follows:

I. Amendment Agreement

The terms set forth in this Amendment No. 1 shall be in addition to and construed together with the terms of the Interlocal Cooperation Contract between the RECEIVING AGENCY and the PERFORMING AGENCY.

The parties acknowledge that amendments are subject to the terms and conditions of the Interlocal Cooperation Contract.

This amendment increases the Contract Amount not to exceed \$118,630.02 and adds one additional performance period for reimbursement of 24 October 2007 through 13 November 2007.

All other terms and conditions of the Interlocal Cooperation Contract shall remain the same.

II. Incorporation of Amendments

Upon and after the date of execution of this Amendment No. 1 to the Interlocal Cooperation Contract, all references to the Interlocal Cooperation Contract in that document and any related documents shall mean the Interlocal Cooperation Contract as modified by this document. The Interlocal Cooperation Contract shall consist of the original Contract, together with all documents incorporated therein, and this Amendment No. 1, together with all documents incorporated therein. These documents shall constitute the entire Agreement of the parties.

III. Signatories

Receiving Agency

Division of Emergency Management
division of the Office of the Governor

Jack Colley

Chief

Date: 11/2/07

Performing Agency

Hidalgo County Constable's Office,
Precinct 1

Authorized Signature

Title: County Judge

Date: 10/23/07