

Zimbra

hector.garcia1@co.hidalgo.tx.us

Re: 2019-048 Lease and/or Service of Portable Toilets

From : Robert Vina <robert.vina@da.co.hidalgo.tx.us> Mon, Mar 04, 2019 02:45 PM
Subject : Re: 2019-048 Lease and/or Service of Portable Toilets 📎 1 attachment
To : hector.garcia1 <hector.garcia1@co.hidalgo.tx.us>
Cc : Josephine Ramirez <josephine.ramirez@da.co.hidalgo.tx.us>, Victor Garza <victor.garza@da.co.hidalgo.tx.us>

Good afternoon Mr. Garcia,
 As requested, this office reviewed the draft requirements contract to include with RFB for portable toilets. It is approved as to form subject to the inclusion of the recommended modifications found on the attached draft contract. Additions are in blue and language to be removed is struck through in green.

Please let us know if you have any questions or concerns
 Thank you,

Robert Viña III

Assistant District Attorney
 Civil Litigation Division

Office of the Criminal District Attorney
 Hidalgo County, Texas
 100 E. Cano
 Edinburg, TX 78539
 [\(956\) 292-7609 EXT 8187](tel:9562927609)
 [\(956\) 292-7619](tel:9562927619) FAX

robert.vina@da.co.hidalgo.tx.us

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On Thu, Feb 28, 2019 at 11:35 AM hector.garcia1 <hector.garcia1@co.hidalgo.tx.us> wrote:
 Good Morning Robert,

Please see attached Draft Requirements Agreement and Specifications for (2019-048 Lease and/or Service of Portable Toilets) . Please advise if this would be that correct agreement to use and if it can be approved as to form.

Thank You!

--

Hector Garcia
Contracts Specialist I
Hidalgo County Purchasing Dept.
2812 S Bus. Highway 281
Edinburg, Texas 78539
T: (956) 318-2626 x4857
F: (956) 292-7612

 **Draft Requirements Contract for RFB - Portable Toilets (w DA Edits).doc**
57 KB

From : hector.garcia1 <hector.garcia1@co.hidalgo.tx.us>
Subject : 2019-048 Lease and/or Service of Portable Toilets
To : Robert Vina <robert.vina@da.co.hidalgo.tx.us>

Thu, Feb 28, 2019 11:35 AM

 2 attachments

Good Morning Robert,

Please see attached Draft Requirements Agreement and Specifications for (2019-048 Lease and/or Service of Portable Toilets) . Please advise if this would be that correct agreement to use and if it can be approved as to form.

Thank You!

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 **04. EXHIBIT A-SPECIFICATIONS.pdf**
305 KB

 **DRAFT REQUIREMENTS CONTRACT.doc**
55 KB

the type and quantity of the Products required. The Products are to be delivered by Buyer to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

4. Seller represents that it is licensed by the State of Texas and qualified to perform and execute the services provided above. If such license is suspended or revoked, this Contract shall automatically be terminated and Seller shall immediately notify the County Judge of Hidalgo.

5. Seller must comply with all applicable laws and regulations of the State of Texas, and County policies. Notwithstanding the foregoing sentence, Seller represents and maintains that Seller is an independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that Seller does not desire or request any fringe benefits provided to employees of County, and/or any agency of the County.

6. Buyer may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days written notice.

7. General Provisions.

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance

with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer:

Hidalgo County
Attention: County Judge
1615 So. Closner, Suite J
Edinburg, Texas 78539

If to Seller:

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the Unites States mail.

f. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

g. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

h. **Assignment.** This Agreement shall not be assignable.

i. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

j. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate

k. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

l. **Insurance.** Seller agrees to provide liability insurance covering all activities, vehicles and persons connected with providing services under this Contract in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. Seller shall name Buyer as an additional insured and shall furnish Buyer a certificate issued by the insurer (attached as Exhibit "C") that such insurance is in full force and effect.

m. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon ninety (90) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

n. **Indemnification: Seller will indemnify and hold Buyer harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Contract, whether such act, omission, or failure was the Seller's or that of any person providing services hereunder through or for the Seller. Upon written notice from the County, the Company will resist and defend at its own expense, and by counsel reasonably satisfactory to County, any such claim or action. The Company will carry proper insurance with the County as an additional named insured.**

o. **Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

- (1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Hidalgo County, or for any elected official, department head or employee or former elected official, department head or employee of

Hidalgo County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of Hidalgo County.

- (2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hidalgo County, or any person associated therewith, as an inducement for the award of a subcontract or order.

p. **Immunities.** Nothing in this Agreement is intended to and Buyer does not hereby waive, release or relinquish any right to assert any of the defenses Buyer enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Buyer as to any claim or action of any person, entity, or individual against Buyer.

q. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

r. **Nondiscrimination:** Seller/Contractor/Vendor, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement.

s. **Appendix II to CFR 200-Contract Provisions:** Pursuant to 2 CFR 200.236, a non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. Applicable required contract clauses were provided as part of the initial procurement packet, and as such are incorporated into this agreement for all purposes.

t. **Authority to Execute:** The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and

this Agreement constitutes the valid and enforceable obligations of the participating County and City in accordance with its terms.

EXECUTED effective as of the day and year first above written.

COUNTY OF HIDALGO

By: _____
Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

COMPANY:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Office of the Criminal District Attorney-Civil Litigation Division

By: _____
Robert Viña, III
Assistant District Attorney

Approved By Commissioners Court: _____

EXHIBIT “A”

REQUEST FOR BIDS

(RFB)

PROCUREMENT

PACKET

EXHIBIT “B”

BID PAGE

EXHIBIT “C”

CERTIFICATE OF INSURANCE