

Pinellas County

Purchase Authorization - Goods Purchase Agreement

THIS PURCHASE AUTHORIZATION – GOODS PURCHASE AGREEMENT (“Agreement”) is made as of this 7 day of December, 2021 (“Effective Date” which is the same date as the last party to execute this Agreement), by and between Pinellas County, a political subdivision of the State of Florida (“County”), and Hustler Turf Equipment Inc (“Contractor”) (individually, “Party,” collectively, “Parties”).

WITNESSETH:

WHEREAS, the County is authorized to purchase goods based on pricing received by other governmental competitive solicitation processes which are made available to local public procurement units; and

WHEREAS, the County has elected to utilize resulting pricing of the cooperative procurement or solicitation issued by Sourcewell Contract No. 031121-HTE for 22-0072-PB(DG)Phase 1_ Vehicle and Equipment Replacement ; and

WHEREAS, Contractor represents that it has the ability to provide the goods as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. The execution of this Agreement is subject to and expressly limited by the Terms and Conditions hereon. County and the Contractor are not bound by additional provisions or provisions at variance herewith that may appear in the Contractor's quotation, acknowledgement in force, or any other communication from Contractor to or from County unless such provision is expressly set forth herein.

2. ASSIGNMENT/SUBCONTRACTING - The Contractor must provide the Goods required by this Agreement. No assignment or subcontracting is allowed without prior written consent of the County. In the event of a corporate acquisition and/or merger, the Contractor must provide written notice to the County, within (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. In that event, the County may terminate this Agreement in those instances in which a corporate acquisition and/or merger represents a conflict of interest or contrary to any local, state or federal laws.
3. ORDERS- Within the term of this Agreement, County may place one or more orders for goods at the prices listed on the Price Schedule which is attached hereto as Exhibit A and which is incorporated by reference hereto.
4. DELIVERY/CLAIMS - Prices on the Schedule of Prices are F.O.B. Destination, FREIGHT INCLUDED and unloaded to location(s) within Pinellas County. Actual delivery address(es) will be identified at time of order. Contractor will be responsible for making any and all claims against carriers for missing or damaged items.
5. COMPENSATION - County will pay Contractor upon Contractor's delivery of, and County's acceptance of, the goods required herein, as specified. All payments will only be made based on invoices submitted in accordance with the Local Government Prompt Payment Act, Florida Statutes §§ 218.70, et. seq.
6. TERM OF AGREEMENT AND SPENDING CAP – This Agreement is effective on the effective date and will continue in effect through delivery and acceptance by the County. Notwithstanding any order(s) placed pursuant to this Agreement, the County may not be held responsible for amounts exceeding \$22,832.00 without a written amendment to this Agreement raising such limit signed by the parties.
7. TERM OF PERFORMANCE – The term of this Agreement shall continue through in conjunction with the cooperative procurement. The parties may extend this agreement in conjunction with any extensions made to the cooperative procurement by a mutually agreed upon written amendment to this Agreement. If the parties desire to extend past the expiration date of the cooperative procurement contract, the parties may do so by entering into a mutually agreed upon written amendment to this Agreement.
8. SURVIVABILITY - Costs associated with purchases using the authority provided by this contract will survive the contract itself operating under the contract terms and conditions. The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the cooperative term contract by more than twelve (12) months. Invoices may be billed for these costs on an “in arrears” basis for an additional twelve (12) month period beyond the contract expiration.

9. INVOICING – Written invoice(s) must be submitted to:
Finance Division Accounts Payable
Board of County Commissioners Pinellas County
PO Box 2438
Clearwater, FL 33757
727-464-8389
FinanceAccountsPay@MyPinellasClerk.org

Each invoice must include, at a minimum, the Contractor's name, contact information and the Purchase Order number.

10. DISCOUNTS - Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for County to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date of receipt of goods, or the date of approved invoice, whichever is later.
11. NAME CHANGES - The Contractor is responsible for immediately notifying the County of any company name change, which would cause invoicing to change from the name used at the time of the original Agreement.
12. COMPLIANCE WITH APPLICABLE LAWS - Contractor certifies that all of the products to be furnished hereunder will be manufactured or supplied by Contractor in accordance with all applicable provisions of State, Local and Federal laws, as of the date that the goods are supplied.
13. CHOICE OF LAW: The laws of the State of Florida apply to this Agreement and any and all purchases made hereunder. Contractors must comply with all local, state, and federal directives, orders and laws including, but not limited to, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA.
14. FISCAL NON-FUNDING- In the event that sufficient budgeted funds are not available for a new fiscal period, the County will notify the Contractor of such occurrence and this Agreement will terminate on the last day of the then current County fiscal period (Oct. 1 – Sept. 30) without penalty or expense to the County.

15. INDEMNIFICATION- Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law; or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or for any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the "ADA") except when such injury, damage, or violation was caused by the sole negligence of the County.

16. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 - The Contractor is and will remain an independent contractor and is neither agent, employee, partner, nor joint venture of the County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324 et. seq., and regulations thereto, as either may be amended from time to time. Failure to comply with the above provisions is considered a material breach and is grounds for immediate termination of the agreement, at the discretion of the County.

17. E-VERIFY

The Contractor and Subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. A Contractor and Subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a Contractor enters a contract with a Subcontractor, the Subcontractor must provide the Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The Contractor must maintain a copy of the affidavit for the duration of the contract.

If the County, Contractor, or Subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered as such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination

of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

18. NOTICES TO PINELLAS COUNTY - Any notices or inquiries relative to Purchase Order should be directed to:

Greg Herremans
Fleet Acquisitions Specialist, Fleet Management Department
727-582-3029
gherremans@pinellascounty.org

19. INSPECTION – In County’s sole discretion, goods rejected due to inferior quality or workmanship will be returned to Contractor at Contractor’s expense and are not to be replaced except upon receipt of written instructions from County.
20. MATERIAL QUALITY - All goods and materials purchased and delivered pursuant to this Agreement will be of first quality and not damaged and/or factory seconds. Any materials damaged or not in first quality condition upon receipt must be exchanged within twenty-four (24) hours of notice to the Contractor at no charge to County.
21. MATERIAL SAFETY DATA - In accordance with OSHA Hazardous Communications Standards, it is the Contractor seller's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at time of delivery.
22. NON-EXCLUSIVE AGREEMENT - Award of this Agreement imposes no obligation on the County to utilize the Contractor for all goods of this type, which may develop during the agreement period. This is not an exclusive agreement. County specifically reserves the right to concurrently contract for similar goods if it deems such action to be in the County's best interest. In the case of multiple-term agreements, this provision applies separately to each term.
23. PURCHASE ORDER NUMBER - Each order will contain the Purchase Order Number applicable to this Agreement, and such Purchase Order Number must appear on all packing slips, invoices and all correspondence relating to the Order. County will not be responsible for goods delivered without a Purchase Order Number.
24. REMEDIES - County and Contractor will have all remedies afforded by applicable law.

25. RIGHT TO AUDIT - The Contractor must retain records relating to this agreement for a period of at least three (3) years after final payment is made. All records must be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit such records pursuant to Pinellas County Code, §2-187.
26. SEVERABILITY - If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent Jurisdiction, such portion must be deemed separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portion thereof.
27. TAX EXEMPTION – County is immune from taxation. The Florida State Sales Tax Exemption Number for Pinellas County is _85-8013287050C-7 Federal Excise Tax Exemption Number is 59-6000800.
28. TAXES - Payments to County are subject to applicable Florida taxes.
29. TERMINATION - County reserves the right to terminate this agreement, without cause by giving thirty (30) days prior written notice to the Contractor of the intention to terminate or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified. Failure of the Contractor to comply with any of the provisions of this Agreement is considered a material breach of Agreement and is cause for immediate termination of the Agreement at the sole discretion of County.
In addition to all other legal remedies available to the County, the County reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of request, as determined by the County.
30. VARIATION IN QUANTITY - County assumes no liability for goods or materials produced, processed or shipped in excess of the amounts ordered pursuant to the terms of this Agreement.
31. WARRANTY - Seller warrants that the goods are of first quality and as described in Prices Schedule. All manufacturer, producer or seller warranties offered to any other purchaser are expressly available and applicable to County.
32. AMENDMENT – This Agreement may be amended by mutual written agreement of the Parties hereto.
33. ENTIRETY- This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

34. FORCE MAJEURE - "Force Majeure Event" means any act or event that (i) prevents a Party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other Party's (the "Performing Party") obligations under this Agreement, (ii) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (iii) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. Force Majeure Event(s) do not include economic hardship, changes in market conditions or insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the Performing Party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. The Nonperforming Party must promptly notify the Performing Party upon the occurrence of a Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the Performing Party's obligations, the Nonperforming Party will resume performance under this Agreement without undue delay. Each Party will use commercially reasonable efforts to mitigate the effect of a Force Majeure Event

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year as written.

PINELLAS COUNTY, FLORIDA
by and through its Board of County
Commissioners

Dave Eggus
Chairman

Hustler Turf Equipment Inc

Brian J. O'Donnell
Authorized Signature

APPROVED AS TO FORM

By: *Keiah Townsend*
Office of the County Attorney

Brian J. O'Donnell
Printed Authorized Signature

Government Sales Manager
Title Authorized Signature

ATTEST:
KEN BURKE

Ken Burke
Deputy Clerk



