



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 5/15/2012

Report Type: Consent

Title: Cooperative Purchase Agreement: Portable Generators

Report ID: 2012-00370

Location: Citywide

Recommendation: Pass a Motion: 1) approving the use of the Houston Galveston Area Council (HGAC) cooperative purchase agreement (Contract No. GE02-12) with PAC Machine Co., Inc. for the purchase of three portable generators in an amount not to exceed \$325,000 through January 31, 2014 or until the contract is no longer available for use; and 2) authorizing the City Manager or the City Manager's designee to execute the purchase specified above provided there are sufficient funds available in the budget adopted for the applicable fiscal year(s).

Contact: Keith Leech, Fleet Manager, (916) 808-5869, General Services Department

Presenter: None

Department: General Services Dept / Presumably, PAC Machine Co. will or has been assigned the contract from Doosan. Legal approval as to form is given subject to the above. If there are problems, please advise.

Division: Fleet Management Admin

Dept ID: 13001311

Attachments:

1-Description/Analysis

2-Exhibit A Cooperative Agreement HGAC Generators

City Attorney Review

Approved as to Form
 Lan Wang
 5/7/2012 10:57:59 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
 Russell Fehr
 4/30/2012 11:07:48 AM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 5/1/2012 12:02:46 PM



Description/Analysis

Issue: The Department of General Services, Fleet Management Division, has a need to provide the Department of Utilities with three replacement portable generators. Using an existing cooperative purchase agreement is advantageous to the City as the agreement meets the needs of the City's fleet specifications and will result in cost and time savings.

Policy Considerations: The recommendations in this report are in accordance with City Code Section 3.56.240, which states that the City Manager may, by cooperative purchase agreements approved by City Council, purchase supplies through contracts of other governmental jurisdictions without separate competitive bidding, where it is advantageous to the City, and are also consistent with Resolution No. 2010-346 prohibiting the City from entering into any contract to purchase goods or services from any business or entity headquartered in Arizona.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Environmental Services Manager has determined that the purchase of portable generators does not have the potential for causing a significant adverse effect on the environment and is therefore exempt under CEQA Guidelines, Section 15061(b)(3).

Sustainability: The recommended purchase is consistent with the Fleet Sustainability Policy adopted by City Council on February 16, 2010 (Resolution No. 2010-083). The replacement generators to be purchased feature a lower level of emissions than the generators to be replaced.

Commission/Committee Action: None

Rationale for Recommendation: The Department of General Services, Fleet Management Division, has a need to provide the Department of Utilities with three replacement portable generators. Using an existing cooperative purchase agreement is advantageous to the City as the agreement meets the needs of the City's fleet specifications and will result in cost and time savings.

In an ongoing effort to maximize cost savings and staff resources, many government agencies share contracting efforts through cooperative purchasing. This procurement method increases pricing competitiveness and lowers capital costs through volume buying. When comparing the administrative costs of procurement, staff considers product research, source selection, specifications, advertising, staff reports, awarding, protest, and administration of the contract. It is often more cost-effective to eliminate the cost and time spent on these administrative processes and purchase items and services through a cooperative purchasing program.

The City has used both regional and national cooperative purchasing agreements to complement its own contracting initiatives. Cooperative purchasing enables City departments and Procurement Services to evaluate a broader range of contracting opportunities and to share resources with other jurisdictions. Cooperative purchasing also leverages internal and external resources to maximize cost savings opportunities for the City.

Financial Considerations: The recommended purchase of three replacement portable generators in an amount not to exceed \$325,000 will be made from the Department of General Services operating budget (Fleet Fund, Fund 6501) and charged to the Department of Utilities multi-year operating projects for replacement vehicles and equipment (I06013140, Water Fund, Fund 6005, and I06013143, Storm Drain Fund, Fund 6011). Sufficient funds are available in the Department of General Services operating budget and the Department of Utilities vehicle and equipment replacement projects to make the recommended purchase through June 30, 2012. Purchases after June 30, 2012, are subject to funding availability in the adopted budget of the applicable fiscal year(s).

Emerging Small Business Development (ESBD): Cooperative purchase agreements are created, evaluated, and awarded by other government agencies that may or may not have similar emerging and small business programs. However, the Department of General Services, Fleet Management and Procurement Services divisions will consider other alternatives if it is determined that using cooperative contracts may have a negative impact on small businesses. PAC Machine Co., Inc. is not certified with the City as an emerging/small business.



A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND

CLARK EQUIPMENT COMPANY DBA DOOSAN INFRACORE PORTABLE POWER
Statesville, North Carolina

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND **Clark Equipment Company dba Doosan Infracore Portable Power**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 1293 Glenway Drive, Statesville, North Carolina 28625.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into an **Auxiliary Power & Backup Generators** Contract to become effective as of February 1, 2012, and to continue through January 31, 2014 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Auxiliary Power & Backup Generators** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Auxiliary Power & Backup Generators** through the **H-GAC** Contract to **END USERS**.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: **GE02-12**, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No: **GE02-12**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6: END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer to, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's** **H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

ARTICLE 7:**SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

ARTICLE 8:**EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9:**REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10:**MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 11:**SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12:**DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder,

CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

ARTICLE 20:

LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21:

PERFORMANCE BONDS FOR INDIVIDUAL ORDERS

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

ARTICLE 22:

CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23:

LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]

CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston
Area Council, Houston, Texas:


Mark Steele, Executive Director

Attest for Houston-Galveston
Area Council, Houston, Texas:


Deidre Vick, Director of Public Services

Date: 1-25, 2012

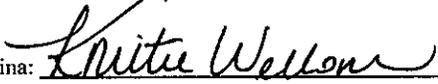
Signed for Clark Equipment Company
dba Doosan Infracore Portable Power, Statesville, North Carolina:



Printed Name & Title: BOB FERGUSON, GOVERNMENT SALES MGR.

Date: JANUARY 12, 2012

Attest for Clark Equipment Company
dba Doosan Infracore Portable Power, Statesville, North Carolina:



Printed Name & Title: Kristie Welborn - Govt Contracts Administrator

Date: Jan 12, 2012



HOUSTON-GALVESTON AREA COUNCIL

April 24, 2012

Bob Ferguson, Government Sales Mgr.
Clark Equipment Company dba Doosan Infracore Portable Power
1293 Glenway Dr.
Statesville, NC 28625

RE: Contract Assignment and Assumption Agreement - Contract #GE02-12 "Auxiliary and Backup Generators (Assignment to PAC Machine Co. Inc.)"

Dear Mr. Ferguson:

Enclosed is one completely executed contract assignment agreement for Assignment to PAC Machine Co. Inc. Should you require further information concerning this contract, please call me at 713-993-2446.

Sincerely,

Veronica Johnson

Veronica Johnson
Contract Specialist
HGAC Cooperative Purchasing
713-993-2446

Enclosure

CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT

This Contract Assignment and Assumption Agreement is made by and between the **Houston-Galveston Area Council of Governments (H-GAC)**, **Clark Equipment Company dba Doosan Infracore Portable Power (Contractor)** and **PAC Machine Co., Inc., (Assignee)**.

WHEREAS, **Contractor** entered into a cooperative purchasing Contract, identified as **GE02-12**, with **H-GAC** for the sale of **Auxiliary Power & Backup Generators** to various End User governmental agencies participating in **H-GAC's** Cooperative Purchasing Program; and

WHEREAS, **Contractor** assigns the performance of its obligations under the Contract to **Assignee** for cooperative purchasing business in specific areas (per attached Information Sheet); and

WHEREAS, **Assignee** shall perform as stipulated in the original Contract (a copy of which is attached hereto) and comply with all the terms and conditions set forth therein; and

WHEREAS, **Contractor** will continue as originally contracted with **H-GAC**; and

NOW THEREFORE, **Assignee** agrees to accept this assignment, and **H-GAC** concurs.

All other terms and conditions of the Contract shall remain unchanged and in full force and effect.

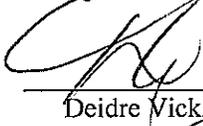
IN WITNESS WHEREOF, the parties have caused this Contract Assignment and Assumption Agreement to be executed by their respective duly authorized representatives.

Signed for **Houston-Galveston Area Council**:



Jack Steele, Executive Director

Attest for **Houston-Galveston Area Council**:

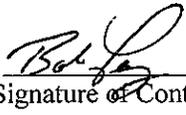


Deidre Wick, Public Services Director

Date: April 4, 2012

Signed for **Clark Equipment Company**

dba Doosan Infracore Portable Power:
Statesville, NC

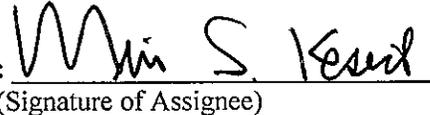


(Signature of Contractor)

Date: 3/20/2012

Bob Ferguson - Government Sales Manager
Printed Name & Title

Signed for **PAC Machine Co., Inc.:**
Sacramento, CA



(Signature of Assignee)

Date: 3/21/2012

Min S. Kesich, President
Printed Name & Title

Information Sheet

(To be completed by Primary Contractor)

Contractor:

PAC Machine Co., Inc.

Contact Person:

Fred Kesich, Vice President

Address:

8570 23rd. Ave
Sacramento, CA 95826

TEL: 916-387-1336

FAX: 916-387-1380

EMAIL: engineering@pacmachine.com

Territory:

Sacramento County, California