

AN ORDINANCE 2009-12-10-1002

ACCEPTING THE BID FROM MODULAR CONNECTIONS, LLC TO INSTALL A PRE-FABRICATED MODULAR CONCRETE RESTROOM AT THE SOUTHSIDE LIONS PARK FOR THE AMOUNT OF \$74,687.00, FROM THE FY 2009 BUDGET, AND AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE INTERLOCAL PURCHASING SYSTEM (TIPS) TO USE CONTRACTS COMPETITIVELY PROCURED THROUGH TIPS.

* * * * *

WHEREAS, the Interlocal Cooperation Act (the “Act”), Chapter 791, Texas Government Code, permits local governmental entities to enter into interlocal agreements for the performance of governmental functions, including administrative functions, such as purchasing, in order to promote efficiencies and effectiveness; and

WHEREAS, the Region VIII, Education Service Center (“Region VIII”) is the Texas administrator of a cooperative purchasing program known as The Interlocal Purchasing System (“TIPS”); and

WHEREAS, TIPS has procured a contract with Modular Connections, LLC, for the purchase and installation of pre-fabricated modular concrete buildings; and

WHEREAS, City wishes to enter into an interlocal cooperative agreement with Region VIII Education Service center to participate in its cooperative purchasing program; and

WHEREAS, City wishes to utilize the TIPS contract with Modular Connections, LLC, for the purchase and installation of a modular concrete restroom for the Southside Lions Park; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, her designee, the Director of Purchasing and General Services and her designee are all hereby authorized to execute the Interlocal Agreement with Region VIII Education Service Center attached hereto and incorporated herein for all purposes as **Exhibit I**.

SECTION 2. The offer from Modular Connections, LLC, is hereby accepted, subject to and contingent upon the deposit of any required bonds, performance deposits, insurance certificates and endorsements. A copy of the bid tabulation and contract are attached hereto and incorporated herein for all purposes as **Exhibit II**.

SECTION 3. The amount of \$74,687.00 in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00202, Southside Lions Park, is authorized to be encumbered and made payable to Modular Connections, LLC for a pre-fabricated concrete restroom.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED and APPROVED this 10th day of December, 2009.


600 M A Y O R
Julian Castro

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

INTERLOCAL AGREEMENT
Region VIII Education Service Center
PUBLIC AGENCY

City of San Antonio
Public Agency

Region VIII Education Service Center

County-District Number

225 - 950
County-District Number

Texas Education Code §8.002 permits regional education service centers, at the direction of the Commissioner of Education, to provide services to assist school districts in improving student performance and increasing the efficiency and effectiveness of school operations Authority for such services is granted under Texas Government Code §§ 791.001 *et seq* as amended.

This Interlocal Agreement (hereinafter the "Agreement") is effective 12/10/09 and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Region VIII Education Service Center, by this Agreement, agrees to provide cooperative purchasing services to the above-named public agency through a Program known as the The Interlocal Purchasing System (TIPS) Program.

~~The purpose of the TIPS Program shall be to obtain substantial savings for participating public agencies through volume purchasing.~~

Role of the Purchasing Cooperative:

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. Receive quantity requests from entities and prepare appropriate tally of quantities.
4. Initiate and implement activities related to the bidding and vendors selection process.
5. Provide members with procedures for ordering, delivery, and billing.

Role of the Public Agency:

1. Commit to participate in the program by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.

INTERLOCAL AGREEMENT, continued

3. Commit to purchase products and services that become part of the official products and services list when it is in the best interest of the member entity.
4. Prepare purchase orders issued to the appropriate vendor from the official award list provided by the Purchasing Cooperative.
5. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
6. Pay vendors in a timely manner for all goods and services received.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of RESC VIII are located which is Titus County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by means of a facsimile machine and the terms and conditions agreed to are binding upon the Parties.

Authorization:

Region VIII Education Service Center and The Interlocal Purchasing System (TIPS) Program have entered into an Agreement to provide cooperative purchasing opportunities to public agencies.

INTERLOCAL AGREEMENT, continued

This Agreement was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code ch. 551.

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Public Agency

Region VIII Education Service Center

By: _____
Authorized Signature

By: *Harvey Hohenberger, Jr.*
Mr. Harvey B. Hohenberger, Jr.,

Title: _____

Title: Executive Director Region VIII ESC

_____ Date

_____ Date

_____ Public Agency Purchasing Contact Person

_____ Public Agency Technology Contact Person

_____ Street Address

_____ Street Address

_____ City, State Zip

_____ City, State Zip

_____ Purchasing Contact's Telephone Number

_____ Technology Contact Telephone No.

_____ Purchasing Contact's Fax Number

_____ Technology Contact Fax Number

_____ Purchasing Contact's Email Address

_____ Technology Contact's Email Address

Please send two signed original Interlocal Agreements to the Region VIII ESC, Attn: Mr. Harvey B. Hohenberger, Jr., Executive Director, Region VIII Education Service Center, PO Box 1894, Mt. Pleasant, Texas 75456-1894. Upon execution, a signed original will be returned to the Purchasing Contact listed above.

Exhibit II

City of San Antonio Bid Tabulation

Opened: November 6, 2009			
For: Modular Concrete Restroom Building			
10-021		ATS	Modular Connections, LLC
			1090 Industrial Blvd.
Item	Description	Quantity	Bessemer, AL 35022 205-980-4565
I	12' X 24' Precast Concrete Restroom Facility	1	
	Price Each		\$74,687.00
	Price Total		\$74,687.00
	Delivery		45 Days
	Prompt Payment Discount		Net 30
	Estimated Total		\$74,687.00
Estimated Total Award			\$74,687.00

CITY OF SAN ANTONIO PURCHASING & GENERAL SERVICES DEPT.

Issued By: ATS CITY CONTRACT NO. 10-021 ATS
COOPERATIVE CONTRACT NO.: TIPS 3082709

Date Issued: November 6, 2009

PROCURING ENTITY/COOPERATIVE: The Interlocal Purchasing Systems (TIPS)

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TERMS & CONDITIONS FOR CONTRACT FOR
BUILDING MODULAR CONCRETE RESTROOM

Contract Documents: The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

- a. This Terms and Conditions Document;
- b. Any Purchase Orders Issued hereunder by the City of San Antonio ("City"); and
- c. Exhibit I - All applicable terms and conditions of Contract # 3082709, procured by the Region VIII Education Service Center and made available to local governmental entities through The Interlocal Purchasing Systems (TIPS).

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document and any Purchase Order issued hereunder shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, Price Schedule, any Attachments identified herein

The City's Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office at 111 Soledad, 11th Floor, San Antonio, Texas 78205, or by calling (210) 207-7260.

It is the policy of the City of San Antonio to involve qualified Small, Minority, Woman-owned, and local business in construction, procurement, professional services, and leases and concessions contracting. The City of San Antonio has established the following minority business enterprise (MBE), woman business enterprise (WBE), African-American business enterprise (AABE), and small business enterprise (SBE) utilization goals: MBE Goal: 15%; WBE Goal: 10%; AABE Goal: 3%, SBE Goal: 50%.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Price Schedule. A signature below indicates that the Vendor has read the entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: Ellia Ayers Firm Name: Modular Connections, LLC
(Please Print or Type)

Address: 1070 Industrial Blvd.

Ellia Ayers
Signature of Person Authorized to Sign Offer

City, State, Zip Code: Bessemer, AL 35476

Email Address: iayers@ModularConnections.com Telephone No.: 205-980-4565
Fax No.: 877-675-5851

FOR CITY USE ONLY

AWARD

Items Accepted: _____ Ordinance No: _____ Date: _____ Amount: _____

Approved: _____

CITY OF SAN ANTONIO

Please complete the following:

Prompt Payment Discount: 0 % 0 days. (If no discount is offered, Net 30 will apply.)

Please check the following blanks which apply to your company:

Ownership of firm (51% or more):

Non-minority Hispanic African-American Other Minority (specify) _____

Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)

Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) LLC

Tax Identification Number: 20-0187641

The remainder of this page is intentionally left blank.

I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.

2. **Rejection of Disclaimers of Warranties & Limitations of Liability.** Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.

3. **Acceptance of Offer.** By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.

4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.

5. **Taxes.** Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.

6. **Point of Destination.** All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery. Regardless of shipping ~~terms used, title and risk of loss shall pass to City only upon receipt at City's "ship to" address.~~

7. **Delivery Times.** Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.

8. **Failure to Meet Delivery Schedule.** When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.

9. **Acceptance By City.** The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

10. **Warranty.** Unless a specific warranty is provided elsewhere in these contract documents, the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.

Modular connections includes its standard one (1) year structural warranty. Component materials will carry the original manufacturer's warranties.

11. Change Orders. In order to comply with Texas law governing purchases made by municipalities, the follow rules shall govern all change orders made under this contract.

- (a) Any change orders that become necessary during the term of this contract as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished may be approved by the Director of Purchasing and General Services Department ("Purchasing Director"), or her designee, provided that such change orders:
 - (1) are made in writing, signed by the Purchasing Director or her designee;
 - (2) do not involve an increase or decrease in contract price of more than \$25,000; and
 - (3) sufficient funds have already been allocated by City or are available to the Purchasing Director to cover any increase in contract price.
- (b) Any other change will require approval of the City Council, City of San Antonio.
- (c) Changes that do not involve an increase in contract price may, however, be made by the Purchasing Director.

12. Contract Termination

TERMINATION-BREACH:

- (a) Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract for convenience upon ~~ten~~ days prior written notice.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

13. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE

FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

14. Assignment and Subcontracting

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing and General Services Department. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.
- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

15. Independent Contractor. Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

16. Patents/Copyrights. The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

17. Public Information Act. Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

18. Conflict of Interest. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service

Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

19. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

20. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

21. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

22. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with ~~all applicable federal, state and local laws, rules and regulations.~~

23. Venue. Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

24. Entire Agreement. This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

25. Invoicing and Payment.

(a) Address for Invoices. All invoices must be sent to: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.

(b) Information Required On Invoice.

All invoices must be in a form and content approved by the City. City may require modification of invoices if necessary in order to satisfy City that all billing is proper and pursuant to the terms of the contract. Invoices are required to show each City Purchase Order Number. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All invoices must show unit prices for each item being billed, the quantity of items being billed and the total for each item, as well as the total for all items on the invoice. If prices are based on list prices basis, then the list

prices, the percentage discount or percentage surcharge, net unit prices, extensions and net total prices must be shown. Prompt payment discounts offered shall be shown separately on the invoice.

- (c) Payment by City. City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date the City receives conforming goods under the contract; (2) the date performance of the service under the contract is completed; or (3) the date the City receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between the City and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount, or the item must be issued by the vendor. City will not make partial payments on an invoice where there is a dispute.

- (d) NECESSITY OF TIMELY INVOICE / WAIVER OF PAYMENT. NOTWITHSTANDING THE FORGOING, THE CITY CANNOT PAY FOR ANY GOODS OR SERVICES WITHOUT AN INVOICE. VENDOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE GOODS ARE DELIVERED OR SERVICES RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 DAY SHALL NEGATE ANY LIABILITY ON THE PART OF CITY AND CONSTITUTE A **WAIVER** BY VENDOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONEYS THAT VENDOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR GOODS OR SERVICES PERFORMED.

- ~~(e) The total price for all goods and/or services is shown on the Price Schedule. No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by City. The parties hereby agree that all compensable expenses of Vendor are shown on the Price Schedule. If there is a discrepancy on the Price Schedule between the unit price for an item, and the extended price, the unit price shall govern.~~

- (f) Tax Exemption. The City of San Antonio is exempt from payment of federal taxes, and State of Texas limited sales excise and use taxes. Bidders must not include such taxes in bid prices. An exemption certificate will be signed by City where applicable upon request by bidder after contract award.
- (g) Prompt Payment Discount. Provided Bidder meets the requirements stated herein, City shall take Bidder's offered prompt payment discount into consideration in determining who the low bidder is. The evaluation will not be based on the discount percentage alone, but rather the net price as determined by applying the discount to the bid price, either per line item or total bid amount. However, the City reserves the right to reject a discount if the percentage is too low to be of value to the City, all things considered. The City may also reject a discount if the percentage is so high as to create an overly large disparity between the price City would pay if it is able to take advantage of the discount and the price City would pay if it were unable to pay within the discount period. City may always reject the discount and pay within the 30 day period, at City's sole option.

The City will not consider discounts that provide fewer than 10 days to pay in order to receive the discount.

For example, payment terms of 2% 5, Net 30 will NOT be considered in bid evaluations or in the payment of invoices. However, payment terms of 2% 10, Net 30 will result in a two percent reduction in the bid price

during bid evaluation, and the City will take the 2% discount if the invoice is paid within the 10 day time period.

26. Insurance

INSURANCE

- (a) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's **Parks & Recreation Department**, which shall be clearly labeled "10-021 Building Modular Concrete Restroom" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's original signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's Purchasing & General Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- (b) The City reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will City allow modification whereupon City may incur increased risk.
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- (c) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

Type	Amount
Workers Compensation Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

- (d) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio

Attn: Purchasing & General Services Department

P.O. Box 839966

San Antonio, Texas 78283-3966

- (e) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured's by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- (f) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- (g) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this agreement.
- (h) It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- (i) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

II. PRODUCT SPECIFICATIONS & DESCRIPTION OF SERVICES

1. Period of Contract. Unless otherwise agreed in writing by City, this contract shall be for the period beginning upon award and terminating upon delivery and acceptance of ordered products. All products shall be delivered no later than March 31, 2010
2. Contractor shall provide and deliver the items identified on the Price Schedule below, and more particularly described on Exhibit I and Attachment A, for the Parks & Recreation Department of the City. Delivery shall be made to Southside Lions Park, located at 3100 Hiawatha, San Antonio, Texas.
3. Contractor shall be responsible for providing all tools and equipment necessary to accomplish delivery and offloading.

III. PRICE SCHEDULE

Price schedule - pursuant to the TIPS co-op contract 3082709

Item	Description	Estimated Quantity	Price
	12' X 24' X 11' Precast		
1	Concrete Restroom Facility	1	
	Price Each		\$71,205.00
	Total Price		\$71,205.00
	Part # Restroom 1224		
2	ADA Dual Single Exterior Drinking Fountain	1	
	Price each		\$2,497.00
	Total Price		\$2,497.00
	Part # ES12532D		
3	Stainless Steel Trash Receptacles	2	
	Price each		\$492.50
	Total Price		\$985.00
	Part # ES11362		

Statement:

"Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us/forms/CIQ.pdf. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205."

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IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING & GENERAL SERVICES
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING & GENERAL SERVICES
111 SOLEDAD, 11TH FLOOR
SAN ANTONIO, TEXAS 78205

REMARKS:

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Attachment A

The **Prefabricated Concrete Restroom Building** proposed will feature solid reinforced monolithic concrete panels with 4" walls, 4" roof and 8" floor with welded connections and pre-installed plumbing, electrical and HVAC.

The Concrete Building System will be pre-engineered to meet the following: UBC 2006, NEC 2008, Code Compliant in TX, 150mph Wind Load, and Bulletproof to 30.06 Rifle from 15 feet per UL-752 Level 4, Seismic Zone 4 and 2-Hour Fire Rating per UBC. The facility will be Prefabricated in a Controlled Environment, Relocate-able, Highly Vandal Resistant and Carry a 1 Year Structural Warranty (Minimum).

Vendor will be awarded based upon best value. All specs shall be met below. Vendor shall set restroom on end user's prepared foundation per manufacturer's recommendations. Final utility connections by others.

The Prefabricated Concrete Restroom Building requested will be manufactured and equipped per specs as follows:

1) Summary

**12' WOD X 24' LOD X 11' HID Prefabricated Concrete Restroom Building
Double Occupancy, ADA Compliant, Men's & Women's Restrooms
Chase / Storage Area with Rear Access**

2) Quality Assurance

Manufactured in an N.P.C.A. Certified Plant
Manufacturer Member of N.P.C.A.
Manufacturer Member of Modular Building Institute
Approved Manufacturer with the State of TX Industrialized Housing and Buildings Documentation demonstrating compliance with the requirements listed above shall be submitted with proposal.

3) Structural Specifications

Estimated Weight: Approximately 74,000 lbs
Walls & Roof: 4" Reinforced Solid Concrete
Interior Walls: 4" Reinforced Solid Concrete
Floor: 8" Reinforced Concrete with Waffle Design for Weight Reduction
Wall Panels Overhang Floor Slab with Internal (Non-Exposed) Structural Seals
(Caulk or Other) with Direct Exposure to UV Not Allowed
Gable Profile Concrete Roof with Secondary Metal Roofing System
Welded Panel Connections using Imbedded Headed Anchor Studs (HAS) (Bolted connections not allowed)

4) Exterior Finishes

Walls – Architectural Cast-In Texture, Stucco with Running Limestone Wainscoting on Bottom 1/3 of Walls with Chamfer (Integrally Colored Exterior Concrete Walls Painted Custom Color with Graffiti Sealer. Color Samples and Texture Supplied to End User)

Roof – Concrete Gable Roof with 2/12 Pitch and 24 Gauge Secondary Metal Roof System (Custom Color. Color and Metal Samples Supplied to End User)

5) Interior Finishes

Walls & Ceiling Surfaces Shall Have Secondary Skim Coat to Remove Form Blemishes with Epoxy Coating (White) - Vendor Shall Supply Information on the Coating Material with Bid

Floor – Smooth, Slip-Resistant Epoxy Coated Concrete with Anti-Microbial Corners (Gray)

Trim – Continuous Trim in All Corners

6) Signage

Recessed, Molded Plastic, Men's, Women's, Maintenance & ADA Signage as Specified

7) Doors and Accessories

Three (3) 3' x 7' 18 Gauge Galvanized and Painted Steel Doors

Cast In 16 Gauge Galvanized and Painted Steel Door Frames

Non-Corrosive Stainless Steel Ball Bearing Hinges

ADA Pull Handle with Deadbolt and Interchangeable Core

ADA Aluminum Threshold and Door Sweep

Weather-Stripping

Hydraulic Door Closer

Aluminum Drip Edge

~~Door Louver~~

Adjustable Door Sweep

8) Plumbing Fixtures & Restroom Accessories

Two (2) ADA Floor Mounted, Rear Discharge Water Closets – Vitreous China
One (1) Floor Mounted, Rear Discharge Water Closet – Vitreous China
One (1) Wall Mounted *Waterless* Urinal – Stainless Steel with Cartridge and Oil
Three (3) ADA Push Button Vandal Resistant Concealed Flush Valves
Two (2) ADA Wall Mounted Lavatories – Stainless Steel
Two (2) Pneumatic Push Button ADA Faucets with Auto-Mix Valves
Dual Level ADA Water Fountain
Required ADA Grab Bars – Stainless Steel
Two (2) ADA Tapered Tilt Mirrors – Polished Stainless Steel with Stainless Steel Frames
Three (3) Dual Toilet Paper Dispensers – Stainless Steel, Lockable
Two (2) Chase Mounted Push Button ADA Vandal-Resistant Hand Dryers
One (1) Hose Bib in Chase
Solid Polymer Privacy Partitions and Urinal Screen
Two (2) Stainless Steel Trash Receptacles
Plumbing in Chase Pre-Plumbed to Floor Opening
Copper Water Lines and PVC Waste Lines
Roof Mounted Vent Stack Installed by Manufacturer After Offloading

*** All fixtures and plumbing will be pre-installed in factory unless otherwise noted, final connections to site utilities by others.

9) Electrical System

12 Circuit Primary Load Center
120/240 VAC Single Phase
60 Hz Operation
100 Amp Main Breaker

Required Breakers

EMT Surface Mounted Conduit (All junctions in chase, minimal exposed conduit)
One (1) GFI Duplex Receptacle in Chase
Four (4) Heavy Duty, Wet Location Fluorescent Light Fixtures Mounted on Chase Wall – Motion Activated (Restrooms)
One (1) Heavy Duty, Wet Location Fluorescent Light Fixture Mounted in Chase – Switch Activated (Chase)
One (1) Compact Fluorescent Exterior Light Fixture with Switched Photocell, Vandal Resistant (Switch in Chase)
All Wiring Pre-Wired to Load Center

*** All fixtures and conduit will be pre-installed in factory unless otherwise noted, final connections to site utilities by others.

10) HVAC

Two (2) High CFM Exhaust Ventilation Fans (Activate with Lights)
Four (4) Kick-Resistant 12" Aluminum, Fixed, Rain-tight Wall Louvers with Bug Screens (2 in Each Restroom, Cross Flow Ventilation)
Fan Forced Chase Heater with Integral Thermostat

11) Conduit / Plumbing Entries

One (1) 12" x 18" Floor Block-out in Chase for Primary Plumbing and Electrical Entrance
Three (3) Floor Drain Kits with Concrete Floors in Each Room Sloping from Perimeter of Room to Center of Floor Drain
Site Plumbing will be Stubbed Up Per Manufacturer's Approval Drawings by End User Before Delivery
Single 4" Sewer Connection in Chase
Single 1" Water Connection in Chase
60A Single Phase 120/240VAC Connection in Chase

*** Block outs will require grouting on site by others after piping termination.

12) Misc Accessories

Two (2) 16" x 32" Glass Block Windows, 8" x 8" Clear Privacy Block
Three (3) Metal Coat Hooks in Stalls

13) Logistics

Shipping to Site (San Antonio, TX) and Crane Offload will be Provided by Building Manufacturer
Field Support Will Be Provided by Building Manufacturer
Lifting Points for Offloading Shall be Roof Mounted for Aesthetics

14) Approvals

Drawing Approval Package Will Consist of:

1. Structural Exploded View
2. Electrical Schematic
3. Plumbing Schematic
4. Equipment List
5. PE Sealed Foundation Drawing and Detail
6. PE Sealed Structural Engineering
7. TX Approvals for Modular Buildings

15) The City of San Antonio to provide Building Foundation, Connection of Electrical and Plumbing to Main Utilities, permits and inspections.