



CITY OF HOUSTON INVITATION TO BID

Issued: November 17, 2006

Bid Opening:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until 10:30 a.m. Thursday, **December 14, 2006** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**TWO-PASSENGER SCOOTERS
FOR
THE POLICE DEPARTMENT
BID INVITATION No. S25-N22194
NIGP Code: 99894**

Buyer:

Questions regarding this solicitation package should be addressed to **Tom Smyer, Senior Procurement Specialist**, at 713-247-1257, or e-mail to thomas.smyer@cityofhouston.net.

Electronic Bidding:

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "PLACE BID" page.

Pre-Bid Conference:

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Concourse Level (Basement), **Conference Room #2**, City Hall, 901 Bagby, at **1:30 p.m. on Monday, November 27, 2006**.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at www.houstontx.gov/purchasing/index.html. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids, or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15 - 1.

***CONTENTS:**

- SECTION A: OFFER
- SECTION B: SCOPE OF WORK/SPECIFICATIONS
- SECTION C: GENERAL TERMS & CONDITIONS

***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the official signature page, which must be signed by a company official authorized to bind the company.**

SECTION A



FLEET FORMAL BID

**TWO-PASSENGER SCOOTERS
FOR
THE POLICE DEPARTMENT
BID INVITATION No. S25-N22194
NIGP Code: 99894**

To the Honorable Mayor
and City Council Members
of the City of Houston, Texas (the "City")

The undersigned hereby offers to furnish and deliver prepaid F.O.B. destination point Houston, Texas, the item(s) listed on the **electronic bid form** and on individual Purchase Orders, in accordance with the price(s) bid and other conditions shown herein, and in accordance with the City's Specifications and General Terms & Conditions and/or samples/drawings provided herein. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of each bidder to ensure it has obtained all such Letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into the bid.

The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order at any time on or before the 120th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.

The City reserves the option, after bids are opened, to adjust the quantities listed on the following page(s) upward or downward, subject to the availability of funds, and/or make award(s) on a line item basis.

The City reserves the right to INCREASE quantities during the twelve-month period following the issuance of the first purchase order subject to agreement in writing by the Prime Contractor/Supplier to honor the same bid price.

SECTION A

Documents/forms must be downloaded from the City's Website
<http://www.houstontx.gov/purchasing/index.html>

Additional Required Forms to be Included with this Bid:

In addition to the electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

Table 1 - Required Forms
Affidavit of Ownership
Fair Campaign Ordinance
Statement of Residency
Conflict of Interest Questionnaire
Bidders Attachments Fleet

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

Table 2 - Documents and Forms
Drug Form
EEOC
Equipment Inspection & Receiver
Formal Instructions for Bid Terms
MWBE
Sample Insurance Over \$25000

SECTION B

SPECIFICATIONS

PART I GENERAL SPECIFICATIONS

1.0 Bidding:

- 1.1 Pricing for Specified Item(s):
 - 1.1.1 Bidders may bid on one or more of the specified items listed.
 - 1.1.2 Bids submitted must contain a unit price for the specified item(s). For any bid solicitation that contains a request for separate pricing of options for the specified item(s), pricing must be provided for both the specified item(s) and option(s) listed. If pricing is provided for only the listed option(s), the bid for that specified item will be deemed as non-responsive and will be rejected.
 - 1.1.3 The unit price for any specified item shall be defined as the price for the manufacturer's standard model, furnished complete with all standard equipment and factory installed accessories listed in the manufacturer's printed literature for the respective unit, and any additional equipment defined herein by the City of Houston that is to be included.
- 1.2 Pricing for Listed Option(s): (If Applicable)
 - 1.2.1 A unit price is required on every listed option for the specified item(s).
 - 1.2.2 If a bidder "no bids" any listed option for which bids are requested for a specified item, the bid for that specified item will be deemed as non-responsive and will be rejected.
- 1.3 The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of bid to the Prime Contractor/Supplier at any time on or before the 120th day following the day the Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.
- 1.4 Prices quoted shall remain firm through delivery and shall not be subject to increases (or supplemented on Prime Contractor/Supplier's invoice(s) for payment).
- 1.5 The City reserves the option, after bids are opened, to adjust the quantities listed on the City's Official Bid Form upward or downward, subject to the availability of funds, and/or make award by line item. Therefore, the City shall not be liable for any contractual agreements/obligations the Prime Contractor/Supplier enters into based on the City purchasing all the quantities specified herein.
- 1.6 The City reserves the right to INCREASE quantities during the twelve-month period following the issuance of the first purchase order subject to agreement in writing by the Prime Contractor/Supplier to honor the same bid price.

2.0 Award:

- 2.1 Award will be made on the basis of the low total bid price for the specified item(s) meeting all specifications referenced herein plus listed options, if any.

3.0 Applicable Specifications:

- 3.1 The applicable specifications are comprised of the "Instructions for Bidding and Terms & Conditions", "Official Bid Forms", the "General Specifications", the "Technical Equipment Specifications", the "General Terms and Conditions" and other specifications that may be included herewith and the purchase orders which refer to these specifications.

SECTION B - PART I: GENERAL SPECIFICATIONS: (Continued)

4.0 Units Bid:

- 4.1 The unit(s) bid shall be new, manufacturer's latest make and model in current production as offered to commercial trade and shall be furnished complete with all factory-installed standard equipment and accessories listed in the manufacturer's latest literature for the respective unit and any additional optional equipment as may be defined in the detailed Technical Specifications.
- 4.2 Prime Contractor/Supplier, by affixing their signature on the Official City Bid Form, has offered to furnish the equipment as specified herein in accordance with these specifications and all provisions set forth in this bid document. As such, it is the Prime Contractor/Supplier's responsibility to adhere to these specifications. **Any exceptions or conditions to the specifications set forth in the bid documents will deem the bid non-responsive, and the bid will be rejected.**
- 4.3 The unit(s) bid shall be in full and complete compliance with all applicable safety and pollution requirements and regulations in effect at the time of bid submittal. This includes but is not limited to standards established by the United States Department of Transportation, including the Federal Motor Vehicle Safety Standards (FMVSS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Texas Department of Transportation and the Texas Commission on Environmental Quality (TCEQ).
- 4.4 The City of Houston requires that the unit(s) bid be the lowest emission unit(s), i.e. Nitrogen Oxides (NOx) and Fine Particulate Matter (PM) without increasing Hydrocarbons (HC), available on the market for the specified equipment. The emission standards established by the EPA shall be considered only as minimum standards. In the absence of EPA standards or if California Air Resources Board (CARB) standards provide lower emissions, CARB standards will be considered as the minimum if the specified unit and any required fuel is available to the City of Houston. Federally regulated engines must be covered by an EPA-issued Certificate of Conformity certifying the engine to be in compliance with federal emission standards and the Prime Contractor/Supplier shall provide the Certificate of Conformity with their bid or within three calendar days from the written request of the City. EPA emission label must be affixed to the vehicle and/or engine and be readily visible.
- 4.5 The term "Heavy Duty", or "HD" as may be applied to these specifications shall be interpreted to mean that the item referred to shall exceed the usual quality, quantity or capacity of that supplied with standard production units and shall be able to withstand the unusual strain, exposure, wear and use to be expected in the intended service. Where specification requirements are given, they shall be considered minimum requirements unless otherwise indicated.
- 4.6 Throughout these specifications, compatibility is of the essence and any modification, accessory, device, material or type of construction, whether to existing or to the specified equipment, which may be necessary to incorporate the specified equipment into the existing equipment shall be considered to be a part of these specifications whether detailed by item or not.
- 4.7 Units provided shall not have any decal, plate, sign, stencil, stamping, molding, or marking of any type pertaining to advertisement other than trademarks, trade names, or model designation normally installed by the manufacturer on equipment delivered to the City of Houston. No accessory item furnished on equipment shall advertise the name of the Prime Contractor/Supplier.

5.0 Technical Literature:

- 5.1 To evaluate the bids, the user department and the City purchasing staff may require product literature/specification sheets. Technical literature may be provided with the bid submittal but is not required. However, the City reserves the right to request and require literature and/or clarifications, as needed, after bid submittal.

SECTION B - PART I: GENERAL SPECIFICATIONS: (Continued)

5.0 Technical Literature: (Continued)

- 5.2 If required, Bidder must submit a minimum of TWO SETS of the requested catalogue information, descriptive literature specifications and/or (if applicable) engineering drawings that completely identify the items bid. Bidder(s) shall furnish the requested literature within seven (7) calendar days after the receipt of the City's written request. FAILURE ON BIDDER'S PART TO FURNISH THE REQUESTED TECHNICAL DATA IN THE TIME LIMIT SPECIFIED MAY BE CAUSE FOR REJECTION OF THE BID.

6.0 Warranty:

- 6.1 A minimum twelve (12) month warranty on both materials and workmanship shall be provided. The warranty period shall commence the date the City officially accepts the completed item(s). When extended warranties are available as standard, they shall be included as a part of the bid for the benefit of the City. Any and all documents necessary to effect warranty shall be properly applied for and submitted by the Prime Contractor/Supplier.
- 6.2 Additional warranties, if required, are listed in the Technical Specifications for each item.
- 6.3 With respect to any goods, materials, equipment, supplies and parts furnished by it, Prime Contractor/Supplier warrants:
- That all items are new and free of defects in title, design, material and workmanship.
 - That each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed and conforms in all respects to the terms of the City Purchase Order and Specifications.
 - That each replacement item is new, in accordance with original equipment
 - Manufacturer's specifications are of a quality of at least as good as the quality of the item that it replaces (when the replaced item was new).
 - That no item or its use infringes any patent, copyright or proprietary right.
- 6.4 The Prime Contractor/Supplier's product shall be supported by an authorized service facility that can provide warranty repair, service and maintenance work within 24 hours from notification by the City.
- 6.5 Any warranty work shall be completed without cost to the City. Prime Contractor/Supplier shall be responsible for all shipping and/or freight expense from the City's designated location to the Prime Contractor/Supplier's facility for all warranty repair and/or maintenance and return to the City's designated location.
- 6.6 Prime Contractor/Supplier shall provide a Manufacturer's Authorized Facility located within the Houston-Galveston Region (Harris County and its seven adjacent counties, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller) for all warranty and maintenance service.

7.0 Licenses and Permits:

- 7.1 Prime Contractor/Suppliers are to adhere to all applicable federal, state as well as local laws and regulations. It is the Prime Contractor/Supplier's responsibility to acquire all necessary licenses and permits required by law.
- 7.2 Prime Contractor/Supplier shall be responsible for securing any and all inspections required by law, including State Inspection stickers. Any fee charged for these inspections shall be the responsibility of the Prime Contractor/Supplier and not the City of Houston.
- 7.3 At the time of delivery to the City of Houston, Prime Contractor/Suppliers are required to provide temporary paper license tags/plates for motor vehicles or other equipment required by the State of Texas to be registered for operation on public highways.
- 7.3 MOTOR VEHICLE COMMISSION CODE Texas Revised Civil Statutes, Annotated, Article 4413 (36) and 4413 (36a) (If Applicable)
- 7.3.1 **License Requirement:** Section 4.01. (a), "Except as provided by this Section, no person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, ... in this state ..., without obtaining a license therefore as provided in this Act and the rules of the Board."

SECTION B - PART 1: GENERAL SPECIFICATIONS: (Continued)

- 7.3.2 **Sale of New Motor Vehicles:** Section 5.04. (a), "No person may engage in the business of buying, selling, or exchanging new motor vehicles unless that person: (1) holds a valid **franchised dealer's license** issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or (2) is acting as a bona fide employee of the licensee."
- 7.3.3 **Licensed Franchised Dealers** submitting bids for new cabs & chassis with installed bodies, by this Statute, are required to employ **properly licensed converters** for the conversions of the new motor vehicles.
- 7.3.4 **The Act of Submitting a Bid is regarded as doing business, as the entity is soliciting a sale.** Accordingly, each bidder must be a **licensed franchised dealer** at the time the bid is submitted.

8.0 Delivery / Inspection:

- 8.1 The item(s) specified herein, with delivery tickets and/or other required documents shall be delivered Prepaid F.O.B. Destination to the location(s) shown on the purchase order(s) **within the delivery time(s) as listed in the Technical Specifications** after receipt of City of Houston Purchase Order.
- 8.2 The Prime Contractor/Supplier shall notify the City Contact listed in the "Ship To" section of the purchase order not less than three (3) days prior to expected delivery/arrival to permit inspection scheduling. The City Contact shall advise Prime Contractor/Supplier as to the date, time and location of authorized delivery/location. An authorized representative of the Prime Contractor/Supplier shall supervise delivery to the City. The City will not assume any liability for vehicle/equipment delivered to an unauthorized location.
- 8.3 Documentation at time of Delivery:
Prime Contractor/Supplier shall provide the following documentation **per purchase order** upon delivery:
- Copy of purchase order(s) and original invoice(s).
 - Manufacturer's Certificate of Origin (Shall be made out to "City of Houston, Texas", 901 Bagby, Houston, TX 77002 and delivered to the Finance and Administration Department representative at the time of delivery of the vehicle/equipment).
 - Temporary paper license tags/plates, if applicable for equipment being delivered.
 - Warranty policy(ies) and/or certifications as may be required in the Specifications.
 - Parts, service, operator and maintenance manual(s) as may be required in the Technical Specifications.
- 8.4 Each unit shall be delivered clean and shall be complete with all equipment operable. Each unit shall be inspected by the City before tender of delivery to determine its compliance with the specifications and/or to test its ability to perform its intended use.
- 8.5 Upon acceptance and receipt of the vehicle/equipment unit by the City, Prime Contractor/Supplier shall obtain the signatures and employee numbers of the City's receiving employees on the City's Equipment Inspection/Receiver Report as attached hereto.

9.0 Conflict in Terms:

- 9.1 Should there be any conflict between the General Specifications and the Technical Specifications, the Technical Specifications shall prevail.

10.0 Miscellaneous:

- 10.1 For purposes of this Contract, the phrase "City Purchasing Agent" shall be deemed to include both the City Purchasing Agent, and his or her designated representative(s).

SECTION B

SPECIFICATIONS

PART II TECHNICAL SPECIFICATIONS

Referenced Manufacturer/Model: Yamaha "Majesty Scooter"; Suzuki "Burgman 400" or City-approved equal

1.0 General:

- 1.1 Equipment Description:
 - 1.1.1 This specification describes a two-passenger scooter that will be used by civilian Police Department employees to respond to acute traffic congestion problems throughout the City of Houston.
- 1.2 Equivalent Equipment:
 - 1.2.1 Equipment bid as an equal to the specified model must provide sufficient operating and technical specifications for the City to evaluate the proposed equipment.

2.0 Two Passenger Scooter:

- 2.1 General:
 - 2.1.1 Include all equipment and accessories listed as standard equipment in manufacturer's printed literature.
 - 2.1.2 Include an integrated windshield and have a wide front-body design intended to protect the driver's legs from wind and rain.
- 2.2 Engine:
 - 2.2.1 Factory OEM liquid cooled gasoline engine with a minimum displacement of 395 cubic inches.
 - 2.2.2 Factory OEM "fuel injection" fuel delivery system.
- 2.3 Transmission:
 - 2.3.1 Factory OEM automatic transmission.
- 2.4 Brakes:
 - 2.4.1 Front and rear factory OEM disc brakes.
- 2.5 Color:
 - 2.5.1 Factory applied blue OEM paint (solid blue in color).
- 2.6 Tires:
 - 2.6.1 Front tire sized 120/80-14 or manufacturer's standard.
 - 2.6.2 Rear tire sized 150/70-13 or manufacturer's standard.

3.0 LITERATURE:

- 3.1 Standard factory operation and maintenance manuals shall be provided with each unit.
- 3.2 Two sets of factory parts and service manuals shall be provided (two total sets).

4.0 WARRANTY:

- 4.1 In addition to manufacturer's standard one (1) year unlimited mileage warranty, an extended warranty of up to five (5) years shall be included, if available. Extended Warranty Option cost and duration shall be noted separate from individual scooter cost.
- 4.2 The warranty period shall commence the date the City officially accepts the vehicles.
- 4.3 Warranty work shall be completed without cost to the City within ten (10) business days after vehicle is delivered to vendor and notification of equipment failure or faulty material is made.

5.0 DELIVERY:

- 5.1 The units specified above, with delivery tickets and/or other required documents shall be delivered Prepaid F.O.B. Destination to the Houston Police Department, Houston, Texas within **thirty (30) calendar days** after receipt of City of Houston Purchase Order.

SECTION C

GENERAL TERMS AND CONDITIONS

1.0 **COMPETITIVE BIDDING:**

It is the intent of the City of Houston to solicit the lowest and best responsible bid or price under competitive conditions. All materials and/or equipment shall be new unless stated otherwise. Prospective bidders are advised that the specifications within this bid invitation are not to be considered restricted to any referenced manufacturer.

2.0 **AWARD:**

- 2.1 The City reserves the right to consider and make awards of bids on articles of similar nature that will in all respects serve the purpose for which the purchase is being made. The City reserves the right to be the sole judge as to whether such articles will serve the purpose.
- 2.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informalities that are in the best interests of the City.

3.0 **CONDITIONS PART OF BID:**

- 3.1 In the event of any conflict, the terms and provisions incorporated in the bid specifications shall control over the terms and provisions of the General Terms & Conditions for any or all purposes. Otherwise, all the terms and provisions appearing within the General Terms & Conditions shall be given full effect and shall be construed in harmony to the maximum extent by the parties hereto.
- 3.2 The failure of the City to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Contract, General Terms & Conditions or Specifications shall not be construed as a waiver or relinquishment of the future performance of such term, covenant or condition by the City, but the obligation of the Prime Contractor/Supplier with respect to such future performance shall continue in full force and effect.

4.0 **SHIPPING TERMS:**

Prices shall be prepaid F.O.B. destination to the delivery locations, Houston, TX, as indicated on individual City of Houston purchase orders. Prime Contractor/Supplier shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Prime Contractor/Supplier. All claims for visible or concealed damage shall be filed by the Prime Contractor/Supplier. The City will notify the Prime Contractor/Supplier promptly of any damaged goods and shall assist the Prime Contractor/Supplier in arranging for inspection.

5.0 **SILENCE OF SPECIFICATIONS:**

The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practice shall prevail and only materials and workmanship of first quality are acceptable. All interpretations of these specifications shall be made upon the basis of this statement.

6.0 **SPECIFIED EQUIPMENT, OR EQUIVALENT:**

- 6.1 Wherever in the specifications any materials or processes are indicated or specified by patent of proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.
- 6.2 The burden of proof shall rest with the bidder, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified.
DETERMINATION AS TO WHETHER THE ITEM(S) BID IS(ARE) EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.

GENERAL TERMS & CONDITIONS: (CONTINUED)

7.0 BRAND NAMES:

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other Prime Contractor/Suppliers, but are intended to approximate the quality design or performance that is desired. Any bid that proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific substitution is made, the assumption will be that the item bid is exactly as specified on the Invitation to Bid.

8.0 PATENTS:

THE PRIME CONTRACTOR/SUPPLIER AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY, ITS AGENTS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL SUITS AND ACTIONS OF EVERY NATURE AND DESCRIPTION BROUGHT AGAINST THEM OR ANY OF THEM, FOR OR ON ACCOUNT OF THE USE OF PATENTED APPLIANCES, PRODUCTS OR PROCESSES, AND IT SHALL PAY ALL ROYALTIES AND CHARGES WHICH ARE LEGAL AND EQUITABLE. EVIDENCE OF SUCH PAYMENT OR SATISFACTION SHALL BE SUBMITTED, UPON REQUEST OF THE CITY PURCHASING AGENT, AS A NECESSARY REQUIREMENT IN CONNECTION WITH THE FINAL ESTIMATE FOR PAYMENT IN WHICH SUCH PATENTED APPLIANCE, PRODUCTS OR PROCESSES ARE USED.

9.0 RELEASE:

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

10.0 INDEMNIFICATION:

10.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) PRIME CONTRACTOR/SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.**

10.2 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

10.3 INDEMNIFICATION PROCEDURES:

- (1) Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 (ten) days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss.
- (2) The notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.
- (3) Defense of Claims
 - (a) Assumption of Defense Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not the Prime Contractor/Supplier will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - (b) Continued Participation If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

11.0 INSURANCE: (See Online Sample of Certificate of Insurance)

11.1 **Prior to award and/or starting work, Prime Contractor/Supplier must present a Certificate of Insurance evidencing the insurance coverage specified herein. This is a mandatory requirement. Only unaltered, original insurance certificates are acceptable. Photocopies are unacceptable.**

***Exception: Proof of insurance coverage is not required by Prime Contractor/Supplier if the specified equipment will be dropped-shipped by manufacturer, or delivered by a common carrier, and this contract agreement does not require Prime Contractor/Supplier to perform a labor or service component at a City facility. Prior to award, Prime Contractor/Supplier must present a written statement attesting to this exception.**

11.2 **The Prime Contractor/Supplier shall have insurance coverage as follows:**

- **Commercial General Liability** shall be \$500,000 per occurrence; \$1,000,000 aggregate, per 12-month policy period.
- **Automobile Liability Insurance for autos furnished or used in the course of performance of this Contract, including Owned, Non-Owned, and Hired auto coverage.** (Any Auto coverage may be substituted for Owned, Non-Owned and Hired Auto coverage.) If no autos are owned by Prime Contractor/Supplier, coverage may be limited to Non-Owned and Hired Autos. If Owned Auto coverage cannot be purchased by Prime Contractor/Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. **EACH AUTO USED IN PERFORMANCE OF THIS CONTRACT MUST BE COVERED IN THE LIMITS SPECIFIED: \$1,000,000 - Combined Single Limit per occurrence; \$1,000,000 aggregate, per 12-month policy period.**

GENERAL TERMS & CONDITIONS : (CONTINUED)

11.0 INSURANCE: (Continued)

- **Worker's Compensation including Broad Form All States endorsement shall be in statutory amount and**
 - **Employer's Liability:** Bodily Injury/Accident \$100,000; Bodily Injury / Disease \$100,000 (per employee); Bodily Injury / Disease \$100,000 (policy limit).
- 11.3 The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in the State of Texas, or (2) shall be an eligible non-admitted insurer in the State of Texas, and shall have a Best's rating of B+ or better and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.
- 11.4 All insurance policies required by this Contract shall require that 1) the City of Houston is named as an additional insured on the General Liability, Auto Liability and any Umbrella policies; 2) waiver of subrogation is provided for the City of Houston on General Liability, Auto Liability, any Umbrella policies, and Worker's Compensation; and 3) thirty (30) days advance written notice shall be provided to the City before the any policy required by this Contract is cancelled or non-renewed. Within such thirty (30) day period, Prime Contractor/Supplier covenants that it will provide other suitable policies in lieu of those about to be cancelled or non-renewed to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Prime Contractor/Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Contract at once.
- 11.5 **REQUIREMENTS FOR CERTIFICATE OF INSURANCE:**
- 11.5.1 Name and Address of Producer writing coverage.
 - 11.5.2 Name of each insurance company providing coverage (as listed on company's Certificate of Authority on file with the Texas Department of Insurance, or in Best's Key Rating Guide).
 - 11.5.3 Name and address of Insured (as shown on policy).
 - 11.5.4 Letter in the column must reference the insurer of the policy being described.
 - 11.5.5 Must be a policy number; no binders will be accepted.
 - 11.5.6 Date policy became effective.
 - 11.5.7 Expiration date of policy must be at least 30 days from date of delivery of certificate.
 - 11.5.8 Name and file number of project (Bid Name and Bid Number).
 - 11.5.9 Name of project manager (Buyer).
 - 11.5.10 Signature or facsimile signature of authorized representative of Producer (blue ink preferred).

FORWARD CERTIFICATE TO BUYER AT: **City of Houston/Finance and Administration Department
Strategic Purchasing Division
P.O. Box 1562
Houston, Texas 77251-1562**

GENERAL TERMS & CONDITIONS: (CONTINUED)

12.0 DRUG DETECTION AND DETERRENCE PROCEDURE: (See Online Forms)

It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by Prime Contractor/Suppliers while on City premises is prohibited. By executing this Contract, Prime Contractor/Supplier represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), both of which are on file in the Office of the City Secretary.

13.0 MINORITY AND WOMEN BUSINESS ENTERPRISES: (See Online Forms)

These provisions apply to goal oriented contracts. A goal oriented contract means any contract awarded for the supply of goods or non-professional services of approximately \$100,000.00 for which competitive bids are required by law and which the City Purchasing Agent has determined to have City of Houston Certified MWBE subcontracting potential.

Prime Contractor/Supplier agrees to comply with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances insofar as such programs apply to this Contract. Prime Contractor/Supplier further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Contract to Minority and Women-owned Business Enterprises certified by the City's Affirmative Action Division. In addition, Prime Contractor/Supplier acknowledges that it has reviewed the requirements for good faith efforts that are on file with the City's Affirmative Action Division, is familiar with such requirements, and will comply with them.

Prime Contractor/Supplier shall require written subcontracts with all MWBE subcontractors and suppliers, which must contain the terms set out in the documents attached herein. If Prime Contractor/Supplier is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

Refer to the "City of Houston Goal-Oriented Minority and Women Business Enterprises Contract Provisions" attachment, which is incorporated in the specifications herein by this reference for all purposes, for more detailed information on this requirement.

14.0 TAXES:

The City is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the Bid Form or Specifications specifically indicate otherwise, the bid price must be net exclusive of above-mentioned taxes. A Prime Contractor/Supplier desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the City Purchasing Agent, if satisfied as to the facts, may approve or issue the necessary certificates.

15.0 REJECTIONS:

15.1 Articles not in accordance with samples and specifications must be removed by the Prime Contractor/Supplier and at his expense. All disputes concerning quality of supplies delivered under this offer will be determined by the City Purchasing Agent or designated representative.

15.2 All articles enumerated in the offer shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the City Purchasing Agent who shall have the right to reject the whole or any part of the same.

GENERAL TERMS & CONDITIONS: (CONTINUED)

16.0 INVOICING:

- 16.1 In order to expedite payments all invoices must be submitted in triplicate, itemized as to quantity, part and/or model number, description in the same order and form as in the City of Houston Purchase Order. Variations will only delay payment. In addition, invoices must show the name of the Department, Division or Section to which the merchandise was delivered, and the City of Houston Purchase Order Number.
- 16.2 All delivery tickets must have a description of the item delivered.
- 16.3 Mail invoices and a copy of the signed City of Houston Equipment/Receiver Report to the Accounts Payable Section of the Department and to the address, as noted on individual purchase orders.
- 16.4 Delivery tickets and packing slips will contain the same information as the invoice.
- 16.5 The City of Houston Equipment/Receiver Report must be signed by the receiving employee with their City Employee Number and must be signed by Prime Contractor/Supplier Representative.

17.0 PAYMENT:

Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the equipment and all required documents, whichever occurs later. Invoices received that do not agree with the provisions set forth herein shall be returned for correction and will result in payment being delayed.

18.0 PAYMENT OF SUBCONTRACTORS:

Prime Contractor/Supplier shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract. Prime Contractor/Supplier agrees to protect, defend, and indemnify the City from any claims or liability arising out of Contractor's/Supplier's failure to make such payments. (Disputes relating to payment of M/WBE subcontractors shall be submitted to arbitration in the same manner as any other disputes under the M/WBE subcontract. Failure of the Prime Contractor/Supplier to comply with the decisions of the arbitrator may be deemed, at the sole discretion of the City, a material breach leading to termination of this Contract).

19.0 INSPECTIONS AND AUDITS:

- 19.1 The City reserves all rights to review all payments made to Suppliers by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Supplier.
- 19.2 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Supplier shall keep its books and records available for this purpose for at least three years after this Agreement terminates. This provision does not affect the applicable statute of limitations.
- 19.3 City representatives have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime contract insofar as those books and records relate to performance under the prime contract.

20.0 CONTRACTOR DEBT:

If Prime Contractor/Supplier, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Prime Contractor/Supplier has incurred a debt, the City Controller shall immediately notify Prime Contractor/Supplier in writing. If Prime Contractor/Supplier does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Prime Contractor/Supplier under this agreement, and Prime Contractor/Supplier waives any recourse therefor.

21.0 SUCCESSORS & ASSIGNS:

Prime Contractor/Supplier may not assign this contract or dispose of substantially all of its assets without the written consent of the City Purchasing Agent. Prime Contractor/Suppliers failure to obtain such consent shall be an event of default, authorizing the Purchasing Agent to terminate this contract according to its terms.

GENERAL TERMS & CONDITIONS: (CONTINUED)

22.0 CHANGE ORDERS:

- 22.1 At any time during the Agreement Term, the City Purchasing Agent, or designated representative, may issue a change order to increase or decrease the scope of services, or change plans and specifications, as may be necessary to accomplish the general purposes of this Agreement. Prime Contractor/Supplier shall furnish the services or deliverables in the change order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the additional work.
- 22.2 Prime Contractor/Supplier shall not make any changes to the specifications contained herein without written authorization from the City Purchasing Agent or designated representative.
- 22.2.1 The City may refuse to accept all or part of the work performed or equipment/supplies delivered if changes are made to the specifications without the written authorization of the City Purchasing Agent or designated representative. The City shall not be responsible for costs incurred by the Prime Contractor/Supplier on unauthorized change orders.
- 22.2.2 A letter with supporting documentation of the requested change(s) shall be submitted to the City Purchasing Agent, and the City Purchasing Agent must approve any requested changes by written authorization PRIOR TO ANY CHANGES BEING PERFORMED. Documentation acceptable to the City Purchasing Agent as evidence of Prime Contractor/Supplier's change(s) shall reference the City's bid specification by section(s) and page number(s). The face of the envelope containing this letter shall clearly state "CHANGE ORDER REQUEST". The letter shall reference the CITY BID INVITATION NUMBER, CONTRACT DESCRIPTION and CITY PURCHASE ORDER NUMBER(S). Failure to provide clear and concise evidence as stated above and in the format requested will result in denial until Prime Contractor/Supplier complies with these provisions. Documentation shall be mailed to:

City Purchasing Agent
City of Houston, Finance & Administration Department
Strategic Purchasing Division
P. O. Box 1562
Houston, TX 77251-1562

- 22.3 The City Purchasing Agent, or designated representative, may issue change orders, subject to the following limitations:
- 22.3.1 City Council expressly authorizes the City Purchasing Agent to approve change orders of \$25,000 or less. A change order of more than \$25,000 over the approved contract amount must be approved by City Council.
- 22.3.2 The total of all change orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 22.3.3 For any items described in a change order that the Prime Contractor/Supplier is otherwise required to provide under the Original Agreement, the City shall not pay additional money to Contractor.

GENERAL TERMS & CONDITIONS: (CONTINUED)

23.0 TERMINATION OF AGREEMENT:

23.1 By the City for Convenience:

23.1.1 The City Purchasing Agent may terminate this Contract at any time upon 30 calendar days notice in writing to the Prime Contractor/Supplier. Upon receipt of such notice, Prime Contractor/Supplier shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Contract and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract. As soon as practicable after the receipt of notice of termination, the Prime Contractor/Supplier shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this Contract to date of termination. The City agrees to compensate the Prime Contractor/Supplier for that portion of the prescribed charges for which the services were actually performed or items delivered under this Contract and not previously paid.

23.2 By the City for Default by Prime Contractor/Supplier:

23.2.1 In the event that the materials and/or services furnished by the Prime Contractor/Supplier do not conform to the standard set forth herein, or if the deliveries and servicing of this Contract do not conform to the requirements detailed herein, the City through a written notice from the Purchasing Agent to the Prime Contractor/Supplier describing such default may as its options:

- (1) Terminate the Contract for default and the City shall have no further obligation under the Contract.
- (2) Allow the Prime Contractor/Supplier to cure default within 30 calendar days from receipt of notice unless the City Purchasing Agent specifies a longer period of time in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, Prime Contractor/Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Prime Contractor/Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Contract as of such date and have no further obligation under the Contract.

23.2.2 In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. Prime Contractor/Supplier shall be responsible for, and shall pay to the City immediately upon demand, the difference in price between that offered by the Prime Contractor/Supplier and that which the City was forced to pay for covering Prime Contractor/Supplier's failure to deliver or perform services.

23.3 By the Prime Contractor/Supplier for Default by City:

23.3.1 Default by the City shall occur if the City fails to perform or observe the terms and conditions of this Contract required to be performed or observed by the City, and the Prime Contractor/Supplier gives notice in writing to the City of the act or omission claimed by the Prime Contractor/Supplier to constitute default on the part of the City.

23.3.2 Upon receipt of such notice in writing from the Prime Contractor/Supplier; however, the City shall have 30 calendar days to cure such default. The Prime Contractor/Supplier, at its sole option, may extend the proposed date of termination to a later date.

23.3.3 If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Prime Contractor/Supplier may terminate its performance under this contract as of such date.