



# CITY OF HOUSTON

## INVITATION TO BID

Issued: February 13, 2009

### **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, March 5, 2009**, 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:

**PURCHASE AND DELIVERY OF SWIMMING POOL GRATES  
FOR THE PARKS AND RECREATION DEPARTMENT  
Bid No. S50-N23161  
NIGP Code: 931-65**

### **Buyer:**

Questions regarding this solicitation should be addressed to Arturo Lopez, **Senior Procurement Specialist, at (832) 393-8731 or e-mail to [arturo.lopez@cityofhouston.net](mailto:arturo.lopez@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.

### **Prebid Conference:**

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Concourse Level (Basement), Conference Room #1, City Hall, 901 Bagby, at **2:00 P.M. on February 25, 2009**.

**All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed all aspects of 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](http://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 any 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:**

- A. OFFER
- B. SCOPE OF WORK/SPECIFICATIONS
- 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 solicitation 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  
OFFICIAL BID FORM**



**FORMAL ONE-TIME BID  
PURCHASE AND DELIVERY OF SWIMMING POOL GRATES  
FOR THE PARKS AND RECREATION DEPARTMENT  
Bid No. S50-N23161  
NIGP Code: 931-65**

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

The undersigned hereby offers to **furnish and deliver Swimming Pool Grates**, 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 Letters of Clarification. It is the responsibility of the bidder to ensure that 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 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.**

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

## 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:**

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Pay or Play Certification of Agreement to Comply w' the Program

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:**

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
Sample Insurance Over \$50,000.pdf

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Arturo Lopez or via fax: 832-393-8759 or via email (preferred method) to [arturo.lopez@cityofhouston.net](mailto:arturo.lopez@cityofhouston.net) no later than 4:00 PM, Friday, February 27, 2009.

**SECTION B  
GENERAL SPECIFICATIONS**

**1.0 BIDDING AND AWARD:**

- 1.1 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 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.
- 1.2 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).
- 1.3 The City reserves the option 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 on a line item basis. Therefore, the City shall not be liable for any contractual agreements/obligations the Bidder enters into based on the City purchasing all the quantities specified herein.
- 1.4 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 APPLICABLE SPECIFICATIONS:**

- 2.1 "Notice to Bidders", the "Official Bid Forms", the "General Specifications", the "Technical Specifications", the "General Terms and Conditions" and other specifications that may be included herewith and the purchase orders which refer to these specifications

**3.0 TECHNICAL LITTERATURE:**

- 3.1 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 literature or clarifications, as needed, after bid submittal.
- 3.2 If required, the 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 GIVEN MAY BE CAUSE FOR REJECTION OF THE BID.

**4.0 WARRANTY:**

- 4.1 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 Bidder.
- 4.2 Additional warranties required are listed in the Technical Specifications for each item.

#### **4.0 WARRANTY: (Continued)**

- 4.3 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.
- 4.4 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.
- 4.5 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.

#### **5.0 DELIVERY INSPECTION:**

- 5.1 The item(s) specified above, with delivery tickets and/or other required documents shall be delivered FOB 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.
- 5.2 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 equipment delivered to an unauthorized location.
- 5.3 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).
  - Warranty policy (ies) and/or certifications as may be required in the Specifications.
  - Parts, service, operators and maintenance manual(s) as may be required in the Technical Specifications.

#### **6.0 SHIPPING TERMS:**

- 6.1 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.

7.0 **RESOLUTION OF LATE DELIVERY FOR EQUIPMENT:**

- 7.1 Time is of the essence in this Contract and accordingly all time limits shall be strictly construed and rigidly enforced. The work shall be furnished and fully completed within the delivery time specified in the Bid Proposal and Purchase Order to be furnished to the Prime Contractor/Supplier by the City. In the event that the work or any portions thereof shall remain uncompleted after expiration of the specified time, the Prime Contractor/Supplier shall furnish to the City a like number of comparable equipment for the City's use until such time as the ordered equipment are delivered. The equipment shall be furnished to the City with insurance to cover the use of this equipment by City personnel and in pursuit of the City's business. Should Prime Contractor/Supplier not furnish such specified equipment during the late delivery period, the City retains the right to lease such equipment from a equipment leasing firm and Prime Contractor/Supplier agrees and authorizes the City to deduct all such costs associated with such leases from the amounts due and owing to Prime Contractor/Supplier under the Purchase Order. The City may avail itself of other remedies that may be available to it in law or equity as to any other event of default
- 7.2 Prime Contractor/Supplier will not be liable for delays in performing its obligations to the extent such delays are caused by unforeseeable conditions that are beyond the Prime Contractor/Supplier's reasonable control and directly interfere with performance, and are without Prime Contractor/Supplier's fault or negligence (force majeure). However, Prime Contractor/Supplier shall provide written notice to the City of the cause and extent of an **excusable delay** requesting a time extension equal to the estimated duration thereof. Upon cessation of the event causing the delay, Prime Contractor/Supplier shall provide written notice to the City of the actual delay incurred. Determination of force majeure shall rest solely with the City Purchasing Agent and the receiving department.

8.0 **CONFLICT IN TERMS:**

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

## TECHNICAL SPECIFICATIONS

### PART 1 GENERAL

#### 1.0 SCOPE

- 1.1 The scope of requires the contractor/supplier to provide all labor, equipment, materials, facilities, supervision and transportation necessary to furnish and deliver swimming pool grates in strict accordance with the specifications stated herein.
- 1.2 Reference Model Number: Paddock Pool Equipment Co., Inc. Model #2424PCDC or City approved equal

#### 2.0 APPLICABLE PUBLICATIONS

- 2.1 American Society of Mechanical of Mechanical Engineers – ASME A112.198-2007 / 8A, 2008 Compliant and NSF certified Swimming Pool Suction Outlet Fittings.
- 2.2 Virginia Graeme Baker Pool and Spa Safety Act. 15 USC 8001.

#### 3.0 SPECIFICATIONS

- 3.1 Size: 24"X24" flat cover.
- 3.2 Total open area: 186 square inches.
- 3.3 Flow: 874 GPM @ 1.5 fps.
- 3.4 NSF Maximum safe flow: 1,420 GPM
- 3.5 The swimming pool suction outlet fittings shall be a velocity, vacuum entrapment, air entanglement reducing anti-vortex device which has been submitted under ASME A112.19.8-2007 / 8A, 2008 for testing by NSF and found to in compliance with this standard.
- 3.6 The suction outlet fitting, both cover/grate and sump shall be fabricated from 304 stainless steel. The outlet and outlet piping assembly shall be fabricated with stainless steel piping and designed so that the top of the suction outlet is a minimum distance of 1 ½ times the size of the pipe diameter, below the cover/grate.
- 3.7 The open area of the suction outlet assembly shall be equal to or exceeds the open area of the outlet pipe of the suction outlet fitting.
- 3.8 All grating fasteners in the assembly shall be 316L stainless steel Pan Head Phillips fasteners. All exposed security fasteners shall be inserted or removed with #2 Phillips Screwdriver with a maximum torque of 19.8 inch pounds. All fasteners shall be engaged by a minimum of three (3) threads.
- 3.9 The velocity of water entering any orifice on the cover/grate of the fitting during normal operation shall not exceed 1.5 feet per second. To prevent finger or toe entrapment, orifice openings in the cover/grate shall not be over ¼ inch in width.
- 3.10 The sumps must be designed by a registered professional engineer in accordance with the mandatory Appendix II of ASME A112.19.8-2007 / 8A, 2008.

- 3.11 Definition of a registered design professional – registered design professional shall be a certified architect or professional engineer duly licensed in the state the drain cover is installed.

## **PART II EXECUTION**

### **2.0 SUBMITTALS**

- 2.1 The contractor/supplier shall prove three sets of submittals including manufacturer's product data sheets, installation instructions and certificate of compliance with testing requirements, engineering data, and product specifications.

## **PART II DELIVERY**

### **3.0 DELIVERY REQUIREMENT**

- 3.1 The contractor/supplier shall deliver the gates in the quantity specified in the City of Houston purchase order **within 21 calendar days** after receipt of the purchase order.

**For more information a PDF version of the two engineering lab reports and pictures of the swimming pool grates can be viewed at the following web-site**

<https://purchasing.houstontx.gov/buyer/BidDocumentManager.aspx?id=N23161>

## **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:**

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. 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 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.

### **5.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:**

- 5.1 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.
- 5.2 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.

### **6.0 BRAND NAME OR TRADE NAME:**

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 exception is made, the assumption will be that the item bid is exactly as specified on the Invitation to Bid.

## **7.0 PATENTS:**

The Prime Contractor/Supplier agrees to indemnify and save harmless the city, its agents, employees, officers, and legal representatives 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.

## **8.0 TERMINATION OF AGREEMENT:**

### **8.1 By the City for Convenience:**

8.1.1 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.

### **8.2 By the City for Default by Prime Contractor/Supplier:**

8.2.1 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 City 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 a reasonable time as specified 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 propose 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.

8.2.2 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.

### **8.3 By the Prime Contractor/Supplier for Default by City:**

- 8.3.1 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 within 30 calendar days of the act or omission claimed by the Prime Contractor/Supplier to constitute default on the part of the City.
- 8.3.2 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.
- 8.3.3 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 propose date of termination, then the Contractor/Supplier may terminate its performance under this contract as of such date

## **9.0 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/Supplier's failure to obtain such consent shall be an event of default, authorizing the City Purchasing Agent to terminate this contract according to its terms.

## **10.0 RELEASE:**

**CONTRACTOR/SUPPLIER RELEASES THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.**

## **11.0 INDEMNIFICATION:**

**11.1 CONTRACTOR/SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FOR ALL THIRD PARTY CLAIMS, LIABILITIES, FINES, AND EXPENSES (INCLUDING ALL DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING THOSE CAUSED BY:**

- (1) **CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) **THE CITY'S AND CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) **THE CITY'S AND CONTRACTOR/SUPPLIER'S STRICT OR STATUTORY LIABILITY, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.**

**11.2 CONTRACTOR/SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

### **11.3 INDEMNIFICATION PROCEDURES:**

- (1) **Notice of Claims.** If the City or 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 10-day period, it does not waive any right to indemnification except to the extent that Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.
- (3) Defense of Claims
- (a) Assumption of Defense. 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. 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, Contractor/Supplier must advise the City as to whether or not will defend the claim. If 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 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. 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 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.

## **12.0 INSURANCE: (See City of Houston's website for sample certificate)**

- 12.1 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.
  - **Worker's Compensation** including Broad Form All States endorsement shall be in statutory amount.
  - **Employer's Liability:** Bodily Injury/Accident \$100,000; Bodily Injury/Disease \$100,000 (per employee); Bodily Injury/Disease \$100,000 (policy limit).
- 12.2 The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in Texas, and shall have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.
- 12.3 All insurance policies required by this Contract shall require on their face that 1) the City of Houston is named as an additional insured; 2) the insurance carrier waives any rights of subrogation against the City; and 3) it shall give thirty (30) days written notice to the City before any policy required by this Contract is cancelled. 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 so as 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.



The above-mentioned goal will apply to Item Nos. N/A.

**14.0 REJECTIONS:**

- 14.1 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.
- 14.2 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.

**15.0 INVOICING:**

- 15.1 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.
- 15.2 All delivery tickets must have a description of the item delivered.
- 15.3 Mail invoices to the Accounts Payable Section of the Department and to the address, as noted on individual purchase orders
- 15.4 Delivery tickets and packing slips will contain the same information as the invoice
- 15.5 All packing slips and delivery tickets must be signed by the receiving employee with their City Employee Number and must be signed by Prime Contractor/Supplier's Representative.

**16.0 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.

**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.

- 17.1 PAYMENT OF SUBCONTRACTORS:  
Prime Contractor/Supplier shall make time 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 Prime Contractor/Supplier's failure to make such payments. (Disputes relating to payment of MWBE subcontractors shall be submitted to arbitration in the same manner as any other disputes under the MWBE 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.)

## **18.0 INSPECTIONS AND AUDITS:**

- 18.1 The City reserves all rights to review all payments made to Prime Contractor/Suppliers by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Prime Contractor/Supplier.
- 18.2 City representatives may have the right to perform, or have performed, (1) audits of Prime Contractor/Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Prime Contractor/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.
- 18.3 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.

## **19.0 CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE:**

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor/Supplier to offer any contribution to a candidate for City elective office (including elected officers and officers-elect). All respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 18 as amended relating to the contribution and solicitation of funds for election campaigns. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Candidates for city office may neither solicit nor receive contributions except during a period commencing 270 calendar days prior to an election date for which a person is a candidate for such office and ending 90 calendar days after the election date, including run off elections if such candidate is on the ballot.

Further, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

For the purposes of this Ordinance, a **Contract** is defined as each Contract having a value in excess of \$30,000 that is let by the City for professional services, personal services, or other goods or services of any other nature whether the Contract is awarded on a negotiated basis, request for proposal basis, competitive proposal basis or formal sealed competitive bids. The term **Contractor/Supplier** includes proprietors of proprietorships, partners having an equity interest of 10% or more of partnerships, (including limited liability partnerships and companies), all officers and directors of corporations (including limited liability corporations), and all holders of 10% or more of the outstanding shares of corporations.

**A STATEMENT DISCLOSING THE NAMES AND BUSINESS ADDRESSES EACH OF THOSE PERSONS WILL BE REQUIRED TO BE SUBMITTED WITH EACH BID OR PROPOSAL FOR A CITY CONTRACT.** Completion of the attached form entitled "**Contractor Submission List**" will satisfy this requirement. Failure to provide this information may be just cause for rejection of your bid or proposal.

## **19.1 CITY OF HOUSTON CONTRACTOR/SUPPLIER OWNERSHIP DISCLOSURE ORDINANCE:**

City Council requires knowledge of the identities of the owners of entities seeking to contract with the City in order to review their indebtedness to the City and other qualifying governmental entities prior to entering into contracts. Therefore, all respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 15, as amended (Sections 15-122 through 15-126) relating to the disclosure of owners of entities bidding on, proposing for or receiving City contracts. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Contracting entity means a sole proprietorship, corporation, non-profit corporation, partnership, joint venture, limited liability company, or other entity that seeks to enter into a contract requiring approval by the Council but excluding governmental entities.

A contracting entity must submit at the time of its bid or proposal, an affidavit listing the full names and the business and residence addresses of all persons owning 5% or more of a contracting entity or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.

Completion of the “**Affidavit of Ownership or Control**”, included herein, and submitted with the Official Bid or Proposal Form will satisfy this requirement. Failure to provide this information with your bid or proposal may be just cause for rejection of your bid or proposal.

## **20.0 CHANGE ORDERS:**

20.0 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.

20.1 Prime Contractor/Supplier shall not make any changes to the specifications or drawings contained herein without written authorization from the City Purchasing Agent or designated representative. The City may refuse to accept all or part of the work performed or equipment/supplies delivered if changes are made to the specifications or drawings 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.

20.3 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). 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 PRIOR TO ANY CHANGES BEING PERFORMED. The face of the envelope containing this letter shall clearly state, “CHANGE ORDER REQUEST” and THE NUMBER OF THE BID INVITATION AND THE NUMBER(S) OF THE PURCHASE ORDER(S) referenced. 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

20.4 The City Purchasing Agent, or designated representative, may issue change orders, subject to the following limitations:

20.4.1 City Council expressly authorizes the City Purchasing Agent to approve change orders of \$50,000 or less. A change order of more than \$50,000 over the approved contract amount must be approved by City Council.

20.4.2 The total of all change orders issued under this section may not increase the Original Agreement amount by more than 25%.

20.4.3 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 Prime Contractor/Supplier.