



CITY OF HOUSTON
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July 28, 2016

Subject: Letter of Clarification No. 5: - S63-N25846 -69th Street Wastewater Treatment Plant Tertiary Filter System for the Department of Public Works and Engineering

To: All Prospective Respondents:

This letter of Clarification is being issued for the following reason:

1. Remove Page No. 118 and replace with Page No. 118, marked **REVISED 7/28/16.**
2. The following questions and the City of Houston responses are hereby incorporated and made part of the Best Value Bid:

Question No. 1 "We request the termination for convenience be modified to compensate Supplier for Supplier's direct out of pocket costs for charges made to us by our suppliers for cancellation in addition to the language included for compensation for "services performed or items delivered"."

See below reference from bid document:

GENERAL TERMS & CONDITIONS, 8.0 TERMINATION OF AGREEMENT, 8.1 By the City For Convenience, Sub-section 8.1.1 (pg.118) - "...As soon as practicable after the receipt of notice of termination, the 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 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. "

Answer: **No change to the existing language.**

Question No. 2 "At the end of this sentence we request to add, "but in no event shall such amount exceed the Contractor/Supplier's total purchase price"." See below reference:

GENERAL TERMS & CONDITIONS, 8.0 TERMINATION OF AGREEMENT, 8.2 By the City For Default by the Contractor/Supplier, Sub-section 8.2.2, (pg. 118) - "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. The Contractor/Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Contractor/Supplier and that which the City was forced to pay for covering The Contractor/Supplier's failure to deliver or perform services."

Answer: **GENERAL TERMS & CONDITIONS, 8.0 TERMINATION OF AGREEMENT, 8.2 By the City for Default by the Contractor/Supplier, Sub-section 8.2.2, (pg. 118) shall be modified as follows:**

"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. The Contractor/Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Contractor/Supplier and that which the City was forced to pay for covering The Contractor/Supplier's failure to deliver or perform services but in no event shall such amount exceed the Contractor/Supplier's total purchase price."

Question No. 3 "We request addition of language indicating that in the event of default by the City and termination by the Contractor/Supplier, the City is responsible for compensating the Contractor/Supplier for Supplier's direct out of pocket costs made to us by our suppliers as well as services actually performed and items delivered under this contract and not previously paid." See below section:

GENERAL TERMS & CONDITIONS, 8.0 TERMINATION OF AGREEMENT, 8.3 By the Contractor/Supplier for Default by City, Sub-section 8.3.3, (pg. 119) - "...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."

Answer: **No change to the existing language.**

Question No. 4 "We request revision of this paragraph to eliminate release due to City negligence, i.e. delete "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" from this clause." See below reference:

GENERAL TERMS & CONDITIONS, 10.0 RELEASE, Section 10.1, (pg. 119) - "THE 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

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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. "

Answer: **No change to the existing language.**

Question No. 5 "We request "OR ALLEGED" be deleted from (2) and (3)." See below section:

GENERAL TERMS & CONDITIONS, 11. INDEMNIFICATION, Section 11.1, (pg. 119), - "(2) THE CITY'S AND THE CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND (3) THE CITY'S AND THE CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER THE CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT."

Answer: **No change to the existing language.**

Question No. 6 "See Section C on page 110 - Could you please clarify the performance bond for this bid? Performance bonds are typically for 100% of the price not 25%."

Answer: **The performance bond for this project is 25%.**

Question No. 7 "Please clarify what is to be submitted for this item reference below. Is it sufficient for the Supplier to provide a letter from their bonding agency stating their ability to meet the performance bond requirements?"

See below reference:

RESPONSIVENESS EVALUATION ASSESSMENT: Table A, item C (pg. 114) – Certificate of Performance Bond

Answer: **A letter from your bonding agency stating your ability to meet the performance bond requirement is sufficient for the *RESPONSIVENESS EVALUATION ASSESSMENT* submittal requirements on page 114 of the bid document. The Performance Bond shall be issued upon execution of the contract documents with the City and Supplier prior to City Council approval.**

Question No. 8 "Please confirm when the performance bond shall be issued (e.g., upon execution of the agreement with the City and Supplier?) and duration of validity (e.g., upon successful completion of the last 7 day function test?). This information is needed to properly cost the performance bond."

See below reference:

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RESPONSIVENESS EVALUATION ASSESSMENT: Section 1.0, sub-section C (p. 110) – “The offeror shall be required to provide a Performance Bond for 25% of the Cost of the Tertiary Filter System Equipment and Materials.”

Answer: **The Performance Bond shall be in place prior to Council Motion approval.**

Question No. 9 “Please confirm the performance bond is to be provided when the contract between the filter manufacturer and owner is executed and confirm if the performance bond is required through the 3 year equipment warranty.” See below reference:

RESPONSIVENESS EVALUATION ASSESSMENT, page # 110, 1.0 Submittal Package Requirements, C. Performance Bonds - "The Offeror shall be required to provide a Performance Bonds for 25% of the Cost of Tertiary Filter System Equipment and Materials."

Answer: **The Performance Bond in the amount of 25% of the total cost of the project for the performance of the system build per specifications (including all Change Orders) is required through the 3-year warranty period and shall be submitted to the City on an annual basis.**

Note: No further questions will be accepted after the publication of this Letter of Clarification.

When issued, Letter(s) of Clarification shall automatically become a part of the solicitation documents and shall supersede any previous specification(s) and/or provision(s) in conflict with the Letter(s) of Clarification. All revisions, responses, and answers incorporated into the Letter(s) of Clarification are collaboratively from both the Strategic Procurement Division and the applicable City Department(s). It is the responsibility of the bidder/respondent to ensure that it has obtained all such letter(s). By submitting a bid on this project, bidders/respondents shall be deemed to have received all Letter(s) of Clarification and to have incorporated them into this solicitation and resulting bid.

Furthermore, it is the responsibility of each Contractor to obtain any previous Letter of Clarification associated with this solicitation.

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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:

- 7.1 The 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 Chief Procurement Officer, 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 Chief Procurement Officer may terminate this Contract at any time upon 30-calendar days notice in writing to the Contractor/Supplier. Upon receipt of such notice, The 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 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 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 the Contractor/Supplier:

8.2.1 In the event that the materials and/or services furnished by the 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 Chief Procurement Officer to the 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 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, The Contractor/Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If The 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. The Contractor/Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Contractor/Supplier and that which the City was forced to pay for covering The Contractor/Supplier's failure to deliver or perform services but in no event shall such amount exceed the Contractor/Supplier's total purchase price.

- 8.3 By the 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 Contractor/Supplier gives