



CITY OF HOUSTON INVITATION TO BID

Issued: July 03, 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, July 23, 2009**, and all bids will be opened and publicly read in the City Council Chamber at 11:00 A.M. on that date for the purchase of:

**CHEMICAL, AQUA AMMONIA
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT
BEST VALUE BID INVITATION NO. S12-S23036
NIGP CODE 885-78-23**

Buyer

MARTIN L. KING is the Buyer for this solicitation and he may be reached at 832-393-8705. Any questions regarding this solicitation should be submitted in writing to 832-393-8750 (fax) or via e-mail at martin.king@cityofhouston.net

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Public Works & Engineering's Materials Management Branch, 319 St. Emanuel, H.T. 77002, at 3:00 p.m. on Thursday, July 16TH, 2009, 1st floor conference room.

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.

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 bidding documents prior to the Pre-Bid Conference. **Any revisions to be incorporated into this bidding 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. No verbal responses will otherwise alter the specifications, terms and conditions as stated herein.**

Bidding forms, specifications and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov>. By registering and downloading this bid document, all updates to this bid document will be automatically forwarded via e-mail to any registered bidder. This information may also be obtained from the office of the City Purchasing Agent, 901 Bagby, Basement, 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.

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SECTION A.



**CHEMICAL, AQUA AMMONIA
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT
BEST VALUE BID INVITATION NO. S12-S23186
NIGP CODE 885-78-23**

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver flexible base materials, **FOB destination point as listed on the electronic bid form and on the individual Purchase Orders**, in accordance with the Net Prices and other conditions shown herein, and in accordance with the City's Specifications and General Terms and Condition Specifications. When issued, 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 the bidder to ensure that it has obtained 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 its bid. THE MANUFACTURER'S NAME, PRODUCT NAME AND PRODUCT NUMBER MUST BE DESIGNATED IN THE SPACE PROVIDED IF BIDDERS ARE BIDDING AN "OR EQUAL" ITEM.

The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of said bid to this Bidder 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 the 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 of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

BIDDING AND AWARD:

It is the intent of the City to award, on the basis of best value respondent meeting specifications for the entire award; however, the right is reserved to accept or reject in whole or in part any or all bids received and to make an award on the basis of individual item, combination of items or overall best bid, as it is deemed in the best interest of the City.

**THIS IS A THIRTY-SIX (36) MONTH AWARD WITH TWO TWELVE MONTH OPTION PERIOD FOR RETH
RENEWAL FOR A TOTAL 5-YEAR TERM**

SPECIAL BIDDERS NOTE:

These bid documents are to be bid exactly as published or amended by any letter(s) of clarification that may be issued pertaining thereto.

LINE ITEM BIDS:

Only one item may be bid for each referenced line item. To bid the referenced line item and an alternate, bidder must submit a separate bid form for each alternate item(s) with its own original signature page. Multiple bids for the same line item on one bid form will be just cause to reject a bid from further consideration.

SECTION A. OFFICIAL BID FORM FOR FLEXIBLE BASE MATERIALS FOR VARIOUS DEPARTMENTS, CONTINUED:

Documents/forms must be downloaded from the City's Website
<https://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
Affidavit of Ownership
Fair Campaign Ordinance
Statement of Residency
Conflict of Interest Questionnaire
Bidders Attachments Supply
Location of Bidders Inventory
MWBE

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
MWBE
Sample Insurance Over \$50000
Formal Instructions for Bid Terms
EEOC

**SECTION B.
CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
CHEMICAL, AQUA AMMONIA**

1.0 BIDDER QUALIFICATIONS:

The purpose of this bid is to determine the best value respondent for aqua ammonia used in the treatment of the City's drinking water. Aqua ammonia quality and supply is of utmost importance to the health and safety of the citizens of Houston. As a result, Bidders as a minimum must:

- 1.1 Be an established aqua ammonia distributor and currently have aqua ammonia manufacturing facilities and/or supplier(s) in operation that can produce and delivery sufficient stocks to meet City of Houston's daily requirements as herein stated and in the electronic bid form.
- 1.2 Have a satisfactory record of past performance and contract compliance with the City of Houston.
- 1.3 Have adequate financial resources, or the ability to obtain such resources as required during the performance of the Agreement.
- 1.4 Upon 10-working days of request, bidder(s) must provide the City proof of financial stability by submitting your company's Dunn & Bradstreet report and/or audited annual financial statements, prepared by a certified public accountant for the past two years or copies of your Federal Tax forms filed to the Internal Revenue Service (IRS) for the past two years.

2.0 QUALITY OF AQUA AMMONIA:

- 2.1 The materials supplied under these specifications shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water which has been treated with it and shall in all respects meet, as a minimum, the current minimum standard specifications of the American Water Works Association or the current Water CHEMICALS Codex (as published by the National Academy Press of the National Academy of Sciences), whichever is the more restrictive specification, unless otherwise specified in these specifications, for materials used in the purification of municipal potable water supplies.
- 2.2 ALL CHEMICALS used in treatment of water supplied by public water systems must conform to Standard 60 of the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) for direct additives. Conformance with these standards must be obtained by certification of the product by an agency recognized by the Texas Natural Resources Conservation Commission.

3.0 PHYSICAL AND CHEMICALS PROPERTIES OF AQUA AMMONIA:

The material shipped shall be free of dirt and debris. Typical physical and CHEMICALS properties shall be as follows:

Total Heavy Metals (as lead).....	0.02% (Max.)
Organic.....	Nil
Physical State.....	Aqueous Solution of NH₄-OH
Weight of 19% NH ₃ Solution.....	7.75 lbs./gal.
Amount of Ammonia in Solution.....	19% NH ₃
Specific Gravity of 19% Solution.....	0.9295
Suspended Material.....	None
Color.....	Colorless.

- 3.1 For the purpose of this contract Nil shall be defined as containing no contaminant in quantities capable of producing deleterious or injurious effects upon the health of the consuming water treated by it, nor shall it contain any substances which react with source waters to produce a substance which could cause deleterious or injurious effects on the health of the consumer. For this purpose, an injurious or deleterious effect is defined as causing the concentration of any one of the CHEMICALS substances regulated in drinking water by the USEPA and/or Texas Department of Health to exceed the Maximum contaminant level, established and in effect at the time of delivery, for the substance, or cause a significant increase in the concentration of such regulated substance over levels currently observed.

TECHNICAL SPECIFICATIONS FOR CHEMICAL, AQUA AMMONIA CONTRACT (CONTINUED)

4.0 MATERIALS:

The items furnished shall be the latest product in production to commercial trade, and shall be of the highest quality as to materials used. CONTRACTOR GUARANTEES TO ASSURE THAT IF ITS NOT THE ORIGINAL MANUFACTURER OF ALL THE MATERIALS TO BE SUPPLIED ON THIS CONTRACT, OR ANY PORTION THEREOF, THAT IT WILL COMMUNICATE THE NATURE OF THESE SPECIFICATIONS TO CONTRACTOR'S SUPPLIER(S) AND ASSURE THAT SUCH MATERIAL MEETS OR EXCEEDS THESE SPECIFICATIONS. Manufacturer furnishing these items shall be experienced in the production of such items and shall furnish evidence of having supplied similar items, which have been in successful operation. The bidder shall be an established supplier of the items bid.

- 4.1 At such time it deems necessary, the City of Houston reserves the right to require a quantitative analysis performed by and agreed upon third party laboratory, and/or to require a Certificate of Guarantee, prepared by and agreed upon third party, as to the presence or absence of contaminants in the contract material, either in exceedance of contract limitations, or capable of increasing the presence of an acute or chronic toxicity agent, present as a contaminant, in the water treated with contract material. All responsibilities and financial obligation to be bore by the contractor.

5.0 PRODUCT SOURCE:

- 5.1 If the bidder is not the original producer of material to be supplied he must supply the City Purchasing Agent and User Department with the following:

- 5.1.1 Name, address, phone number and contact persons of the original producer.
- 5.1.2 Actual site (or sites) of material production.
- 5.1.3 Shipping point (or points) or origin to be supplied.
- 5.1.4 Whether original producer produces material to be supplied as a primary product or as a by-product.
- 5.1.5 If the material is a by-product, what is the nature of the original process and is there any potential danger of contamination. This section is not to be interpreted as a requirement for detailed proprietary process information disclosure. Simple basic information as to the safety and basic nature of the process is all that is required.
- 5.1.6 Notification of change of ownership of original producer during contract period is to be reported to the City Purchasing Agent and User Department at least sixty (60) days in advance of transfer of ownership.

- 5.2 In the event the bidder is an original producer of the material to be supplied, but will not supply all or any of the contract material from his production process he must supply the City Purchasing Agent and User Department with:

- 5.2.1 Those sources of supply items listed herein.
- 5.2.2 What proportion of contract material is to be supplied from another producer or supplier and what proportion is to be supplied by the bidders production process.

- 5.3 In the event the bidder is an original producer of the material to be supplied and will supply all contract material from his production process, he must supply the City Purchasing Agent and User Department:

- 5.3.1 Actual site or sites of material production.
- 5.3.2 Shipping point of origin of material to be supplied.
- 5.3.3 Whether material is a primary product or by-product.
- 5.3.4 Notification of change of ownership of original producer during contract period is to be reported to the City Purchasing Agent and User Department at least sixty (60) days in advance for approval.

TECHNICAL SPECIFICATIONS FOR CHEMICAL, AQUA AMMONIA CONTRACT (CONTINUED)

CITY OF HOUSTON
CERTIFICATE OF ANALYSIS
FOR
CHEMICALS, AQUA AMMONIA CONTRACT
FOR
PUBLIC WORKS & ENGINEERING DEPARTMENT,
WATER PRODUCTION DIVISION

THIS SHEET MUST BE SUBMITTED IN DUPLICATE UPON REQUEST.

<u>Parameter</u>	<u>Concentration</u>
Available Ammonia as NH ₃	_____ % by weight
Total Organic Carbon	_____ ppm
Total Heavy Metals as Pb	_____ ppm
Specific Gravity	_____
Suspended Material	_____ ppm

Additional analyses may be required prior to bid award as deemed necessary by the City of Houston.

Source of Supply: _____ Laboratory: _____
Supplier: _____ Analyses By: _____
Supplier Representatives: _____ Certified By: _____
Title: _____
Address: _____
Phone No.: _____

All bidders agree by their participation in the bidding process to supply the user department within ten (10) working days from date of request, duplicate Certified Analysis performed by a third party independent analytical laboratory and signed by said laboratory's management and analyst. Such analysis is to be used, if deemed necessary by user department, for comparative purposes when making comparisons to bidder analyses and the City of Houston's analyses. Failure to provide this within ten (10) working days may remove bid from consideration.

TECHNICAL SPECIFICATIONS FOR AQUA AMMONIA : CONTINUED

6.0 BID QUANTITIES:

Materials will be ordered in accordance with water treatment needs at each delivery location. The maximum quantity of material which the City will be obligated to purchase, resulting from this bid, is the quantity ordered, delivered, and accepted as satisfactory based on Purchase Orders issued by the Purchasing Agent of the City of Houston. However, nothing herein shall be construed as an obligation on the part of the City to order or pay for any quantity other than the amount required for effective treatment of water at each of the City of Houston's Water Treatment Facilities.

7.0 SOURCE OF SUPPLY:

7.1 Bidder will specify whether the raw materials used in the manufacture of aqua ammonia supplied are "virgin" materials, or purchased as a "by-product" of another manufacturing process. If purchased as a "by-product", is the material listed as hazardous waste under 40 CFR 261? If yes, what specific characteristic or constituents cause it to be a listed material?

7.2 If the Bidder proposes use of "virgin" materials as the raw material for the process producing aqua ammonia , Bidder must supply the following with the bid:

- 7.2.1 Material Safety Data Sheets for each "virgin" material consumed in the process.
- 7.2.2 A brief description of the manufacturing process producing the aqua ammonia to be supplied.

7.3 If the Bidder proposes to supply aqua ammonia purchased as a "by-product" of another manufacturing process, or proposes use of "by-product" raw materials as the raw material(s) for the process producing any of the coagulant products, Bidder must supply the following with the bid:

- 7.3.1 Material Safety Data Sheets for all raw materials consumed in the process producing the "by-product" raw material.
- 7.3.2 A description of the process generating the "by-product" to be used as raw materials in the manufacture of aqua ammonia .
- 7.3.3 If the "by-product" purchased for use as a raw material in the manufacture of aqua ammonia is listed as hazardous waste under Rocky Flats Cleanup Agreement (RFCA) regulations as stated in 40 Code of Federal Regulations No. 261, Bidder must supply the exact nature of the hazardous characteristics and/or constituents.

7.4 If all or some of the "by-product" material has been disposed, in the past, as a hazardous waste, Bidder must supply the following, with their bid:

- 7.4.1 A copy of the Texas Water Code (TWC) waste registration for the material, including waste code number, description, and an analysis of the hazardous constituents.
- 7.4.2 Purchase price of "by-product" material to determine if "fair market value" requirements for recycling of a hazardous waste are being met.

7.5 If Bidder is not the original manufacturer of material to be supplied, Bidder must supply the City Purchasing Agent with:

- 7.5.1 Name, address, phone number and contact person of the original manufacturer.
- 7.5.2 Actual site(s) of material manufacture.
- 7.5.3 Shipping point(s) of origin for each source to be supplied.
- 7.5.4 Whether original manufacturer produces material to be supplied as a "primary product" or as a "by-product".

7.0 SOURCE OF SUPPLY: (Continued)

7.5.5 If material to be supplied is a "by-product", or manufactured from raw materials obtained as a "by-product", or another manufacturing process, Bidder must submit, as part of bid package, a description of each manufacturing process used for the production of "by-product" aqua ammonia , or production of by- product raw materials to be used in the manufacture of aqua ammonia . Bidder must also submit an estimate of the potential contamination of chemical from other materials used or stored at each site of manufacture of virgin or "by-product" aqua ammonia or raw materials used in the production of aqua ammonia . If such potential exists, what specific chemical substances are likely to be present? _____

This section is not to be interpreted as a requirement for detailed proprietary information, but must include a description of original source materials.

7.5.6 Notification of any change of ownership of original manufacturer(s) is to be reported to the Purchasing Agent and the User Department at least 60 days in advance of transfer of ownership.

7.5.7 Prior notification and written approval must be obtained from the Purchasing Agent and User Department for any significant changes in the original manufacturing process(es), or source materials used, as described in the solicitation if manufactured as a primary product. If material is a "by-product", the Supplier must submit notification of any significant changes of the manufacturing process(es) and/or source materials used by the process generating "by-product" to the City Purchasing Agent. Failure to make such notifications and obtain necessary approvals shall be grounds for termination of this contract.

7.5.8 Material Safety Data Sheets (MSDS) which conform to the format in ANSI Z400.1 (Latest Revision) for the product manufactured by the process generating aqua ammonia as a "by-product", as well as source materials used in the primary process.

7.6 In the event the Bidder is an original manufacturer of material to be supplied, but will not supply all (or any) of the material from this manufacturing process, Bidder must supply the Purchasing Agent and User Department with:

7.6.1 All information listed in Section 7.5 (7.5.1 thru 7.5.8).

7.6.2 The proportion of material to be supplied from the Bidder's manufacturing process, and the proportion(s) to be supplied from each manufacturer listed in Section 7.5 (7.5.1 and 7.5.2).

8.0 MATERIALS:

The items furnished under this proposal shall be the latest product in production to commercial trade, and shall be of the highest quality as to materials used. SUPPLIER GUARANTEES TO ASSURE THAT IF HE IS NOT THE ORIGINAL MANUFACTURER OF ALL THE MATERIALS TO BE SUPPLIED ON THIS PROPOSAL, OR ANY PORTION THEREOF, THAT HE WILL COMMUNICATE THE NATURE OF THESE SPECIFICATIONS TO THE PROVIDER(S) AND ASSURE THAT SUCH MATERIAL MEETS OR EXCEEDS THESE SPECIFICATIONS. Manufacturer furnishing this item shall be experienced in production of such items and shall furnish evidence of having supplied similar material which has been used successfully in the treatment of potable water and wastewater. The Bidder shall be an established supplier of the items bid for municipal and industrial use.

9.0 TRANSPORTATION AND WEIGHING:

9.1 Aqua Ammonia shall be shipped in appropriately lined truck trailers. All delivery tickets must have a description of the product being delivered, company name, address, contact person's name, contact phone number, and be accompanied by a weight ticket showing Gross, Net, and Tare weights for each shipment. All weights for bulk chemical deliveries are to be determined at scales maintained at the City of Houston's Water Treatment Facilities, or by other methods previously approved, in writing, by the City Purchasing Agent and the Public Works & Engineering Department. The scales located at the City of Houston Water Treatment Facilities shall be considered the official scale for billing purposes. These scales meet Weights and Measures Standards through the N.I.S.T. Handbook 44.

9.2 WEIGHING DETERMINATION:

Delivery tickets must have a description of the product being delivered, company name, address, contact person's name, contact phone number, and be accompanied by a weight ticket showing Gross, Net, and Tare weights for each shipment. All weights for bulk chemicals deliveries are to be determined at scales maintained at the Water Purification Facilities, or by other methods previously approved, in writing, by the Purchasing Agent and the User Department. The scales located at all Water Purification Plants shall be considered the official scale for billing purposes. These scales meet Weights and Measures Standards through the N.I.S.T. Handbook 44. Weight of material delivered shall be determined by weighing the fully loaded truck on Water Purification scales before it is unloaded, and weighing the empty truck on the same scales after it is unloaded. The weight of the empty truck will be subtracted from the weight of the fully loaded truck to determine the actual weight of material delivered, and will be the weight used for billing purposes. The driver must be away from the scale during all weighing operations. If weights are subsequently approved at other than the Water Purification Facilities, such weights are subject to verification at the discretion of the City.

$$\frac{\text{Gross Weight (lbs)} - \text{Tare Weight (lbs)}}{2000} = \text{Net Weight Delivered.}$$

9.2.1 Bidder will submit specific gravity charts to be used for determination of the percentage of active product.

- 9.3 All access points on the tank trucks will be secured with a locking devise and a numbered tamperproof seal prior to leaving the manufacturer's facility. The Supplier will provide the tamper proof seal number to the facility contact prior to delivery. The only seal that will be required for removal will be on the discharge line only. Loads that are unsecured, or have a broken, mislabeled, or missing seals will be rejected and returned to the Supplier at its expense. In the event that a load is returned for failure to meet security provisions, Supplier must provide a replacement load of product freshly loaded and sealed at the point of origin within 24 hours. The replacement load must be accompanied by proof that rejected load has not been resealed and returned, or commingled with original batch at the point of origin. Misrepresentation of replacement product or failure to follow these procedures may be grounds for termination of the awarded bid proposal.
- 9.4 It is the responsibility of the Supplier to conduct security screening on all delivery and support staff that may require access to the Water Treatment facilities. The Supplier will provide the City of Houston with a roster of these employees, and the roster must include the employee's full name, picture, and their driver's license number. Any changes to the roster must be forwarded to the City of Houston immediately upon change. The vendor will forward the name of the delivery driver to the City of Houston prior to each delivery via e-mail or fax. Failure to adhere to these security requirements will be just cause for termination.
- 9.5 SUPPLIER SHALL GUARANTEE TO ASSURE THAT EITHER ITS OWN OR ANY COMMON CARRIER USED FOR TRANSPORT SHALL BE COVERED BY ALL APPROPRIATE INSURANCE REQUIRED BY ANY AND ALL STATE AND FEDERAL AGENCIES FOR THE TRANSPORT OF HAZARDOUS CHEMICALS. SUPPLIER SHALL FURTHER GUARANTEE TO ASSURE THAT ALL VEHICLES ARE PROPERLY PLACARDED AND/OR LABELED, AND SUITABLY MAINTAINED AND EQUIPPED FOR THE SAFE TRANSPORT AND DELIVERY OF HAZARDOUS CHEMICALS.
- 9.6 Supplier shall insure that all delivery vehicles be equipped with spill prevention and containment apparatus (including drip containers, absorbent pads and other clean-up materials). The driver must be trained in the proper use of these materials to prevent spills to the environment and use diligence in the clean-up thereof.

10.0 QUALITY:

- 10.1 The AQUA AMMONIA supplied under terms of this proposal shall contain no inorganic or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming water treated with it, nor shall it contain any substances which react with source or process waters to produce a substance which could be deleterious or injurious to the health of the consumer. For this purpose, an injurious or deleterious effect is defined as causing the concentration of any one (1) of the chemical substances regulated in drinking water by the United States Environmental Protection Agency (USEPA) and/or Texas Commission on Environmental Quality (TCEQ) to exceed the Maximum Contaminant Level, established and in effect at the time of delivery, for that substance, or cause a significant increase in the concentration of that substance over levels currently observed.

TECHNICAL SPECIFICATIONS FOR AQUA AMMONIA : CONTINUED

10.2 In any regard, AQUA AMMONIA supplied by Supplier shall, in all respects, meet the current standard specification of the American Water Works Association (AWWA B501-98 or latest revision) and/or the current edition of the Water Chemical Codex, whichever is more restrictive.

11.0 AFFIDAVIT OF COMPLIANCE:

Bidder shall submit, as part of the "ATTACHMENTS TO BID" and AFFIDAVIT OF COMPLIANCE, signed by a responsible officer of the Bidding Firm, stating the product to be supplied complies with specifications stated in the AWWA STANDARD FOR AQUA AMMONIA as set forth herein. If not supplied as an attachment to bid proposal, bidder must supply the aforementioned documents within five (5) working days of request by the City of Houston. Failure to supply the requested documentation will be just cause to reject bid.

12.0 SILENCE OF SPECIFICATIONS:

The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement. The Bidder shall be an established Supplier of the items bid.

13.0 SPECIFIED MATERIAL, OR EQUIVALENT:

13.1 Wherever in the specifications any materials or processes are indicated or specified by patent or 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.

13.2 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.**

14.0 BID EVALUATION:

14.1 The aqua ammonia award will be made to the Bidder determined to be the "best value respondent" that meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Bidder to provide for the requirements of the City of Houston. The Bidder shall furnish to the City such data within 10-working days upon request for this purpose. The City reserves the right to reject any offer as a result of the evidence or investigation if the Bidder fails to satisfy the City that the Bidder is properly qualified to provide the supplies and services contemplated.

14.2 An evaluation committee consisting of Public Works & Engineering Department subject matter experts will determine the "best value respondent" based on the following evaluation criteria as stated in order of importance below:

<u>Category</u>	<u>Percentage Points</u>
Bid Price	45%
Past Performance Participation with the City	35%
Conformance to the Invitation to Bid Requirements and Technical Specifications	15%
M/WBE	<u>5%</u>
Total (Up to 100%):	100%

14.3 The Bidder accumulating the most evaluation points shall be determined to be the "best value respondent".

14.4 The evaluation committee's determination of the "best value respondent" and the subsequent formal award recommendation will be final and not subject to bid participant review or protest.

BIDDER'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime supplier, for delivering CHEMICAL, AQUA AMMONIA that is similar in size and scope to this solicitation. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Supplier's responsibility. Bidder must have references documenting that it has delivered CHEMICAL, AQUA AMMONIA .**

- 1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____
- 2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____
- 3. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

In addition to providing references for similar work and size, the following must be addressed within 10 working days of request by the City of Houston:

The City of Houston has chosen Dun& Bradstreet (D&B) to assist with the evaluation process of the contract award in two specific areas, past supplier performance and financial and operational stability. This is accomplished through your provision of requested information to D&B and our review of two (2) D&B reports:

1. Past Performance Evaluation

This report will provide an overall rating and reliability, cost, order accuracy, delivery/timeliness, quality, order accuracy, business relations, personnel, customer support and responsiveness. To assist in the development of this report, all bidders must complete the attached forms in Section Four (4). This includes the submittal of twenty (20) business references. Completed forms are to be submitted to D&B's fulfillment partner, Open Ratings.

2. Supplier Evaluation Report

This report will provide an independent, third-party overview of your financial and operational stability. You are not required to provide D&B with any information for this report.

It is mandatory that you order and pay for these reports, as well as, submit proof of having ordered them with your bid document to be considered for this contract. The cost of the two reports is \$225.00

Because the Past Performance Evaluation report will take approximately 10-15 days after receipt of order form to complete, bidders are encouraged to submit their request to D&B in a timely fashion.

Past Performance Evaluation (PPE) Order Form

To order, complete the attached forms and fax or e-mail them to:

Open Ratings, Inc.

eFAX: 866-743-4239

E-MAIL: reports@openratings.com

ATTN: Mary Kelly, Past Performance Evaluation Fulfillment

SECTION ONE: ABOUT YOUR COMPANY

Enter name and contact information for the company on which the past performance evaluation/supplier evaluation report is to be prepared:

(COMPANY NAME)

(DUNS NUMBER)

(STREET ADDRESS)

(CITY, STATE, ZIP)

(YOUR NAME)

(TITLE)

(E-MAIL ADDRESS)

(COMPANY PHONE NUMBER)

(COMPANY FAX NUMBER)

If you don't know your company's DUNS number, call (800) 333-0505 or look it up online at:

<http://www.dnb.com/dunsno/dunsno.htm>.

SECTION TWO: REPORT RECIPIENTS

One copy of the past performance evaluation and supplier evaluation report will be sent to the individual listed in Section 1. One additional copy will be sent to the agency specified below (additional copies of the PPE can be sent to additional recipients for a fee of \$25 per additional recipient – attach additional sheets as necessary):

_____	_____
(AGENCY NAME)	(COMPANY NAME)
_____	_____
(AGENCY STREET ADDRESS)	(COMPANY STREET ADDRESS)
_____	_____
(CITY, STATE, ZIP)	(CITY, STATE, ZIP)
_____	_____
(AGENCY PHONE NUMBER)	(COMPANY PHONE NUMBER)
_____	_____
(AGENCY FAX NUMBER)	(COMPANY FAX NUMBER)
_____	_____
(CONTACT NAME/ATTENTION)	(CONTACT NAME/ATTENTION)
_____	_____
(E-MAIL ADDRESS)	(E-MAIL ADDRESS)
RFP #: _____	RFP #: _____

SECTION THREE: PAYMENT INFORMATION

ENCLOSED PLEASE FIND MY COMPANY CHECK

BILL TO MY CREDIT CARD:

AMERICAN EXPRESS **VISA** **MASTERCARD**

CARD NUMBER: _____ **EXP. DATE:** _____

SIGNATURE: _____

I AGREE TO PAY \$225 FOR THE PREPARATION/DISTRIBUTION OF MY PAST PERFORMANCE EVALUATION AND SUPPLIER EVALUATION REPORT, COPIES OF WHICH WILL BE PROVIDED BOTH TO MY COMPANY AND ONE RECIPIENT IDENTIFIED IN SECTION TWO ABOVE.

I ALSO AGREE TO PAY \$25 FOR EACH ADDITIONAL PPE COPY THAT I HAVE REQUESTED BE DISTRIBUTED TO ADDITIONAL RECIPIENTS IDENTIFIED IN SECTION TWO.

QUESTIONS? CONTACT OPEN RATINGS AT (617) 232-9660

SECTION FOUR: CUSTOMER REFERENCES

PLEASE PROVIDE INFORMATION ON 20 RECENT CUSTOMERS TO BE SURVEYED (COMPANIES WITH WHICH YOU HAVE DONE BUSINESS WITHIN THE PAST 1 YEAR)

1. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

2. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

3. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

4. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

5. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

SECTION FOUR: CUSTOMER REFERENCES (CONTINUED)

6. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

7. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

8. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

9. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

10. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

SECTION FOUR: CUSTOMER REFERENCES (CONTINUED)

11. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

12. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

13. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

14. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

15. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

SECTION FOUR: CUSTOMER REFERENCES (CONTINUED)

16. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

17. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

18. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

19. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

20. CUSTOMER NAME: _____

DUNS NUMBER: _____

CITY/STATE: _____

NAME OF CONTACT: _____

PHONE: _____ FAX: _____

E-MAIL: _____

SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS FOR
CHEMICAL, AQUA AMMONIA
FOR THE
PUBLIC WORKS AND ENGINEERING DEPARTMENT

1.0 TERM OF AWARD:

- 1.1 The awarded bid's term shall be for a THREE YEAR period beginning on or about August 9, 2009, with two 12-month option periods to renew for a total of 5-year term. During this period, purchase orders will be issued for items as needed. Any conflict between the terms and conditions as specified herein and said purchase orders; the term and conditions of this document shall govern. The awarded Supplier will not perform the specified services without first having received an official City of Houston purchase order. While it is the intent to procure goods/services by issuing an Official City of Houston Purchase Order, there will be instances when a Purchasing Card (P-Card) or Petty Cash may be used. **The City requires that the awarded prices be honored on all purchases.**
- 1.2 It is emphasized that the City of Houston does not guarantee to purchase any specific quantity of any item listed during the period of the award; rather, the quantities may vary depending upon the actual needs of the user departments. Supplier shall remain obligated to the City under all clauses of the Award that expressly or by their nature extend beyond and survive the expiration or termination of the Award, including but not limited to warranties and indemnity provisions hereof.

**THIS IS A THREE (3) YEAR AWARD WITH TWO TWELVE MONTH OPTION PERIODS FOR RENEWAL FOR
A TOTAL FIVE (5) YEAR TERM**

2.0 SUPPLIER'S DUTY TO PAY:

Supplier shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this award. Supplier agrees to protect, defend, and indemnify the City from any claims or liability arising out of 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 Supplier to comply with the decisions of the arbitrator may, at the sole discretion of the City, be deemed a material breach leading to termination of this award).

3.0 OPTIONAL EXTENSION:

The awarded bid term may be extended for up to two additional 12 month periods upon acceptance of the Supplier and 30-days written notice prior to the expiration of the initial term, or first option period, as applicable from the City Purchasing Agent. Subject to the availability of funding, this Award may be extended on month-to-month basis upon acceptance of the Supplier beyond the initial term and option periods. A price increase, subject to the provisions of the Award, may be requested by the Supplier for approval by the City Purchasing Agent at this time. If the price increase is approved by the City Purchasing Agent or if no price increase is requested, a letter of extension will be issued by the City Purchasing Agent for the Supplier's acceptance under the same terms and conditions as the existing Award.

4.0 PRICE ADJUSTMENTS

4.1 Price Adjustment Mechanism:

The price adjustment mechanism will be based on the NOLA Green Market Reports monthly "low average price" for Anhydrous Ammonia Spot Barge Prices/FOB U.S. Gulf, as reported in the Pike & Fischer Publishing Company's Green Markets Index Report, or industry recognized and agreed upon index, and the DOE Diesel fuel prices. The contract price the City of Houston pays per dry pound of aqua ammonia delivered will be adjusted by two factors, 95% by the change in GM NOLA anhydrous ammonia and 5% by the change in DOE Diesel fuel prices over a three-month (quarterly) calendar period. The percent of the contract adjustment shall not exceed the actual documented percent of change as determined by the anhydrous ammonia pricing data reported and confirmed in the NOLA Green Market Reports and the DOE Diesel.

4.2 Example:

Per Contract Section 4.1, initial and subsequent contract price will be adjusted by two factors:
95% of price to be adjusted by change in GM NOLA anhydrous ammonia,
5% of price to be adjusted by change in DOE Diesel fuel prices.

Thus, our current Contract Price is:		\$ per lb
95% - Chemical Cost		0.2700
5% - Fuel Cost		0.0167
	Current Price	<u>0.2867</u>

Chemical Cost adjustment:

GM Jan-Mar 09 avg	0.1617	
GM Apr-Jun 09 avg	<u>0.1448</u>	
Index Change ==>	-0.0169	
95% of Change	-0.0161	
New Chemical Cost component		0.2539

Fuel Cost adjustment:

DOE Jan-Mar 09 avg, \$/gal	2.664	
DOE Apr-Jun 09 avg, \$/gal	<u>3.004</u>	
	0.3402	
% Index Change==>	12.77%	
% Change on Fuel Cost	0.002138	
New Fuel Cost component		<u>0.0189</u>
New Contract Price, Jul-Sept 2009		0.2727

4.2 **Contract Pricing:**

Initial and subsequent contract pricing will be determined by adjusting the awarded bid's pricing in accordance with the documented percent of change in the "low average price" for anhydrous ammonia and diesel fuel, as verified and reported by pricing data from the last published NOLA Green Market Report from Pike & Fischer and the DOE Diesel report prior to the date the awarded bid is received by the City Secretary's Office up until the last published Green Market Report from Pike & Fischer Publishing on the date of Council approval.

4.3 **Subsequent Price Increases or Decreases:**

Subsequent contract price adjustments will be based on [the documented percent of change in the "low average price" for anhydrous ammonia as verified and reported over a **three calendar \(quarterly\) month reporting period**](#). The contract price adjustment will be initiated the month following each **three calendar (quarterly) month reporting period**.

4.3.1 After each three calendar month price adjustment period, the contractor must submit a letter stating the reported percent of change, and the amount of the increase and/or decrease itemized by line item. The letter must illustrate the methodology as outlined in this Section 4.1 by listing the three calendar month period covered and each of the reported months corresponding low average price, the overall percent of change, contractor's current price, and the revised contract price after percent adjustment. The price adjustment request must be accompanied by the corresponding monthly index market report data. The letter and documentation shall be sent to the following address:

**City Purchasing Agent
City of Houston
P.O. Box 1562
Houston, Texas 77251**

- 4.3.2 If the City Purchasing Agent approves the price increase, he or she shall notify Supplier in writing; no price increase will be effective until Supplier receives this notice. If the City Purchasing Agent does not approve Supplier's price increase, Supplier may terminate its performance under the agreement upon **sixty (60) days** advance written notice to the City Purchasing Agent upon notification of denial. Termination of performance is Supplier's only remedy if the City Purchasing Agent does not approve the price increase.
- 4.3.3 If, at any time after approving a price increase, the City Purchasing Agent determines that the City can obtain the same item at a lower price from a different source without violating the State bid law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

5.0 INVOICING:

5.1 BASIS FOR INVOICING:

The AMMONIA (NH₃) content of the aqua ammonia as received will be determined by specific gravity. Pounds received for billing purposes will be computed on the basis of 19% NH₃ present in the shipment according to the following formula for aqua ammonia:

Gallons received x 7.75 lbs. per gal. @ .19 NH₃ = Total lbs. x price bid per pound.

EXAMPLE: 5,000 gals x 7.75 x .19 = 7,362.50 x \$0.15 per dry lb. = \$1,104.75 for 5,000 gal.

- 5.2 In order to expedite payment all invoices must be submitted **in triplicate and**, itemized as to quantity, part number, description, and applicable discount (if any) 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.
- 5.3 All delivery tickets must have a description of the commodity delivered.
- 5.4 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 5.5 **Delivery tickets and packing slips will contain the same information as the invoice.**
- 5.6 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

6.0 LIQUIDATED DAMAGES:

All prospective bidders are hereby notified that the Department's specified product deliver time is important to plant operations and scheduling. Late deliveries will cause damage to the City. As such, late deliveries shall be subject to liquidated damages of one percent per day of the total dollar amount of the subject quantity in the specific purchase order, or quantity of materials requested for delivery specified on one order. Liquidated damages shall apply for all days past the specified days for delivery after receipt of the quantity specified in the purchase order, or date of requested delivery under a blanket purchase order.

7.0 PAYMENT:

Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the goods, whichever occurs later.

8.0 ESTIMATED QUANTITIES not GUARANTEED:

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of aqua ammonia will be purchased during the term of this agreement. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein and on the electronic bid document are good faith estimates of usage during the term of this agreement. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein and in the electronic bid document.

9.0 CONTAMINATED MATERIALS:

Each Supplier shall be required to identify their source of supply. No material will be accepted from a hazardous or toxic waste site, regardless of whether the site has been identified by either a Local, State or Federal Agency. No contaminated, toxic, hazardous waste products or heavy metal product shall be contained in these deliveries. If any material, supplied to the City via an issued purchase order, is found to be contaminated or contain heavy metal products, it will be the responsibility of the Supplier to remove and replace the contaminated product at their expense and at no cost to the City. The City has the option to arrange the removal of any contaminated material and charge back the Supplier any and all costs involved.

10.0 INSPECTIONS AND AUDITS:

- 10.1 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.
- 10.2 Representatives of the City have the right to examine the books of all suppliers supplying goods and/or services under the issued purchase order insofar as those books and records relate to performance under the issued purchase order.
- 10.3 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 the issued purchase order. Supplier shall keep its books and records available for this purpose for at least three years after this Award terminates. This provision does not affect the applicable statute of limitations.

11.0 DELIVERY:

- 11.1 The Supplier agrees to make deliveries only "**after**" receipt of duly signed and approved Purchase Orders issued by the City of Houston City Purchasing Agent, "**and only after ordered by an authorized representative of the user department.**"
- 11.2 Deliveries will be made to the following facilities or other City sites or locations which may become necessary:
 - 11.2.1 East Water Purification Plant III - 2300 Federal Road, Houston, Tx 77015
 - 11.2.2 Southeast Water Purification Plant - 2620 Genoa Red Bluff, Houston, Tx 77251
 - 11.2.3 Northeast Water Purification Plant – 12121 North Sam Houston Parkway East, Humble, Tx 77396
- 11.3 Deliveries shall be made at such intervals as required, against Purchase Orders issued by the User Department. It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine purification plant operations. The Supplier will ensure that carrier vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading, including a 2" discharge hose and a fifty foot 1" air hose with crows feet on each end. The City of Houston's chemical offloading equipment is to be used for backup or emergency use only. The City will not be responsible for demurrage charges resulting from use of City offloading equipment in lieu of adequate carrier offloading equipment. The Supplier assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks. Unloading hoses shall be maintained with caps covering at all times other than when offloading to prevent debris from entering loading system.

GENERAL TERMS AND CONDITIONS FOR CHEMICAL, AQUA AMMONIA , CONTINUED:

- 11.4 Deliveries are to be made to the appropriate City facility between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, with standard provisions to be made for deliveries on holidays and weekends, during these same hours, and during periods of high product demand. **There can be no extra charges to the City for Pre-Loaded trailers or Weekend and Holiday deliveries if deliveries are requested for these times.** The successful Bidder must make adequate provisions for product supply and transportation, and must maintain close contact with user department at all times. If there is a delay in the delivery schedule, the supplier must notify the ordering/ship to City facility immediately; at 713-837-7468. Additionally, the successful Bidder must make provisions for emergency delivery outside of the above listed normal delivery hours, at all times, to maintain adequate supply. Additional supplies may occasionally be required on an emergency basis.
- 11.5 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and feed systems at the affected user site, if the source of such contamination is found, subsequent to initial acceptance, to originate with any individual, or series of chemical deliveries.
- 11.6 All clean up and disposal activities will be conducted in a manner consistent with the best available technology and conform to all local, state, and federal regulations. The Supplier shall assume the responsibility as the generator of such contaminated material, along with all inherent obligations to ensure proper disposal of contaminated material, and any responsibilities arising from future lawsuits or clean-up costs associated with disposal of such contaminated materials.
- 11.7 The Supplier's carrier is responsible for containment and clean up of any product material released during offloading. The offloading area is to be free of any product material after offloading has been completed. The City reserves the right to delay final weighing of the carrier vehicle, at no cost to the City for demurrage or other costs, until any spilled product has been cleaned to the City's satisfaction or an acceptable agreement for cure has been reached between the Supplier and the City.

11.0 DELIVERY:

- 11.8 The Supplier's carrier must comply with site-specific safety training and regulations while in the plant. It will be the responsibility of the supplier's carrier to equip each vehicle entering the facility with appropriate personal protective equipment (PPE) for the safe offloading and spill cleanup associated with normal offloading procedures. The City reserves the right to request the Supplier to replace any delivery personnel who refuses to comply with City regulations.
- 11.9 **The City reserves the right to request the vendor to replace any delivery personnel who refuse to comply with City regulations.**

11.0 DELIVERY:

- 11.10 The Supplier/Contractor agrees to make deliveries only "**after**" receipt of duly signed and approved Purchase Orders issued by the City of Houston City Purchasing Agent, "**and only after ordered by an authorized representative of the user department.**" **It will be mandatory for the supplier to fax all information to the SEWP 24 hours before delivery at 281-487-6951. All deliveries at the East Water Purification Plant will be required to come to the 2300 Federal road gate to check in with security**

12.0 TESTING OF DELIVERIES:

- 12.1 The quality of aqua ammonia in each truck lot will be determined from the analysis of a sample collected upon arrival at the Point of Delivery for each truckload; at no time will a sample be taken without City Operation personnel present. The supplier may have a representative present at the time of sampling. Analysis is to be made under the direction of the City of Houston, Water Quality Control Laboratory, on-site, and the City's analysis shall be final and binding. Analysis, at a minimum, shall include specific gravity, percent NaOH, presence of excess visible suspended solids, unusual odor, and/or color. No product material is to be off-loaded until a determination is made by the laboratory staff that the shipment meets specifications.

GENERAL TERMS AND CONDITIONS FOR CHEMICAL, AQUA AMMONIA , CONTINUED:

- 12.2 The City will select samples, on a random basis, for analysis of inorganic and organic constituents by an independent third party laboratory certified by the Laboratory Analysts Section of the Texas Water Utilities Association for the analysis of water and waste water, or by the Texas Commission on Environmental Quality for NPDES compliance testing, for any and all parameters represented in the "QUALITY" section of these specifications. Cost of analysis will be borne by the Supplier if the delivered product fails to meet specifications, as determined by third party analysis. Failure to comply with specifications, as confirmed by such independent third party analysis, may be grounds for termination for this Award.
- 12.3 Any costs incurred to the Supplier for handling, transportation, and/or demurrage, etc. from any shipment rejected by the on-site laboratory for failure to meet specifications, shall be the responsibility of the Supplier. The City shall, in no way be held vulnerable to any charges associated with such rejected shipments.
- 12.4 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and process feed systems at the affected user site, if the source of contamination is found, subsequent to initial acceptance, to have originated from any individual, or series of individual aqua ammonia solution deliveries. All clean-up and disposal activities will be conducted in a manner consistent with the best available technology, and conform to all local, state, and federal regulations for the management of hazardous wastes. The supplier assumes responsibility as the Generator of such contaminated material, along with all inherent obligations to insure proper disposal of contaminated material, and any and all responsibilities arising from future lawsuits or clean-up costs associated with disposal of such contaminated material.

13.0 WARRANTY:

The Bidder shall warranty that all aqua ammonia solution delivered, by the successful Bidder, is of at least as good a quality as that of the sample submitted with his bid, within accepted analytical tolerance for error in determination.

14.0 BASIS FOR REJECTION:

- 14.1 The City of Houston may reject and refuse delivery of any truckload lot of aqua ammonia solution that is not within the specific maximum and minimum limits of the listed parameters as enumerated in the "QUALITY" specification section.

The rejection of a shipment of Aqua Ammonia will be at the City's option as follows:

- 14.1 Ammonia (NH₃) less than 17% by weight or more than 20% by weight.
- 14.2 Specific gravity of Solution corrected to 20^oC is greater than 0.9344 or less than 0.9247.
- 14.3 Visible suspended material present.
- 14.4 Non-compliance with quality section.
- 14.5 Total heavy metals in excess of .02% by weight expressed as lead.
- 14.2 Such analyses shall be performed using recognized methods and procedures as detailed by the American Water Works Association Standard B501-93, STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, and/or USEPA approved methods for the analysis of portable water.
- 14.3 The City of Houston shall not be held to have accepted any truckload shipment until after the City's on-site laboratory personnel have made their analysis of the material, and the City of Houston has had an opportunity to exercise its right of rejection.

14.0 BASIS FOR REJECTION: (Cont.)

- 14.4 In the event that a shipment is rejected for failure to meet specifications, the Supplier is to furnish an emergency replacement shipment to the affected location within four (4) hours or as agreeable to the receiving department. Any additional expense associated with the replacement shipment over and above the contract price shall be at the expense of the supplier. In the event a replacement shipment causes City Operations and/or laboratory personnel to remain on overtime to receive and sample the replacement shipment, the Supplier shall reimburse the City the sum of fifty dollars (\$50) per hours for each hour or portion of an hour after 3:30 P.M. that City personnel must remain on site to receive the replacement shipment.

15.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on a purchase order. The Supplier shall retain title and control of all goods until they are delivered and off-loading is completed. All risk of transportation and all related charges shall be the responsibility of the Supplier. The Supplier shall file all claims for visible or concealed damage. The City will notify the Supplier promptly of any damaged goods and shall assist the Supplier in arranging for inspection.

16.0 MATERIALS:

The items furnished shall be the latest product in production to commercial trade, and shall be of the highest quality as to materials used. The Supplier furnishing these items shall be experienced in the production of such items and shall furnish evidence of having supplied similar items, which have been in successful operation. The Bidder shall be an established Supplier of the items bid.

17.0 ADDITIONS & DELETIONS:

The City, by written notice from the City Purchasing Agent to the Supplier, at any time during the term of this award, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the Award shall be in accordance with the awarded specification/scope of services, and the charges or rates for items added shall be the same as specified on the bid form. In the event additional equipment, supplies, locations and/or services are not identical to the item(s) already under the Award, the charges therefore will then be the Supplier's normal and customary charges or rates for the equipment, supplies, locations and/or services classified on the bid form.

18.0 FORCE MAJEURE:

- 18.1 Timely performance by both parties is essential to this award. However, neither party is liable for delays or other failures to perform its obligations under this Award to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority. In case of emergencies, the Supplier will provide the City 24/7 contact information.
- 18.2 This relief is not applicable unless the affected party does the following:
 - 18.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 18.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 18.3 The City may perform the awarded Bidder's functions itself or bid them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Award by the City.
- 18.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Award by giving 30 days' written notice to Supplier. This termination is not a default or breach of this Award. SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AWARD AT THE TIME OF THE TERMINATION.

19.0 BID SAMPLE:

- 19.1 Upon request by the City, the Bidder is required to submit duplicate, one liter, bid samples of aqua ammonia solution in tightly capped glass containers. These samples must be representative of the material to be supplied and must be accompanied by the applicable Certified Analysis Sheet, using the attached forms. The Bid Samples and Certified Analysis Sheets are to be delivered to the City of Houston, Water Quality Control Laboratory, 2300 Federal Road, Houston, Texas 77015, between the hours of 8:00 a.m. and 3:00 p.m., Monday thru Friday within ten (10) working days of request by the City of Houston. Failure to supply the requested documentation will be just cause to reject bid. In addition, representative bid samples accompanied by the applicable Certified Analysis Sheets, may also be requested forwarded to the City of Houston, Wastewater Quality Control Laboratory Facility, 10,500 Bellaire Blvd., Houston, Texas 77072.

19.0 BID SAMPLE:

- 19.2 Each sample shall be labeled with the Bidder's name, Bid Invitation Number, and Bid Form Item Number. Should bidder(s) have any problems with submission of these samples, please contact the Water Quality Lab at (281) 450-5142.
- 19.3 Before the successful Bidder is awarded, the City shall verify, by means satisfactory to itself, that the Bid sample submitted conform to specifications. Failure of the samples to meet any one of the requirements specified shall be sufficient grounds for refection of the bid.
- 19.4 The "CERTIFIED ANALYSIS" shall be obtained from an independent third party analytical laboratory certified by the Laboratory Analysts Section of the Texas Water Utilities Association for the testing of contaminants in water and waste water, or by the Texas Commission on Environmental Quality (TCEQ) or other State Primacy Agency if other than Texas) for National Pollutant Discharge Elimination System compliance testing. If the laboratory is located outside the extra-territorial jurisdiction of the City of Houston, proof of laboratory certification may be required. Analyses to be performed are listed on the attached sheet, "CITY OF HOUSTON, CERTIFIED ANALYSIS FOR aqua ammonia solution AWARD, FOR UTILITY OPERATIONS DIVISION, PUBLIC WORKS AND ENGINEERING DEPARTMENT".

20.0 DEMURRAGE:

The City will be responsible for demurrage on trucks only when such charges occur because of the City's negligence in the unloading of the material, and the unloading time exceeds two (2-1/2) hours in total plant time. Delays due to extended time required for sample analysis because of questions as to the quality of the sampled shipment are not to be considered negligent on the City's part and the City shall not be responsible for any demurrage charge incurred under such circumstance. It is the carrier's responsibility to properly document all demurrage charges. [All demurrage invoices need to be sent to.](#)

City of Houston
Contract Compliance Section
Office of the Director
611 Walker 23rd floor
Houston, Texas 77208

[Upon approval the invoice will be sent to PUD Purchasing for payment.](#)

21.0 COVER FOR NON-DELIVERY:

The Supplier agrees that if, for any reason, at any time, it shall be unable to deliver in quantities and/or quality ordered by the City of Houston under these specifications, and having been notified to make a shipment, shall have failed to deliver such a shipment after notification, then the City of Houston shall be authorized to purchase such material wherever available, and the Supplier agrees to pay the City of Houston the amount paid by it, over and above the bid price.

22.0 SUPPLIER SUPPLY OF SAFETY TRAINING:

The successful Bidder shall agree to supply as a result of participation in the bidding process, formal safety training sessions to the user department. Such safety training sessions are to consist of the following:

- 22.1 A videotape, DVD, filmstrip, slide presentation or live trainer presentation on the general safe handling of the awarded bid material.
- 22.2 Coverage in such presentation of the main safety hazards and general information as covered in the material safety data sheet.
- 22.3 Coverage in such presentation of the general characteristics and behavior of the awarded bid material.
- 22.4 Such training sessions are to be conducted on site at the user department. At least two (2) such presentations of sixty (60) minutes each shall be supplied to the user department during the first two (2) months of the bid award, and during the first (1st) month of each twelve (12) month period thereafter. Should the awarded bid be longer than twelve (12) months, but not be for a period that is an even multiple of twelve (12) months, the training shall be supplied within the first two (2) months of the last increment as well.

23.0 STOCKS AND WAREHOUSE FACILITIES:

- 23.1 In order to receive bid award consideration, the Bidder shall maintain sufficient stock(s) to fulfill normal City of Houston requirements as set forth herein. Bidder must demonstrate that he is able to secure all required product within a 24-hour period, and demonstrate access to sufficient production capacity to provide uninterrupted supply of aqua ammonia solution during periods of peak usage.
- 23.2 An inspection may be made to determine whether bidder actually has access to sufficient capacity and stock. Adequate stock inventory and production capacity shall be considered a factor in determining award. Adequate is defined as having, in stock, a storage capacity of two (2) weeks supply of aqua ammonia for each of the two (2) locations supplied.
- 23.3 Bidder must demonstrate he is able to secure all required product within a 48 hour period.

24.0 RELEASE AND INDEMNIFICATION:

24.1 RELEASE:

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 AWARD, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.

24.2 INDEMNIFICATION:

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 AWARD INCLUDING THOSE CAUSED BY:

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

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

24.2.1 INDEMNIFICATION PROCEDURES:

- (1) Notice of Claims. If the City or 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 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.

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 Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

24.0 RELEASE AND INDEMNIFICATION (CONTINUED):

(2) Defense of Claims

- (a) Assumption of Defense Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Supplier must advise the City as to whether or not it will defend the claim. If 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 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. 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 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.

25.0 WORKER'S COMPENSATION INSURANCE:

On any City Award with a labor component or any Award where Supplier delivery people make deliveries for City sites, Worker's Compensation Insurance as shown in the Insurance Section is required.

26.0 INSURANCE:

- 26.1 If performance of this Award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have insurance coverage and furnish certificates of insurance showing the City as an additional insured, in duplicate form, prior to the beginning of the Award. The City shall be named as an additional insured on all such policies except Worker's Compensation. **The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or 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, Property-Casualty United States.** Comprehensive General Liability including Contractual Liability, Automobile Liability and Pollution Liability insurance shall be in at least the following amounts. Automobile Liability Insurance for autos furnished or used in the course of performance of this Award. 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 Supplier, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS AWARD MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.
- 26.2 \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate, per 12-month policy period. Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 26.3 All insurance policies required by this Award shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation against the City, and that it shall give thirty (30) days written notice to the City before they may be cancelled. Within such thirty (30) day period 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 Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Award at once.
- 26.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.

27.0 SUCCESSORS AND ASSIGNMENTS:

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

28.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

28.1 These provisions apply to goal-oriented Awards. A **goal-oriented** Award means any City solicitation 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.

28.2 The City of Houston, through Ordinance No. 84-1309 and Council Motion 86-2204, encourages the participation of Minority and Women Business Enterprises in the performance of City Awards. Pursuant to the aforesaid Ordinance and Council Motion, the City has classified the Award that will result from this bid as a Goal-Oriented Award and the recommended Supplier shall be required to make good faith efforts to subcontract at least **11%** of the total dollar amount of this award ("City of Houston Certified MWBE goal") to either Minority Business Enterprises, Women Business Enterprises, or both, unless otherwise stated in the Bid Form or Specifications. The City Purchasing Agent with the concurrence of the Affirmative Action Director reserves the right to adjust upwards or downwards the designated percentage goal.

29.0 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 price bid must be net exclusive of above-mentioned taxes, and will be so construed. A 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, will approve or issue the necessary certificates.

30.0 AWARD:

30.1 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.

30.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informality for the best interest of the City.

31.0 REJECTIONS:

31.1 Articles not in accordance with samples and specifications must be removed by the Supplier and at his expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the City Purchasing Agent or designated representative.

31.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and of 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.

32.0 BRAND 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 Suppliers, but are intended to approximate the quality design or performance, which is desired. Any bid, which 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, assumption will be that the item is bid exactly as specified on the Invitation to Bid.

33.0 CHANGE ORDER

33.1 At any time during the Awarded Bid Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Award. The Supplier shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Award plus any special provisions, specifications, or special instructions issued to execute the extra work.

33.2 The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Supplier]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Award between the City and [Name of Supplier] countersigned by the City Controller on [Date of countersignature of the Award]

Subject to all terms and conditions of the Awarded Bid, the City requests that Supplier provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director upon written notice to the City Purchasing Agent]

33.3 The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:

33.3.1 Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved Award amount must be approved by the City Council.

33.3.2 If a Change Order describes items that Supplier is otherwise required to provide under this Award, the City is not obligated to pay any additional money to Supplier.

33.3.3 The Total of all Change Orders issued under this section may not increase the Original Award amount by more than 25%.

33.4 Whenever the Supplier receives a Change Order, Supplier shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Supplier shall complete the work within the time prescribed. If no time for completion is prescribed, Supplier shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Supplier is required to perform under this Award, Supplier may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

33.0 CHANGE ORDER, CONTINUED:

33.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Award, and is subject to the terms and conditions of the Original Award as if it had originally been a part of the Award.

34.0 TERMINATION OF AWARD

34.1 By the City for Convenience:

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

34.2 By the City for Default by Supplier:

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

- (a) Terminate the Award for default and the City shall have no further obligation under the Award.
- (b) Allow the 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, Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Award as of such date and have no further obligation under the Award.

34.2.2 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. Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Supplier and that which the City was forced to pay for covering Supplier's failure to deliver or perform services.

34.3 By the Supplier for Default by City:

34.3.1 Default by the City shall occur if the City fails to perform or observe the terms and conditions of the Award required to be performed or observed by the City, and the Supplier gives notice in writing to the City within 30 calendar days of the act or omission claimed by the Supplier to constitute default on the part of the City.

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

34.3.3 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 Supplier may terminate its performance under this Award as of such date.

35.0 PATENTS

The Supplier agrees to indemnify and save harmless the City, the City Purchasing Agent and assistants 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 he 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

36.0 SUPPLIER DEBT:

If Supplier, at any time during the term of this Award, 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 Supplier has incurred a debt, she shall immediately notify Supplier in writing. If 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 Supplier under this Award, and Supplier waives any recourse therefore.

37.0 SUPPLIER'S DUTY TO PAY:

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

**NO BID SHEET
FOR
CHEMICAL, AQUA AMMONIA
FOR
THE PUBLIC WORKS & ENGINEERING DEPARTMENT**

BID INVITATION NO. S12-S23036

If your firm has chosen not to submit a bid for this procurement, please complete this form and submit to:

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

Please check the items that apply:

- Do not sell the item(s) required.
- Cannot be competitive.
- Cannot meet the Specifications highlighted in the attached Bid.
- Cannot provide Insurance required.
- Cannot provide Bonding required.
- Cannot comply with Indemnification requirements.
- Job too large.
- Job too small.
- Do not wish to do business with the City.
- Other reason / OR please state by you can not bid for this Procurement.

Company Name: _____
(Print or Type Name of Company)

By: _____
(Signature of Authorized Officer or Agent)

Vendor Number: _____

Telephone Number: (____) _____

FAX Number: (____) _____

→→ RETURN TO: Buyer – MARTIN L. KING
City Hall - City of Houston
Finance & Administration Department
Strategic Purchasing Division
P.O. Box 1562
Houston, Texas 77251