



CITY OF HOUSTON INVITATION TO BID

Issued: December 15, 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, January 21, 2010**, 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:

**PAINT, STREET MARKING
FOR
VARIOUS DEPARTMENTS
BID INVITATION NO. S06-S23471
NIGP CODE: 630-66**

Buyer

Tywana Rhone is the Buyer for this solicitation and he/she may be reached at 832.393.8754. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at tywana.rhone@cityofhouston.net.

Electronic Bidding

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

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Basement, City Hall, 901 Bagby, Houston, Texas 77002 at 10:00 a.m., Tuesday, January 12, 2010 City Hall Basement Conference Room #1.

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.



PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS BID INVITATION NO. S06-S23471

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver **street marking paint, 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 overall low net bid 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 SIXTY (60) MONTH AWARD

FIRM PRICES ARE TO BE QUOTED FOR THE FIRST TWELVE (12) MONTH PERIOD

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 PAINT, STREET MARKING 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 Attachment 1

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

ATTACHMENT "1"

PAINT CHARACTERISTICS

1.0 STANDARD FORMULA:

The following standard formula shall be the basis for the Acrylic Waterborne Traffic Paint. No variations will be permitted except for the replacement of volatiles lost in processing, or those approved by the City of Houston representative. Amounts are shown in pounds of materials.

	<u>WHITE</u>	<u>YELLOW</u>	<u>RED</u>
C.I. Pigment Red 3			25
C.I. Pigment Yellow 65		32	
Titanium Dioxide, Rutile, Type II (Derr-McGee CR800)	100	21	
Calcium Carbonate, Type PC (Mississippi M-60)	150	150	50
Calcium Carbonate, Type GC (Hubercarb Q6)	430	465	785
Hydroxy Ethyl Cellulose (Natrasol 250HBR)	0.5*	0.5*	0.3*
Acrylic Emulsion, (50)-percent Solids (E2706)	541	535	415
Taxanol (Eastman)	24	23	20
Defoamer (Colloids 654)	5	5	6
Dispersant (Tamol 850)	8	9	8
Surfactant (Triton CF10)	2	2	2
Methyl Alcohol	29	28	30
Preservative (Troy 192)	1.5	1.5	1
Water	10	10	50
	<hr/>	<hr/>	<hr/>
Total Pounds	1301	1282	1392.3

*Hydroxy Ethyl Cellulose amount may be varied by up to (0.1)-pound to adjust viscosity to desired range.

PAINT CHARACTERISTIC S (CONTINUED):

1.0 STANDARD FORMULA (CONTINUED):

	<u>WHITE</u>	<u>YELLOW</u>	<u>RED</u>
C.I. Pigment Red 3 (Engelhard 1177)			_____
C.I. Pigment Yellow 65 (Engelhard 1244)	XXX	_____	_____
Titanium Dioxide, Rutile, Type II (Derr-McGee CR800)	_____	_____	_____
Calcium Carbonate, Type PC (Mississippi M-60)	_____	_____	_____
Calcium Carbonate, Type GC (Hubercarb Q6)	_____	_____	_____
Hydroxy Ethyl Cellulose (Natrasol 250HBR)	_____*	_____*	_____*
Acrylic Emulsion, (50)-percent Solids (E2706)	_____	_____	_____
Taxanol (Eastman)	_____	_____	_____
Defoamer (Colloids 654)	_____	_____	_____
Dispersant (Tamol 850)	_____	_____	_____
Surfactant (Triton CF10)	_____	_____	_____
Methyl Alcohol	_____	_____	_____
Preservative (Troy 192)	_____	_____	_____
Water	_____	_____	_____
	_____	_____	_____
Total Pounds	_____	_____	_____

Bidder Company Name

Signature of Authorized Agent

*Hydroxy Ethyl Cellulose amount may be varied by up to (0.1)-pound to adjust viscosity to desired range.

PAIN T CHARACTERISTIC S (CONTINUED):

2.0 MIXED PAINT:

- 2.1 The mixed paint shall conform to requirements listed below . If any variation in materials are allowed from the standard formula, the mixed paint shall equal or exceed all test results on a standard prepared from the standard formula and tested under parallel conditions for all the listed requirements.
- 2.2 The paint shall be strained before filling using a screen not coarser than 40 mesh or a suitable sieve meeting the approval of the City of Houston representative.
- 2.4 The volatile content of the finished paint shall contain less than 150-grams of volatile organic matter per liter of total non-volatile paint material in accordance with ASTM D 3960.

PIGMENT COMPOSITION:

	<u>WHITE</u>	<u>YELLOW</u>	<u>RED</u>
Organic Red 3 (percent)	XXX	XXX	Min. 2.9
Organic Yellow 65 (percent)	XXX	Min. 4.8	XXX
Titanium Dioxide (percent)	Min. 13.4	Min. 2.6	Min.____
Calcium Carbonate (percent)	Max. 86	Max. 93	Max. 97.1

PIGMENT COMPOSITION:

	<u>WHITE</u>	<u>YELLOW</u>	<u>RED</u>
Organic Red ____ (percent)	XXX	XXX	____
Organic Yellow 65 (percent)	XXX	____	XXX
Titanium Dioxide (percent)	Min. ____	Min. ____	Min.____
Calcium Carbonate (percent)	Max. ____	Max. ____	Max.____

Bidder Company Name

Signature of Authorized Agent

PAINT CHARACTERISTICS (CONTINUED):

3.0 PHYSICAL PROPERTIES:

Percent Total Solids by weight, minimum	73
Percent Volume Solids, minimum	58
Percent Pigment by weight	49-54
Percent Vehicle by weight	46-51
Percent Non-volatile in Vehicle by weight, minimum	44
Weight per Gallon, Pounds	± 0.30 Theo
and/or by split weight	± 0.10
Viscosity, (77)-degrees F, Krebs Units	83-98
Grind (Hegman Gage)	3
Laboratory Dry Time, ASTM D 711 minutes, maximum	10
Dry Time	Not greater than 15 min. of standard formula
Percent Total Solids by weight, minimum	_____
Percent Volume Solids, minimum	_____
Percent Pigment by weight	_____
Percent Vehicle by weight	_____
Percent Non-volatile in Vehicle by weight, minimum	_____
Weight per Gallon, Pounds	± _____
and/or by split weight	± _____
Viscosity, (77)-degrees F, Krebs Units	_____
Grind (Hegman Gage)	_____
Laboratory Dry Time, ASTM D 711 minutes, maximum	_____
Dry Time	_____ min

Bidder Company Name

Signature Authorize Agent

PAIN T CHARACTERISTIC S (CONTINUED):

4.0 PHYSICAL REQUIREMENTS:

	<u>WHITE</u>	<u>YELLOW</u>	<u>RED</u>
Color Match (Method)	_____	_____	_____
Flexibility Test (Method)			_____
Water Resistance Test (Method)			_____
Freeze-Thaw Stability Test (Method)			_____
Heat Stability Test (Method)			_____
Storage Stability (Days)			_____ days
Contrast Ratio (Minimum)			_____ min
Reflectance, White, Yellow and Red (Minimum)		_____ min.	_____ min. _____ min.
Bleeding Ratio (Minimum)			_____ min
Abrasion Resistance Test (Method)			_____
No-Track Dry Time Field Test (Minutes)			_____ min
Dry Through Time Test (Minutes)			_____ min

Bidder Company Name

Signature Authorize Agent

SECTION B.

CITY OF HOUSTON TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS

SPECIFICATION FOR WHITE AND YELLOW ACRYLIC WATERBORNE TRAFFIC PAINT: PWE/SWM/DEPTS.

SPECIFICATION FOR RED ACRYLIC WATERBORNE TRAFFIC PAINT: SWM DEPT.

1.0 TOTAL RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) METALS AND TOTAL VOLATILE ORGANICS TESTING REPORTS:

- 1.1 The successful bidder shall furnish to the City of Houston the results of a Total RCRA Metals and Total Volatile Organics test performed on retained samples of each color of traffic paint that is produced for the City of Houston. The test shall be performed on the first batch of each color at the start of each awarded year. This is a mandatory requirement.
- 1.2 The City of Houston also reserves the right to ask for a Total RCRA Metals and Total Volatile Organics test at any time during the award period for any reason the City of Houston finds it necessary to do so.
- 1.3 The Total Volatile Organics test shall be the GC/MS EPA 8240 method with a Quality Control Data Report, and the Total RCRA Metals Test shall be by EPA 206.2 / 270.2 / 7420 / 6010 methods run for all eight (8) metals with a Quality Control Data Report. Tests shall be performed by a testing laboratory approved by the Environmental Protection Agency or the Texas Natural Resource Conservation Commission.
- 1.4 Laboratory test reports shall be submitted within fourteen (14) calendar days after the first production of each color to:

FOR PWE: DEPUTY ASSISTANT DIRECTOR/GENERAL SUPERINTENDENT
ATTN: BILL HLAVACEK/RICHARD PEREZ
TRAFFIC MANAGEMENT AND MAINTENANCE DIVISION
PUBLIC WORKS AND ENGINEERING DEPARTMENT
2200 PATTERSON ST.
HOUSTON, TX 77007
Contact Number: 713-837-7244

FOR SWM: ASSISTANT DIRECTOR
ATTN: ANDREW CONTRERAS
SOLID WASTE MGT. DEPARTMENT
5617 NECHES
HOUSTON, TX 77026

- 1.5 The cost of all RCRA Metals and Volatile Organic Tests and any cost associated with these tests shall be paid by the successful bidder and shall be an integral part of the bid process. There shall be absolutely no cost passed on the City of Houston for any of the tests listed above.

TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS, (CONTINUED):

2.0 COLOR:

The color of the white paint after drying shall be a flat white, free from tint, furnishing good opacity and visibility under both daylight and artificial light. For yellow, the color shall closely match Color Chip 335538 of Federal Standard 595 and be \pm 6-percent from the PR 1 chart central color when read over the black portion of a 2 Leneta Chart, and for red, TT-P-1952 D Type II Federal Standard 595, Red 31350.

3.0 FLEXIBILITY:

The paint shall show no cracking or flaking when tested in accordance with Federal Specification TT-P-1952B.

4.0 WATER RESISTANCE:

The paint shall conform to TT-P-1952B. There shall be no blistering or appreciable loss of adhesion, softening, or other deterioration after examination.

5.0 FREEZE-THAW STABILITY:

The paint shall show no coagulation or change in consistency greater than 10 Kreb Units when tested in accordance with TT-P-1952B.

6.0 HEAT STABILITY:

The paint shall show no coagulation, discoloration or change in consistency greater than 10 Kreb Units when tested in accordance with TT-P-1952B.

7.0 DILUTION TEST:

The paint shall be capable of dilution with water at all levels without curdling or precipitation such that the wet paint can be readily cleaned up with water only.

8.0 STORAGE STABILITY:

After thirty (30) days storage in a three-quarters filled, closed container, the paint shall show no caking that cannot be readily remixed to a smooth, homogeneous state, on skinning, curdling or hard setting. The viscosity shall not change more than 5 Kreb Units from the viscosity of the original sample. After storage for periods of up to nine months from the date of packaging, the pigment shall not settle or cake in the container, nor shall the paint skin or thicken in storage sufficiently to cause an undesirable change in consistency, nor show spoilage. The paint shall comply with all the provisions of these specifications and be capable of being dispersed with a paddle to a smooth homogeneous condition of easily useable consistency.

9.0 CONTRAST RATIO:

The minimum contrast ratio shall be 0.98 when applied at a wet film thickness of 15-mils on a 2 Leneta Chart or equal. Contrast Ratio = Black / White.

TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS, (CONTINUED):

10.0 REFLECTANCE:

The daylight directional reflectance of the traffic paint shall not be less than 84-percent for the white, and not less than 50-percent for the yellow and red paint of a 15-mil wet film applied to an A Leneta Chart or equal. After drying 24 hours, measure the reflectance of the paint over the black portion of the chart using a HunterLab D25-9 Colorimeter ASTM E97 to assure that there is no pigment discoloration in the reflectance of the paint.

11.0 BLEEDING:

The paint shall have a minimum bleeding ratio of 0.97 when tested in accordance with TT-P-1952B. The asphalt saturated felt shall conform to ASTM D 226 for Type I.

12.0 ABRASION RESISTANCE:

No less than 190 liters of sand shall be required for removal of the paint film when tested in accordance with TT-P-1952B.

13.0 NO-TRACKING TIME FIELD TEST:

The paint shall dry to a no-tracking condition under traffic in three minutes maximum when applied at 15 ± 1 mil wet film thickness plus six pounds of glass beads under conditions specified in the bid package. "No tracking" shall mean the line has dried to the point where a standard automobile can run over the line a 40 MPH while making a passing movement and not track the reflectorized line when viewed from a distance of 50 feet.

14.0 DRY-THROUGH TIME:

The paint shall be applied to a non-absorbent substrate at a wet film thickness of 15 ± 1 mils and placed in a humidity chamber controlled at 90 ± 5 -percent R.H. and 72.5 ± 2.5 -degrees F. The dry-through time shall be determined according to ASTM D1640, except that the pressure exerted shall be the minimum needed to maintain contact with the thumb and film.

15.0 SCOPE:

- 15.1 It is the intent of this specification to cover white, yellow and red acrylic waterborne traffic paints for application onto new or old bituminous and Portland cement concrete pavements, also over existing solvent base paints, thermoplastic compounds, preformed plastic tapes, and existing waterborne paints.
- 15.2 Application will be made by spray equipment owned by the City of Houston Public Works and Engineering Department/Traffic Management and Maintenance Division, and the Solid Waste Management Department. Application temperatures of paint shall range from fifty (50)-degrees F to one hundred and fifty (150)-degrees F.
- 15.3 The acrylic waterborne traffic paint shall be capable of receiving and retaining glass spheres for producing reflective traffic markings. The method for glass sphere installation will be the type by which glass spheres are dropped on the wet paint with a pressurized glass gun.
- 15.4 Both truck mounted heated paint systems, small walk-behind crosswalk machines, and airless paint systems shall be used in the application of the acrylic waterborne traffic paint.
- 15.5 The attention of the bidder is specifically directed to the following requirement: Any paint furnished under this award that does not meet specifications or provisions listed in this solicitation, or that cannot be satisfactorily applied, shall be disposed of by the successful bidder and immediately replaced with acceptable marking paint entirely at the bidder's expense, including handling and transportation cost. It is to be expressly understood that this requirement is an integral part of the bid package.

TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMETNS. (CONTINUED):

16.0 GENERAL:

- 16.1 The finished white, yellow and red acrylic waterborne traffic paint shall be formulated and manufactured from first-grade materials. The materials shall be as listed in the standard formula, unless otherwise authorized in advance of manufacturer, by the City of Houston Public Works and Engineering/Traffic Management and Maintenance Division, and Solid Waste Management Departments. Any proposed equivalent materials shall equal or exceed the quality, composition, and the physical and chemical behavior of the specified material after aging in the finished product.
- 16.2 Paint shall be homogeneous, well ground to uniform and smooth consistency, and shall not skin, cake, level, thicken, curdle, or gel in container. Paint shall be capable of being broken up and mixed without difficulty by use of a paddle or drum rotator and shall retain desired characteristics at any time within nine (9) months from date of delivery. Paint shall be free from skins, dirt, or other foreign matter.
- 16.3 Paint shall be suited to application by means of spray marking equipment of either air or airless type systems. When used with such equipment, paint shall be capable of producing solid, full-width 4, 8, or 12-inch lines when applied at a rate of 105 square feet per gallon, plus or minus five (5)-percent with four (4) to six (6) pounds per gallon of glass spheres dropped on by glass sphere gun.
- 16.4 All ingredient materials shall be delivered in the original containers and shall be used without adulteration.

17.0 PERFORMANCE REQUIREMENTS AND OBLIGATIONS:

- 17.1 Successful supplier shall submit with each lot or shipment, a certification which states material supplied meets requirements as listed in specifications.
- 17.2 Where traffic marking materials supplied and used in accordance with manufacturer's recommendations have not met performance requirements of the specification, successful bidder shall cover all replacement cost for marking materials determined by the City of Houston to be unsatisfactory, and shall have the choice of the following options.
 - 17.2.1 Successful supplier may replace defective materials with new supplies of material manufactured by the original supplier;
 - 17.2.2 Successful supplier may purchase, on the open market, traffic paint meeting specification at its cost; or
 - 17.2.3 The City of Houston may purchase, on the open market, traffic paint meeting specification. All cost for that traffic paint; (including all shipping and transportation cost) shall be paid by the supplier that supplied the original defective material.

18.0 MANUFACTURING CHANGES:

When in the opinion of the Director of the Traffic Management and Maintenance Division, Public Works and Engineering Department; or Solid Waste Management Department changes made in the composition, manufacturing process, or quality of materials bid in this solicitation may affect its durability or appearance, such change shall be immediately reported to the Division Director. The City of Houston reserves the right to conduct whatever evaluation or tests that are deemed necessary to identify if a change made will affect the materials durability. Such changes that are detected and not reported by the successful bidder or manufacturer shall be cause for removal of that material from the approved list of materials.

19.0 COMPLIANCE OF SPECIFICATIONS:

Failure to comply with specification requirements may be cause for cancellation of this award.

20.0 TYPES:

Type III- (white) Acrylic Waterborne Traffic Paint 55-Gallon Steel Drums and 5 Gallon Plastic Pails.

Type IV - (yellow) Acrylic Waterborne Traffic Paint 55-Gallon Steel Drums.

Type II - (red) Acrylic Waterborne Traffic Paint 5-Gallon Plastic Pails.

Type VI - (yellow) Acrylic Waterborne Traffic Paint 5-Gallon Plastic Pails.

21.0 PIGMENT:

21.1 Pigment Yellow 65-This material will only be allowed from the following sources: Hoeschst, Engelhard, and Sun Chemical or equal. No lead can be added to yellow pigment.

21.2 Titanium Dioxide-This material shall comply with the latest revision of the specification for Titanium Dioxide Pigments, ASTM D 476 Type II, Rutile. Hiding power of the Titanium Dioxide shall be greater than or equal to the standard sample when tested in the standard formula.

21.3 Alcium Carbonate-This material shall comply with the latest revision of the specification for Calcium Carbonate Pigments, ASTM D 1199 Type CG, Grade I, with minimum of 95-percent Calcium Carbonate and Type PC, minimum 98-percent Calcium Carbonate.

22.0 VEHICLE:

22.1 Acrylic Emulsion Polymer The non-volatile portion of the vehicle shall be composed of a 100 percent acrylicpolymer and shall not be less than 44-percent by weight. Acrylic emulsion polymer shall be Rohm and Haas E-2706 or DT 211 DOW or equal as determined by the City of Houston.

22.2 Methyl Alcohol ASTM D 1152 Specific Gravity, 20-degrees C, 0.791 to 0.794.

22.3 Water Potable.

23.0 MISCELLANEOUS MATERIALS:

Dispersant	Tamol 850, Colloids 226-35.
Surfactant	Triton CF-10, Colloids CTA 639.
Defoamer	Foamaster 111, Drew 493, Colloids 654.
Hydroxy Ethyl Cellulose	Natrasol 250 HBR, Bermocoll E431FQ
Coalescent	Texanol
Preservative	Troy 192, Dowicil 75, Nuosept 101

24.0 SUCCESSFUL BIDDER:

Prior to award the successful bidder shall furnish to the City of Houston the exact batch formula which will be used in manufacturing the paint. No change shall be made in this formula without prior approval by the City of Houston representative, and no change will be approved that adversely affects the quality or serviceability of the paint.

25.0 PACKAGING:

- 25.1 Traffic Marking Paint shall be delivered, as specified in bid form and purchase orders, in fifty-five (55)-gallon steel drums and 5-gallon plastic pails.
- 25.2 All fifty-five (55)-gallon steel drums shall be flat bottom, open head steel containers, with full removable heads that can be replaced and resealed with a twelve (12) gauge lever locking ring. The lever-locking ring is to be securely "locked down" with a heavy-duty plastic tie-strap to prevent opening while the drum is being transported. The drums shall be new with no evidence of rust. All drumheads shall have two (2) Internal Pipe Thread screw openings, (one-2 inch diameter, and one-3/4 inch diameter), at 180-degree locations on the drumhead. Drums shall have three (3) rolling hoops with minimum metal thickness of 1.09 mm and shall conform to Tile 49 of the Code of Federal Regulations (49 CFR), parts 107 and 171-179. The drums are to be non-leaking and embossed with [UN1A2/Y1.6/100](#) so that drums can be recycled. All drums and drumheads shall be coated on the interior with epoxy phenolic, compatible with waterborne paints so that the drums will not rust.
- 25.3 Drums that contain yellow marking paint exteriors shall be painted yellow; drums that contain white marking paint exteriors shall be painted white.
- 25.4 All five (5)-gallon containers shall be constructed of new sturdy plastic of the highest quality and workmanship with swing-down handles and removable heads that can be replaced and resealed. Container heads shall come with a pour spout and screw on and off type cap that can be resealed when necessary.
- 25.5 All containers shall be marked with stencils and labels on top and sides with information as follows:

CITY OF HOUSTON
MANUFACTURER'S NAME AND PLANT LOCATION
PAINT TYPE
LOT NUMBER
BATCH NUMBER
DATE OF MANUFACTURE
CITY OF HOUSTON PURCHASE ORDER NUMBER
HMIS LABEL, STYLE NC-L502C (1981 NPCA), (HEALTH) (FLAMMABILITY) (REACTIVITY) AND (PERSONAL PROTECTION) WITH PROPER IDENTIFICATION AND CODES PRINTED ON LABELS).

TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS, (CONTINUED):

25.0 PACKAGING (CONTINUED):

- 25.6 All containers shall be shipped on new/unused 48-inch by 48-inch heavy-duty double face pallets with four (4) drums per pallet capable of holding four 55-gallon steel drums of paint without boards bowing or bending and thirty-two 5-gallon plastic pails per pallet. Top and bottom face of pallets shall be constructed of ¾" solid oak planking spaced 1-inch apart with 2-inch by 4-inch solid oak frames. All containers shall be wrapped and/or banded together on pallets to keep containers from shifting while in transit.
- 25.7 Palletized containers shall be shipped on open flatbed trailers. The "open"-face of the pallet shall be positioned so that the pallet can be easily unloaded by forklift from the left side or the right side of the trailer. Pallets are not to be double stacked on trailer.

26.0 INSTRUCTION AND TRAINING:

Supplier shall provide services, if required, for instruction and training for City personnel at a City of Houston facility. This instruction shall include, but shall not be limited to, training films, material application, equipment operation, packaging, storage, and other proven marking practices as they apply to traffic paints supplied by the supplier to assure that resulting pavement markings comply with applicable specifications and industry standards. All cost associated with this service shall be paid by the supplier, and shall be an integral part of the bid package.

27.0 TECHNICAL SERVICE:

Supplier shall provide to the City of Houston employees, services of a qualified and competent service technician for the purpose of supplying training, product information, and technical services, including but not limited to problems with traffic paint, application methods, and packaging and shipping problems. All cost associated with this service, including all travel expenses, shall be paid by the supplier, and shall be an integral part of the award package.

28.0 PRICE ADJUSTMENT:

28.1 Direct Cost:

In this section means Supplier's cost from the manufacturer of any item or if Supplier is the manufacturer, the cost of raw materials required to manufacture the item, plus costs of transportation from manufacturer to Supplier and Supplier to the City.

28.2 Price Decreases:

28.2.1 If the Supplier's Direct Cost **decreases** at any time during the full term of this award, Supplier shall **immediately** pass the decrease on to the City and lower its prices by the amount of the decrease in Direct Cost.

28.2.2 Supplier shall notify the City Purchasing Agent of price decreases in the same way as for price increases set out below. The price decrease shall become effective upon City Purchasing Agent's receipt of Supplier's notice.

TECHNICAL SPECIFICATIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS, CONTINUED:

28.3 Price Increases:

28.3.1 Suppliers may request a price increase after 12 months from the bid opening date of the bid received by the City Secretary of the City of Houston. Subsequent price increases may be requested 12 months from the date of the previous approved price increase. The amount of the first increase shall not exceed actual documented increase in Supplier's Direct Cost and shall not ever be more than 10% above the previous bid price. The amount of the subsequent price increase shall also not exceed this percentage.

28.3.2 To request a price increase, Supplier must submit a letter setting the amount of the increase, along with an itemized list of any increased prices, showing the Supplier's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Documentation from the Supplier's supplier(s) showing the actual dollar increase/decrease to the Supplier must accompany this request. Such documentation from the Supplier's supplier must clearly show the dollar increase incurred by the Supplier on the applicable solicitation per item bid. The letter and documentation shall be sent to the following address:

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

28.3.3 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 upon **sixty (60) days** advance written notice to the City Purchasing Agent. Termination of performance is Supplier's only remedy if the City Purchasing Agent does not approve the price increase.

28.3.4 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 laws, the City may then purchase the item from the lower price source without any obligation to the Supplier.

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 street marking paint 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 street marking paint.**

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: _____

SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS
FOR
PAINT, STREET MARKING
FOR THE
VARIOUS DEPARTMENTS

1.0 TERM OF AWARD:

- 1.1 The term of award shall be for a sixty (60) month period beginning on the date specified in the Notice of Award letter. 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 the solicitation shall govern. The Supplier will not provide any goods/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 prices awarded 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; 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 this 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.

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 INVOICING:

- 3.1 In order to expedite payment all invoices must be submitted in triplicate, 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.
- 3.2 All delivery tickets must have a description of the commodity delivered.
- 3.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 3.4 Delivery tickets and packing slips shall contain the same information as the invoice.
- 3.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

4.0 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.

5.0 MATERIAL SAFETY DATA SHEETS (MSDS):

- 5.1 All Bidders should submit with their bid, two (2) complete, most current copies of the required Material Safety Data Sheet (OSHA Form 174), manufacturer's safety data sheet, or such other sheet that contains the same information as the OSHA Form 174 for each product bid. Should these forms be omitted from the bid, Bidder promises to deliver said forms within ten (10) working days of receipt of notice from the City. Failure to comply with this notice will be just cause for rejection of the bid from further consideration. A Material Safety Data Sheet must accompany each shipment.
- 5.2 Each sheet submitted should be identified by the Bidder's complete company name; formal bid number and bid form item number.

6.0 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 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 solicit the removal of any contaminated material and charge back the Supplier any and all costs involved.

7.0 INSPECTIONS AND AUDITS:

- 7.1 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.
- 7.2 Representatives of the City have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime award insofar as those books and records relate to performance under the prime award.
- 7.3 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 this award. 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.

8.0 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.

9.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

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

GENERAL TERMS AND CONDITIONS FOR PAINT, STREET MARKING FOR VARIOUS DEPARTMENTS, CONTINUED:

10.0 DELIVERIES:

- 10.1 The Supplier agrees to make deliveries within five (5) working days only upon receipt of duly signed and approved Purchase Orders issued by the City of Houston City Purchasing Agent or designee. Delivery made without such Purchase Order shall be at Supplier's risk and shall leave the City the option of canceling any award implied or expressed herein.
- 10.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.
- 10.3 Full tare must be allowed and no charges made for packages.
- 10.4 In the event that the deliveries of the supplies covered in the solicitation are not made within the number of days specified, or in the event that the supplies delivered are rejected, and are not removed and replaced within the number of days specified in the official notice of rejection, the City reserves the right to terminate. The defaulting Supplier will be deemed non-responsible and will be disqualified from bidding on the solicitation if it is re-let by the City within ninety (90) days of such termination.
- 10.5 The Bidder must demonstrate its ability to secure and deliver any item within five (5) working days. Forty-eight (48) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.

11.0 SITE VISITS:

When deemed necessary an inspection may be made by the various departments to determine whether a bidder actually has a facility at the location they have listed in the bid document.

12.0 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 award of coverage has been 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.

13.0 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.

14.0 RESTOCKING (EXCHANGES AND RETURNS):

There will be no restocking charge to the City for return or exchange of any item purchased under the terms of this award. If the City wishes to return items purchased under this award, the Supplier agrees to exchange, these items for other items, with no additional charge incurred. Items must be returned to Supplier within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Supplier shall invoice the City for increase price or provide the City with a credit or cash refund for any decrease in price. On items returned, a credit or cash refund will be issued by the Supplier to the City. This return and exchange option shall extend for thirty (30) days following the expiration date of the award. All items returned by the City must be unused and in the same merchantable condition as when received. **Items that are special ordered and/or stocked by the Supplier at the specific request of the City may be returned only upon approval of the Supplier.**

15.0 CONTRACT COMPLIANCE:

15.1 The Public Works & Engineering Department reserves the right to monitor this award for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.

15.2 Monitoring may take the form of but shall not necessarily be limited to:

15.2.1 Site Visits

15.2.2 Review of deliveries received for accuracy and timelines

15.2.3 Review of supplier's invoices for accuracy

15.3 The responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Public Works & Engineering Department.

16.0 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 solicitation 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 awarded, 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.

17.0 FORCE MAJEURE

17.1 Timely performance by both parties is essential to the award. However, neither party is liable for delays or other failures to perform its obligations 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.

17.2 This relief is not applicable unless the affected party does the following:

17.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and

17.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

17.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.

17.4 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. SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE AT THE TIME OF THE TERMINATION.

18.0 MEASUREMENTS:

The measurement stated for these items are approximates. The City reserves the right to accept items that are similar in size, if in the City's judgment, the item bid fulfills the intended purpose.

19.0 SAMPLES:

- 19.1 If requested by the City, the two (2) apparent low Bidders will be required to submit samples of the items proposed within seven (7) days of such request. The samples will be used to determine if the proposed items meet the specifications stated herein.
- 19.2 **If the Bidder fails to provide samples within the seven (7) day period, as required, the City may reject your bid and not consider it for further evaluation.**
- 19.3 These samples, if not subject to destructive testing, will be returned to the supplying Supplier. A notice will be mailed to the Supplier when samples are ready to be released by the City. Supplier will have fourteen (14) days to redeem the samples. If samples are not redeemed within this time period the City cannot be responsible for condition or loss of the subject items.

20.0 WARRANTY:

A minimum warranty of twelve (12) months from Supplier and the manufacturer's warranty will be furnished on materials and workmanship shall be provided. The warranty period shall begin the day the City officially accepts the item. Any warranty work is to be completed within five (5) working days after receipt of item.

21.0 RELEASE:

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

22.0 INDEMNIFICATION:

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

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

22.0 INDEMNIFICATION (CONTINUED):

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

22.3 INDEMNIFICATION PROCEDURES:

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

This notice does not estop 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 Prime Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

- (a) Assumption of Defense. Prime Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Supplier must advise the City as to whether or not it will defend the claim. If Prime Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If Prime Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime 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.

23.0 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.

24.0 INSURANCE:

- 24.1 If performance of this award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have and maintain in effect 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 and Automobile 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.
- 24.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 24.3 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.
- 24.4 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.

25.0 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.

26.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 26.1 These provisions apply to goal-oriented contracts. A goal oriented contract means any contract awarded for the supply of goods or non-professional services of approximately \$100,000.00 for which competitive bids are required by law and which the City Purchasing Agent has determined to have City of Houston Certified MWBE subcontracting potential.
- 26.2 Prime Supplier agrees to comply with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances insofar as such programs apply to this Contract. Prime Supplier further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least **11%** of the value of this Contract to Minority and Women-owned Business Enterprises certified by the City's Affirmative Action Division. In addition, Prime Supplier acknowledges that it has reviewed the requirements for good faith efforts that are on file with the City's Affirmative Action Division, is familiar with such requirements, and will comply with them.
- 26.3 Prime Supplier shall require written subcontracts with all MWBE subcontractors and suppliers, which must contain the terms, set out in the documents attached herein. If Prime Supplier is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

26.0 MINORITY AND WOMEN BUSINESS ENTERPRISES (CONTINUED):

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

27.0 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.

28.0 AWARD:

28.1 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.

28.2 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.

29.0 REJECTIONS:

29.1 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.

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

30.0 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.

31.0 CHANGE ORDER

31.1 At any time during the term of the award, 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.

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

31.0 CHANGE ORDER (CONTINUED):

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]

Subject to all terms and conditions of the award, 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]

31.3 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:

31.3.1 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 awarded amount must be approved by the City Council.

31.3.2 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.

31.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.

31.4 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, 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.

31.5 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.

32.0 TERMINATION OF AWARD

32.1 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 and not previously paid.

32.0 TERMINATION OF AWARD (CONTINUED):

32.2 By the City for Default by Supplier:

32.2.1 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.

(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 as of such date and have no further obligation under the award.

32.2.2 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.

32.3 By the Supplier for Default by City:

32.3.1 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.

32.3.2 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.

32.3.3 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 as of such date.

33.0 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.

34.0 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.