



CITY OF HOUSTON

Administration and Regulatory Affairs Department
Strategic Purchasing Division

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November 18, 2010

Subject: Letter of Clarification No. 2 to Invitation to Bid No. S12-23709RA for Chemical, Hydrofluorosilicic Acid for the Public Works and Engineering Department.

To: All Prospective Bidders:

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

1) **To change the reverse auction closing date, revise the specifications and respond to question posed by prospective bidders:**

- **The reverse auction closing date is hereby changed from 10:00 a.m., Monday, November 22, 2010 to *until 10:00 a.m. Tuesday, November 30, 2010.***
- **SECTION B, entitled TECHNICAL SPECIFICATIONS is hereby changed as follows:**
 1. Remove pages 7 of 23 and 9 of 23 and replace with the attached pages 7 of 26 and 9 of 26 marked "*Revised 11/18/2010.*"
 2. Pink and ink changes – Change page 8 of 23 to read 8 of 26 and change pages 10, 11, 12, 13, 14 and 15 of 23 to read 10 of 26, 11 of 26, 12 of 26, 13 of 26, 14 of 26 and 15 of 26.
 3. Remove pages 16 of 23 through 23 of 23 and replace with attached revised pages 16 of 26 through 26 of 26 marked "*Revised 11/18/2010.*"
- **The following are the questions posed by prospective bidders and the answers thereto:**

Question #1 "When are bidders to submit Dunn & Bradstreet evaluations?"

Answer: **The Dunn & Bradstreet financial evaluations shall be required within ten (10) working days after receipt of a written notice from the City to do so.**

Question #2 "Where is the signature page in this bid document?"

Answer: **See attached signature page.**

Partnering to better serve Houston

Council Members: Brenda Stardig Jarvis Johnson Anne Clutterbuck Wanda Adams Mike Sullivan Al Hoang Oliver Pennington
Edward Gonzalez James G. Rodriguez Stephen C. Costello Sue Lovell Melissa Noriega C.O. "Brad" Bradford
Jolanda "Jo" Jones **Controller: Ronald C. Green**

Question #3 “Where is the certified analysis form with the bid – there is no form attached to the bid doc?”

Answer: **The certified analysis form is to be supplied by the bidder's independent laboratory, see attached.**

Question #4 “In regards to the ARO (delivery time) – on section 10.5, it states 5 working days with ability for 48 hours, and then on 10.6 it says orders will be placed with 24 hours notice? Which one is the correct ARO?”

Answer: **Subsection 10.5 is applicable to all potential "Bidders". Subsection 10.6 is the applicable "Supplier" ARO.**

Question #5 “Just to confirm....MWBE requirements for this contract are zero?”

Answer: **Yes, the MWBE requirement is zero.**

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

- 2) When issued, Letter(s) of Clarification shall automatically become a part of the bid documents and shall supersede any previous specification(s) and/or provision(s) in conflict with the Letter(s) of Clarification. It is the responsibility of the bidders to ensure that it has obtained all such letter(s). By submitting a bid on this project, bidders shall be deemed to have received all Letter(s) of Clarification and to have incorporated them into this solicitation.
- 3) Furthermore, it is the responsibility of each Contractor to obtain any previous Letter of Clarification associated with this solicitation.

Martin L. King
Martin L. King
Senior Staff Analyst
832-393-8705



- Attachments:
- (1) Pages 7 of 26 and 9 of 26; and Pages 16 of 26 through 26 of 26, Marked Revised 11/18/2010.
 - (2) Signature Page - **Must be signed and submitted with the hard copy of the bid.**
 - (3) Certificate of Analysis - **Must be completed, signed and submitted with the hard copy of the bid.**

SECTION B.

CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
CHEMICAL, HYDROFLUOROSILICIC ACID
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT

1.0 GENERAL:

- 1.1 These specifications cover furnishing Hydrofluorosilicic Acid (H_2SiF_6) for use in potable water treatment during a sixty (60) month period. The price bid shall be F.O.B., City of Houston, to principle sites located at 12555 Clinton Drive, 2300 Federal Road, 3100 Genoa Red Bluff, 12121 North Sam Houston Parkway East and any additional sites which become necessary as decided by the Director of the Department of Public Works and Engineering, Houston, Texas. All unloading charges shall be included in the bid.
- 1.2 Supplier agrees by bidding to assure a confirmed and reliable year round supply of the product and to take into consideration the fact that the usage of Hydrofluorosilicic Acid in Water Treatment is principally a constant rate process being affected only by feed equipment failure of significant variations in water supply demand.
- 1.3 The product furnished 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 that has been treated with it, or causing water so treated to fail to meet United States Environmental Protection Agency on Drinking Water Regulations.
- 1.4 **All delivery tickets must have a description of the product delivered and be accompanied by a weight ticket showing gross, net, and tare weights for each shipment. All weights are to be determined at scales maintained at the Water Purification Plant or by other methods previously approved, in writing, by the Purchasing Agent and the User Department 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.**
- 1.5 The weight of the product shall be ascertained from a certified weight ticket attached to the bill of lading from the originating line.

2.0 SOURCE OF SUPPLY:

- 2.1 **Each supplier shall be required to provide the following applicable documentation with its bid.**
 - 2.1.1 Name, address, phone number and contact person of the original manufacturer.
 - 2.1.2 Actual site (or sites) of product manufacture.
 - 2.1.3 Shipping point (or points) of origin to be supplied.
 - 2.1.4 Whether original manufacturer produces product to be supplied as primary product or as a by-product
 - 2.1.5 If product 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.
 - 2.1.6 Notification of any change of ownership of original manufacturer during award period is to be reported to Administration and Regulatory Affairs Department, Strategic Purchasing Division and User Department at least sixty (60) days in advance of transfer of ownership.
- 2.2 In the event that the Bidder is an original manufacturer of product being supplied, but will not supply all (or any) of the product from its manufacturing process, the bidder must provide the Administration and Regulatory Affairs Department, Strategic Purchasing Division and user department with the following:
 - 2.2.1 The source of supply items listed above (Items 2.1.1 through 2.1.6).
 - 2.2.2 What proportion of award product is to be supplied from another manufacturer or supplier and what proportion is to be supplied by the Bidder's manufacturing process.

5.0 BASIS OF REJECTION:

- 5.1 Hydrofluorosilicic Acid less than 22.0% by weight or greater than 30.0% by weight of Hydrofluorosilicic Acid strength.
- 5.2 **Specific gravity of solution corrected to 60 degrees F is no less than 1.190 and no greater than 1.300.**
- 5.3 Visible suspended product present.
- 5.4 Non-compliance with Section 1, Paragraph 2.
- 5.5 Total heavy metal in excess of .02
- 5.6 Excessive color – product should be clear and colorless.
- 5.7 The product should be odorless; samples inconsistent with the bid sample are subject to rejection.

6.0 **CERTIFIED ANALYSIS:**

- 6.1 **The certified analysis form attached to the bid document shall be completely filled out by the bidder and submitted with the bid. The certified analysis form will be retained by the City and used for comparison of the quality of product delivered under the award. The successful bidder shall also be required to furnish to the City, by mail, its laboratory reports which include percent Hydrofluorosilicic Acid and percent Hydrofluoric Acid in each quantity delivery and any other information required for the safe usage of the product as may be requested by the Houston Water Purification Plant Laboratory.**
- 6.2 **If the Hydrofluorosilicic Acid to be supplied is a by-product, the bidder shall make this fact known in writing on the bid form along with pertinent information pertaining to the source of supply and the quality of the product to be supplied.**

7.0 **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 product 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.

8.0 **SPECIFIED PRODUCT, OR EQUIVALENT:**

- 8.1 Wherever in the specifications any products 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, products and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.
- 8.2 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, products, 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.**

- 10.1.1** **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 shall be immediately notified of all spills and leaks that occur during the delivery/offloading of product. 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 vendor and the City.**
- 10.1.2** **The Supplier’s carrier shall conduct a pre-trip inspection of vehicles, checking for leaks/drips prior to entering City of Houston facilities to deliver/offload product. The Supplier’s carrier shall use drip pans, buckets or the like underneath hose and pipe connections and other leak-prone spots during liquid transfer operations, and when making and breaking connections. Spilled product shall not be hosed down into storm drains. Hose down of spilled product is only allowed in approved drain areas. These areas shall be clearly marked by the City of Houston.**
- 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 proposal 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/Supplier will be deemed non-responsible and will be disqualified from bidding 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 three (3) to five (5) working days. Twenty-four (24) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.**
- 10.6** **The City of Houston will notify the Supplier of a cancellation within two (2) hours prior to the Supplier’s delivery of product to the designated City of Houston site.**
- 10.7** **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."**
- 10.8** **Deliveries will be made to the following facilities or other City sites or locations which may become necessary:**
- 10.8.1** **East Water Purification Plant I & III - 2300 Federal Road, Houston, TX 77015. Deliveries to the East Water plant must be faxed over 24 (twenty four) hours before delivery to Fax # 713-450-5137. In the event there is a delay in delivery, contact Deborah Smith at 713-450-5106.**
- 10.8.2** **Southeast Water Purification Plant - 3100 Genoa Red Bluff, Houston, TX 77034. Deliveries to the Southeast Water plant must be faxed over 24 (twenty four) hours before delivery to Fax # 281-487-6951 or 281-487-7671. In the event there is a delay in delivery, contact Anne Bowers at 281-487-6624.**
- 10.8.3** **Northeast Water Purification Plant – 12121 North Sam Houston Parkway East, Humble, TX 77396. Deliveries to the Northeast Water plant must be faxed over 24 (twenty four) hours before delivery to Fax # 832-395-3798. In the event there is a delay in delivery, contact Bridgette Quansah at 832-395-3795.**

- 10.9 All delivery confirmations faxed to the Water Purification Plants must have the drivers name, truck number, trailer number, and seal numbers. If any of the information should change, the new information must be re-faxed ASAP for delivery.
- 10.10 The Supplier shall use rear discharge trailers only for the delivery of Hydrofluosilicic Acid to all drinking water plants. In the event a side discharge trailer comes into a plant, the load and trailer will be rejected and it must be replaced on the same day.
- 10.11 Deliveries shall be made at such intervals as required, against Purchase Orders issued by the User Department. Deliveries shall be made using rear discharge trailers only as stated in the Technical Specifications 5.2. 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.
- 10.12 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 shall 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. 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 at no additional cost to the City. Occasionally, additional supplies may be required on an emergency basis.
- 10.13 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.
- 10.14 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.
- 10.15 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.
- 10.16 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) per the MSDS 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.

10.17 TESTING OF DELIVERIES:

The quality of Hydrofluosilicic Acid solution 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, 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.

10.17.1 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.

10.17.2 Any costs incurred by 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.

10.17.3 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 Hydrofluosilicic Acid 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.

11.0 SHIPPING TERMS:

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

12.0 PRODUCTS:

The items furnished shall be the latest product in production to commercial trade, and shall be of the highest quality as to products used. The Supplier/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/Supplier of the items bid.

13.0 ADDITIONS & DELETIONS:

The City, by written notice from the City Purchasing Agent to the Supplier/Supplier, at any time during the term of this Agreement, 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 Agreement shall be in accordance with the Agreement 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 agreement, the charges therefore will then be the Supplier's/Supplier's normal and customary charges or rates for the equipment, supplies, locations and/or services classified on the bid form.

14.0 FORCE MAJEURE:

14.1 Timely performance by both parties is essential to the Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement 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.

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

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

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

14.3 The City may perform agreement functions itself or outsource them during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.

14.4 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 Agreement by giving 30 days' written notice to Supplier. This termination is not a default or breach of this Agreement. SUPPLIER/SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

15.0 SAMPLES:

15.1 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.

15.2 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.

15.3 These samples, if not subject to destructive testing, will be returned to the supplying Supplier/Supplier. A notice will be mailed to the Supplier/Supplier when samples are ready to be released by the City. Supplier/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.

16.0 WARRANTY:

A minimum warranty of twelve (12) months from Supplier/Supplier and the manufacturer's warranty will be furnished on products 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.

17.0 RELEASE AND INDEMNIFICATION:

17.1 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 AGREEMENT, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE.

17.2 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 AGREEMENT 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 AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. SUPPLIER’S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

17.2.1 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.

- (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.

18.0 WORKER'S COMPENSATION INSURANCE:

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

19.0 INSURANCE:

- 19.1 If performance of this agreement requires Supplier/Supplier to provide labor in addition to supplies, labor and products, the Supplier /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 Agreement. 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 agreement. 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/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 AGREEMENT MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.
- 19.2 \$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.
- 19.3 All insurance policies required by this agreement 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/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/Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Agreement at once.
- 19.4 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.

20.0 SUCCESSORS AND ASSIGNMENTS:

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

21.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 21.1 These provisions apply to goal-oriented award. A **goal-oriented award** means any award 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 subawarding potential.
- 21.2 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 agreements. 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/Supplier shall be required to make good faith efforts to sub-agreement at least **0%** 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.

22.0 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/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.

23.0 AWARD:

- 23.1 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.
- 23.2 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.

24.0 REJECTIONS:

- 24.1 Articles not in accordance with samples and specifications must be removed by the Supplier/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.
- 24.2 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.

25.0 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 Supplier/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.

26.0 CHANGE ORDER:

- 26.1 At any time during the Agreement 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 Agreement. The Supplier/Supplier shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 26.2 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 Agreement between the City and [Name of Supplier] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, 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]

- 26.3 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:
- 26.3.1 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.
- 26.3.2 If a Change Order describes items that Supplier is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Supplier.
- 26.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 26.4 Whenever the Supplier receives a Change Order, Supplier shall furnish all product, 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 Agreement, 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.
- 26.5 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 Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

27.0 TERMINATION OF AGREEMENT:

- 27.1 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/Supplier. Upon receipt of such notice, Supplier/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/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/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.

27.2 By the City for Default by Supplier/Supplier:

27.2.1 In the event that the products and/or services furnished by the Supplier/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/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/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/Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Supplier/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.

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

27.3 By the Supplier/Supplier for Default by City:

27.3.1 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/Supplier gives notice in writing to the City within 30 calendar days of the act or omission claimed by the Supplier/Supplier to constitute default on the part of the City.

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

27.3.3 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/Supplier may terminate its performance under this award as of such date.

28.0 PATENTS:

The Supplier/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

29.0 SUPPLIER DEBT:

If Supplier, at any time during the term of this agreement, incurs a debt, as the word is defined in section 15-122 of the Houston city code of ordinances, it shall immediately notify the city controller in writing. If the city controller becomes aware that 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 agreement, and Supplier

waives any recourse therefore.

30.0 Site Visit:

When deemed necessary an inspection may be made by the Public Works & Engineering Department to determine whether a bidder actually has a facility at the location they have listed in the bid document.

31.0 Post Award Meeting:

Once the award has been approved by City Council, PW&E will schedule a Post Award Meeting with the successful Supplier and the PW&E End Users. This meeting will cover procurement, PW&E contacts, supplier invoicing, supplier payment, and all other matters related to award administration.

32.0 Award Compliance:

- 32.1 The Department of Public Works & Engineering reserves the right to monitor this award for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.
- 32.2 Monitoring may take the forms of, but will not necessarily be limited to:
 - 32.2.1 Site visits
 - 32.2.2 Review of deliveries received for accuracy and timeliness
 - 32.2.3 Review of Supplier’s invoices for accuracy
- 32.3. The responsibility for monitoring compliance rests with the Award Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works and Engineering.

NO BID SHEET

**FOR
CHEMICAL, HYDROFLUOROSILICIC ACID
FOR
THE PUBLIC WORKS & ENGINEERING DEPARTMENT**

BID INVITATION NO. S12-S23709RA

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)

Supplier Number: _____

Telephone Number: (____) _____

FAX Number: (____) _____

→→ RETURN TO: Buyer –

**MARTIN L. KING
City Hall - City of Houston
Administration & Regulatory Affairs Department
Strategic Purchasing Division
P.O. Box 1562
Houston, Texas 77251**

OFFICIAL SIGNATURE PAGE

The undersigned hereby offers to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with the Invitation to Bid, Clarification Letters, and General Terms and Conditions Specifications, all of which are made a part of this offer.

All pages of the City of Houston's bid document, including but not limited to the General Terms and Conditions and Page Three (3) of the bid invitation are incorporated by reference into this bid for all purposes.

The undersigned, as Bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Bidder has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this Contract.

NOTE: BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED.

**SUBMIT YOUR BID IN DUPLICATE
BID MUST BE MANUALLY SIGNED IN INK
(BLUE IN PREFERRED)**

Respectfully Submitted:

Bidder: _____
(Print or type name of Bidder-Full Company Name)

Vendor Number: _____

Federal Identification Number: _____

By: _____
(Signature of Authorized Officer or Agent)

Name: _____

Title: _____

Date: _____

Address (Street or P. O. Box)

City-State-Zip Code

Telephone Number: (____) _____

FAX Number: (____) _____

E-Mail Address: _____

**CITY OF HOUSTON
 CERTIFIED ANALYSIS
 FOR HYDROFLUOROSILICIC ACID
 FOR PUBLIC WORKS AND ENGINEERING DEPARTMENT**

This sheet must be submitted in duplicate with the bid. This is a mandatory requirement.

<u>PARAMETER</u>	<u>CONCENTRATION</u>
Hydrofluorosilicic Acid (H ₂ SiF ₆)%	_____ % by Weight
Hydrofluoric Acid (HF)%	_____ % by Weight
Arsenic (As)%	_____ % by Weight
Antimony (Sb)%	_____ % by Weight
Lead (Pb)%	_____ % by Weight
Iodine (I)%	_____ % by Weight
Total Heavy Metals%	_____ % by Weight
Organics%	_____ % by Weight
pH of 1% Solution	_____

PHYSICAL PROPERTIES

Physical State	_____
Weight of 23% Solution	_____ lbs./gal.
Amount of Fluoride available in Acid	_____ %
Specific Gravity of 23% Solution	_____
Suspended Product	_____

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

Source of Supply: _____	Laboratory: _____
Supplier: _____	Analysis By _____ / _____
	PRINTED NAME SIGNATURE
	Date of Analysis: _____
Supplier Representatives: _____	Certified By: _____
	Title: _____
	Address: _____
	Phone No.: _____

All Bidders agree by their participation in the bidding process to supply the user department 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 certified analysis may remove bid from consideration.