



CITY OF HOUSTON, TEXAS

NOTICE OF BEST VALUE BID (BVB)
SOLICITATION NO.: S12-S24221

STRATEGIC PURCHASING DIVISION
"PARTNERING TO BETTER SERVE HOUSTON"

NIGP CODE:

885-78

SOLICITATION DUE DATE/TIME:

THURSDAY, APRIL 19, 2012 at 10:30 A.M., CST

SUBMITTAL LOCATION:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby Street
Houston, Texas 77002

DESCRIPTION:

CHEMICAL, LIQUID POLYMER FLOCCULENTS
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT

PRE-BID CONFERENCE:

Date	Time
April 10, 2012	1:30 P.M.

Location

PWE, Material Management Branch Conference Room (Lower Level) 319 St. Emanuel, Houston, TX 77002

In accordance with T.L.G.C. § Chapter 252, competitive sealed Bids for the services specified will be received by the City Secretary's Office of the City of Houston at the above specified location, until the time and date cited. Offers must be in the actual possession of the City Secretary's Office on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this Solicitation.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

Martin L. King

Name

Martin.king@houstontx.gov

E-Mail Address

Calvin D. Wells

City Purchasing Agent

03-23-12

Date

SPECIAL INSTRUCTIONS TO OFFEROR(S)
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1.0 SUBMITTAL PROCEDURE:

1.1 Sealed bids, two (2) hard copies of the Bid package, including one (1) printed original must be signed in ink on the Official Signature Page by an authorized officer of the Offering Company. Additionally, the Bid package must include the hard copy of the Electronic Bid Form and five (5) additional electronic CD copies of the Bid Forms as referenced in Section 2.3 below are required to be submitted in a sealed envelope/box bearing the assigned Solicitation Number, located on the first page of the BVB document to:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby St.
Houston, Texas 77002

1.2 The deadline for the submittal of the Bid to the City Secretary's Office is no later than the date and time as indicated on the first page of the BVB document. All bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby St. at 11:00 AM on the solicitation due date. Failure to submit the required number of copies as stated above may be subject for disqualification from the BVB process.

1.3 Respondents may elect to either mail or personally deliver their Bids to the City Secretary's Office.

1.4 The City of Houston shall bear no responsibility for submitting responses on behalf of any Offeror. Offeror(s) may submit their Bid to the City Secretary's Office any time prior to the stated deadline.

2.0 BEST VALUE BID FORMAT:

2.1 The Bid should be electronically generated, printed and signed in original ink. The bid should not be submitted in elaborate or expensive binders. Legibility, clarity, and completeness are important and essential.

2.2 The Bid must be signed by an individual(s) legally authorized to bind the Offeror(s), and the City may accept this bid offer by issuance of a Contract to the said Offeror(s) at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

2.3 The complete Bid packet shall consist of the following items:

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

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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

3.0 PRE-BID CONFERENCE:

3.1 A Pre-Bid Conference will be held at the date, time, and location as indicated on the first page of the BVB document. Interested Offeror(s) should plan to attend. It will be assumed that potential Offeror(s) attending this meeting have reviewed the BVB in detail, and are prepared to bring up any substantive questions not already addressed by the City.

4.0 ADDITIONAL INFORMATION AND SPECIFICATION CHANGES:

4.1 Requests for additional information and questions should be addressed to the Administration and Regulatory Affairs Department, Strategic Purchasing Division Buyer, Martin L. King, telephone: (832) 393-8705, fax: (832) 393-8759, or e-mail (preferred method to): martin.king@houstontx.gov, no later than Monday, April 9, 2012 at 5:00 P.M. CST. The City of Houston shall provide written response to all questions received in writing before the submittal deadline. Questions received from all Offeror(s) shall be answered and sent to all Offeror(s) who are listed as having obtained the BVB. Offeror(s) shall be notified in writing of any changes in the specifications contained in this BVB.

5.0 LETTER(S) OF CLARIFICATION:

5.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or outlined in this BVB should be used in preparing bid responses.

5.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to Offeror(s).

6.0 EXAMINATION OF DOCUMENTS AND REQUIREMENTS:

6.1 Each Offeror shall carefully examine all BVB documents and thoroughly familiarize themselves with all requirements prior to submitting a Bid to ensure that the Bid meets the intent of this BVB.

6.2 Before submitting a Bid, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this BVB. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the BVB.

7.0 EXCEPTIONS TO TERMS AND CONDITIONS:

7.1 Best Value Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.

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8.0 ACCEPTANCE AND REJECTION OF BIDS:

- 8.1 The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed most advantageous or in the best interest to the City.
- 8.2 The City may accept this bid offer by issuance of a Contract 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, but shall expire on the 121st day unless the parties mutually agree to an extension of time in writing.

9.0 HIRE HOUSTON FIRST:

- 9.1 THIS PROCUREMENT IS SUBJECT TO THE HIRE HOUSTON FIRST PROGRAM, WHICH GIVES A PREFERENCE TO CERTAIN LOCAL BIDDERS IN AWARD OF THE PROCUREMENT. FOR MORE INFORMATION, GO TO:

- <http://www.houstontx.gov/obo/hirehoustonfirst.html>

9.2 Designation as a City Business or Local Business

- 9.2.1 To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit (“HHF Affidavit”)** to the Director of the Mayor’s Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

- 9.2.2 **Download the HHF Affidavit** from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

- www.houstontx.gov/obo/moreforms/hirehoustonfirstaffidavit.pdf

- 9.2.3 **Submit the completed application forms to: Mayor’s Office of Business Opportunity, One Stop Business Center, 900 Bagby St., Public Level, Houston, TX 77002 or Applications may be submitted via e-mail to HHF-MOBO@houstontx.gov or faxed to 832.393.0952.**

9.3 Award of a Procurement of \$100,000 or More for Purchase of Goods:

- 9.3.1 THE CITY WILL AWARD THIS PROCUREMENT TO A “CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)
- 9.3.2 IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- 9.3.3 UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.
- 9.3.4 IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

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9.4 Award of Procurement under \$100,000 for Purchase of Goods:

- 9.4.1 THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")
- 9.4.2 IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- 9.4.3 UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.
- 9.4.4 IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

9.5 Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

- 9.5.1 THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")
- 9.5.2 IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- 9.5.3 IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- 9.5.4 UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.
- 9.5.5 IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Documents/forms must be downloaded from the City's Website:
<https://houstontx.gov/purchasing/index.html>

10.0 PROTEST:

- 10.1 A protest shall comply with and be resolved, according to the City of Houston Municipal Code, Chapter 15, Article 1 and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Purchasing Agent and the Solicitation contact person as identified on the first page of the BVB. A pre-award protest of the BVB shall be received by the City Purchasing Agent prior to the Contract award date. A post-award protest of an awarded Contract shall be filed within ten (10) days after the protester knows, or should have known, the basis or outcome of the Contract award.
- 10.2 A protest shall include the following:
 - 10.2.1 The name, address, e-mail, and telephone number of the protester;
 - 10.2.2 The signature of the protester or its representative who has the delegated authority to legally bind its company;
 - 10.2.3 Identification of the BVB description and the BVB or Contract number;
 - 10.2.4 A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
 - 10.2.5 The desired form of relief or outcome, which the protester is seeking.

UNIFORM INSTRUCTIONS TO OFFEROR(S)
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- 1.0 This BVB does not commit the City of Houston to award a Contract, issue a Purchase Order, or to pay any costs incurred in the preparation of a Bid in response to this request.
- 2.0 The Bid will become part of the City's official files without any obligation on the City's part. All Responses shall be held confidential from all parties other than the City until after the Bids are opened and publicly read. Afterward, the Bids shall be available to the public.
- 3.0 The City of Houston shall not be held accountable if material from responses is obtained without the written consent of the Offeror by parties other than the City, at any time during the Bid evaluation process.
- 4.0 In the event an Offeror submits trade secret information to the City, the information must be clearly labeled as a **"Trade Secret."** The City will maintain the confidentiality of such trade secrets to the extent provided by law.
- 5.0 Offeror(s) shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston (including any and all members of the Bid evaluation committees).
- 6.0 Offeror(s) shall not collude in any manner, or engage in any practices, with any other Offeror(s), which may restrict or eliminate competition, or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a) responding to this BVB; or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein.
- 7.0 Offeror(s), their authorized representatives and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the Conditions, requirements, and Specifications of the BVB at the time a Bid is submitted to the City.
- 8.0 **The Award(s) shall become effective on or about June 16, 2012 for a term of three (3) years. The City of Houston reserves the option of extending the Award(s) on an annual basis for two (2) additional one-year terms, or portions thereof.**
- 9.0 If necessary for the completion of tasks required under the project, the City will provide reasonable working space to the Prime Contractor.
- 10.0 Clerical support and reproduction of documentation costs shall be the responsibility of the Prime Contractor. If required, such support and costs shall be factored into the Bid amount.
- 11.0 Prime Contractor personnel essential to the continuity, and the successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the City Project Director.
- 12.0 The Prime Contractor will be expected to adhere to all standard contractual requirements of the City which shall include, but are not limited to, provisions for: Time Extensions; Appropriation of Available Funds; Approvals; Term and Termination; Independent Contractor; Business Structure and Assignments; Subcontractors; Parties in Interest; Non-Waiver; Applicable Laws; Notices; Use of Work Products; Equal Employment Opportunity; Force Majeure; and Inspections and Audits.
- 13.0 The City may terminate its performance under a Contract in the event of a default by the Prime Contractor and a failure to cure such default after receiving notice of default from the City. Default may result from the Prime Contractor's failure to perform under the Terms of the Contract or from the Prime Contractor becoming insolvent, having a substantial portion of its assets assessed for the benefit of creditors, or having a receiver or trustee appointed.
- 14.0 Prime Contractor must promptly report to the City Project Director any conditions, transactions, situation, or circumstances encountered by the Prime Contractor which would impede or impair the proper and timely performance of the Contract.
- 15.0 The City of Houston has sole discretion and reserves the right to cancel this BVB, or to reject any or all Bids received prior to Contract award.

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- 16.0 The City reserves the right to waive any minor informality concerning this BVB, or to reject any or all Bids or any part thereof.
- 17.0 The City reserves the right to request clarity of any Bid after they have been received.
- 18.0 After bid award and issuance of a City of Houston purchase order, the successful Offeror shall be the Prime Contractor and responsible party for contracting and communicating the work to be performed to subcontractors, and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the BVB. Any subcontracting not specified in the BVB will need prior written approval from the City Purchasing Agent.
- 19.0 Prime Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime Contractor or is subcontracted to another organization.
- 20.0 If subcontractor involvement is required in the use of license, patent, or proprietary process, the Prime Contractor is responsible for obtaining written authorization from the subcontractor to use the process, or provide another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.

TECHNICAL SPECIFICATIONS

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1.0 OVERVIEW:

1.0 Materials will be ordered in accordance with water treatment needs and the maximum quantity of material that the City of Houston will be obligated to purchase under the Contract is the quantity ordered, delivered, and accepted on Purchase Orders issued by the Purchasing Agent of City of Houston. However, nothing herein shall be construed as an obligation of the City to order or pay for any quantity other than the amount determined to be necessary for treatment of water at the Purification Facilities.

1.1 Bidders should submit a bid for each of the items and quantities listed below. The quantities listed are an estimated 5-year usage. The contract will be awarded based on qualifying low bid for the product shipped:

2.0 ESTIMATED USAGE FOR 5 YEARS:

- 20 & 40% polyDADMAC Low Molecular Weight Solution Bulk Deliveries 17,000,000 lbs.
- Dry, Medium charge, Medium Molecular Weight Anionic Flocculant Packaged in 50-pound bags. 625,000 lbs.
- Dry, Medium charge, Medium Molecular Weight Anionic Flocculant Packaged in bulk tote bags of approximately 2,000 pounds. 1,400,000 lbs.
- 28% ± 2%, low charge, medium molecular weight anionic emulsion Polymer Packaged in 270-gallon bulk tote containers. 560,000 lbs.
- 30-32% active, nonionic emulsion Polymer, Packaged in Drums of 450lb 260,000 lbs.

3.0 ESTIMATED QUANTITIES NOT GUARANTEED:

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

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4.0 BID EVALUATION:

4.1 Evaluation Summary: **Only respondents previously issued a City of Houston Certificate of Responsibility under solicitation S12-23974 are permitted to bid.** The short list of respondents may be scheduled for a structured testing analysis and assessment presentation. Such presentations will be at no cost to the City of Houston. At the end of the structured testing analysis and assessment presentation, the evaluation of the short listed respondents will be completed. The structured testing analysis and assessment presentation may be recorded and/or videotaped.

4.2 Selection Process: The award will be made to the respondent(s) offering the response which best meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Bidder to provide for the requirements of the City of Houston. The Bidder shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any offer as a result of the evidence or investigation if the Bidder fails to satisfy the City that the Bidder is properly qualified to provide the supplies and services contemplated. Each respondent will be evaluated on the basis of the following evaluation criteria that are listed in order of importance as stated below:

4.2.1	Price	45%
4.2.2	Polymer Test Evaluation	35%
4.2.3	Service & Technical Expertise	10%
4.2.4	Financial Strength of Bidder	5%
4.2.5	M/WBE Capacity	5%
	Total:	100%

4.2.6 The successful supplier will be selected based on the scoring criteria.

5.0 Price Composition: The prices per pound of product shall include delivery to the designated location and the specified level of field service. Prices shall be based on a discount from a published price list submitted with the bid. **The product(s) price will be determined from the plus or minus percentage applied to the manufacturer's published price list lowest unit price column as bid.** The same discount shall apply to all current and future products within the same category of service and application, therefore, new products currently not available, may be purchased under the contract for use if the end results reflect a lower net cost to the City.

6.0 DELIVERY:

6.1 The Supplier agrees to make deliveries only "after" receipt of duly signed and approved Purchase Orders issued by the City of Houston City Purchasing Agent, "and only after ordered by an authorized representative of the user department."

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6.2 Deliveries shall be made to the Houston Water Purification Facilities at Federal Road, Clinton Drive, Genoa Red Bluff, the Northeast Water Purification Facility at 12121 North Sam Houston Parkway, the Southeast Water Purification Facility at 3100 Genoa Red-bluff Road, and any other location that may become necessary during the life of the contract. Deliveries shall be made at such intervals as required against purchase orders issued by the Purchasing Agent. 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. Supplier will ensure that carrier vehicles are equipped with a suitable vehicle mounted pump and/or air source to allow for product offloading. The City of Houston's chemical offloading equipment is to be used as 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. 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.

7.0 DELIVERY LOCATIONS:

The supplier must make adequate provisions for product supply and transportation, and must maintain close contact with user department at all times. Deliveries are to be made to the following water purification facilities between the hours of 7:00 a.m. and 3:00 p.m. Monday through Friday, with provisions to be made for deliveries on holidays, weekends, and/or periods of high product demand:

40% polyDADMAC LIQUID CAT-POLYMER FLOCCULANT:

- 2300 Federal Road, Houston, Texas 77015
- 3100 Genoa Red-bluff Road, Houston, Texas 77034

20% polyDADMAC LIQUID CAT-POLYMER FLOCCULANT:

- 2300 Federal Road, Houston, Texas 77015
- 12121 North Sam Houston Parkway East, Humble, Texas 77396

DRY, MEDIUM CHARGE, MEDIUM MOLECULAR WEIGHT ANIONIC POLYMER:

- 2300 Federal Road, Houston, Texas 77015

28% ± 2%, LOW CHARGE, MEDIUM MOLECULAR WEIGHT ANIONIC EMULSION POLYMER:

- 2300 Federal Road, Houston, Texas 77015
- 12121 North Sam Houston Parkway East, Humble, Texas 77396

30-32% ACTIVE, NONIONIC EMULSION POLYMER

- 12121 North Sam Houston Parkway East, Humble, Texas 77396

7.1 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. 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 assumes 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.

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

8.0 PRODUCT TRANSPORTATION:

- 8.1 All chemical bulk deliveries shall be shipped in stainless steel or appropriately lined truck tank trailers. Prior to loading, the tanks, hoses, and discharge nozzles shall be thoroughly cleaned and inspected. Any necessary maintenance will be performed prior to shipment. Tank trucks shall adequately protect the material from weather and wastage in transport. All access points on the tank trucks will be secured with a locking device and a numbered tamperproof seal prior to leaving the manufacturer's facility. The Supplier will provide the tamper proof seal number to the facility contact prior to delivery. Loads that are unsecured, or have a broken, mislabeled, or missing seals will be rejected and returned to the Supplier at their expense. In the event that a load is returned for failure to meet security provisions, Supplier must provide a replacement load of product freshly loaded and sealed at the point of origin within 24 hours. The replacement load must be accompanied by proof that rejected load has not been resealed and returned, or commingled with original batch at the point of origin. Misrepresentation of replacement product or failure to follow these procedures may be grounds for termination of contract.
- 8.2 All bag, totes, and bulk container products, whether in 50-pound bags, 2000-pound bags, totes or bulk containers, shall be palletized for shipment. Upon arrival at the City facility, it will be the responsibility of the delivery personnel to offload the material. City personnel will take responsibility once the materials are placed on the sludge plant receiving dock or designated location. The product will be shipped in boxed trailers that can adequately protect the material from weather and wastage in transport. All access points on the trailer will be secured with a locking device and a numbered tamper seal prior to leaving the manufacturer's facility. The Supplier will provide the tamper proof seal number to the facility contact prior to delivery. Loads that are unsecured, or have a broken, mislabeled, or missing seals will be rejected and returned to the Supplier at their expense.
- 8.3 It is the responsibility of the Supplier to conduct security screening on all delivery and support staff that may require access to the Water Production facility. The Supplier will provide the City of Houston with a roster of these employees, and the roster must include the employee's full name, picture, and drivers license number. Any changes to the roster must be forwarded to the City's of Houston immediately upon change. The Supplier will forward the name of the delivery driver to the City of Houston prior to each delivery via phone, e-mail, or fax. Shipments may be held at the security entrance to the facility pending proper driver identification, with no demurrage charges incurred by the City. Failure to adhere to these security requirements will be just cause for termination of the contract.

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8.4 SUPPLIER SHALL GUARANTEE TO ASSURE THAT EITHER HIS OWN CARRIER OR ANY COMMON CARRIER USED SHALL BE COVERED BY ALL APPROPRIATE INSURANCE REQUIRED BY ANY AND ALL STATE AND FEDERAL AGENCIES FOR THE TRANSPORT OF HAZARDOUS CHEMICALS. SUPPLIER SHALL FURTHER GUARANTEE TO ASSURE THAT ALL VEHICLES ARE PROPERLY PLACARDED AND/OR LABELED AND SUITABLY MAINTAINED AND EQUIPPED FOR THE TRANSPORTATION OF HAZARDOUS CHEMICALS.

9.0 DELIVERY WEIGHT DETERMINATION:

9.1 All delivery tickets must have a description of the product being delivered, company name, address, contact person's name, contact phone number, and be accompanied by a weight ticket showing Gross, Net, and Tare weights for each shipment. All weights are to be determined at scales maintained at the Water Purification Facilities, or by other methods previously approved, in writing, by the City Purchasing Agent and the User Department. The scales located at the Water Purification Plant (WPP) shall be considered the official scale for billing purposes. Weight of material delivered shall be determined by weighing the fully loaded truck on WPP scales before it is unloaded, and weighing the empty truck on the WPP scales after it is unloaded. The weight of the empty truck will be subtracted from the weight of the fully loaded truck to determine the actual weight of material delivered, and will be the weight used for billing purposes. The driver must be away from the scale during all weighing operations. If weights are subsequently approved at other than the Purification Facilities, such weights are subject to verification at the discretion of the City (See attached Exhibit A).

9.2 Gross Weight (lbs) - Tare Weight (lbs) = Net (lbs) Delivered.

7.3 Palletized material will also be subject to count verification. The driver and the City of Houston employee responsible for accepting the shipment must verify the package count, and in the event of a discrepancy, the count made by the two representatives will be accepted as actual shipment quantity.

10.0 AFFIDAVIT OF COMPLIANCE FOR POLYMER FLOCCULENT (DIALLYDIMETHYLAMMONIUM CHLORIDE):

10.1 Bidder should submit with his bid package an Affidavit of Compliance as per the American Water Works Association Standard B451-98, Section 6.3 for polyDADMAC.

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

11.0 BASIS FOR REJECTION:

11.1 The City of Houston may reject and refuse delivery of any truckload that is not within the product quality standards. The following criteria will be used as a standard for rejection of product:

11.1.1 The City may refuse acceptance of any load that exhibits offensive or unusual odor as compared to the bid sample supplied by the bidder. For this reason the Supplier will supply additional certified samples, at the City's request, as needed based on the expected shelf life of the product.

11.1.2 Loads that have an unusual color not generally associated with the product, or contain suspended solids visibly greater than the bid sample.

TECHNICAL SPECIFICATIONS

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- 11.2 The City may reject any load that fails to meet the percent active solids content:
- 11.3.1 40% polyDADMAC Solution - The product shall be greater than 38% and no more than 42%
 - 11.3.2 20% polyDADMAC Solution - The product shall be greater than 18% and no more than 22%
 - 11.3.3 Loads with a pH less than 5.0 and greater than 8.0, may be rejected by the City.
- 11.3 The City shall not be held to have accepted any truckload shipment until after the Water Purification Plant on-site laboratory has made its analysis of the material and the City of Houston has had an opportunity to exercise this right of rejection
- 11.4 In the event that a shipment is rejected for failure to meet specifications, the supplier is to furnish an emergency shipment to the Water Purification Plant within twenty-four (24) hours. Any additional expense associated with the emergency shipment over and above the Contract price shall be at the expense of the supplier.
- 11.5 The City also reserves the right to select samples on a random basis, for analysis of inorganic and organic contaminants by an independent third party laboratory certified by the Laboratory Analysts Section of The Texas Water Utilities Association, or the Texas Commission on Environmental Quality (TCEQ) for NPDES compliance testing. Cost of analysis will be borne by the City if all properties tested are within specifications as required by this document. Cost of analysis will be borne by supplier if product fails to meet contract specifications as indicated by the third party analysis. Failure to comply with contract specifications, as confirmed by independent third party analysis, may be grounds for termination of this contract.

12.0 VENDOR PERFORMANCE DEMONSTRATION:

- 12.1 Following the bid opening, the bidders will be required to demonstrate performance of their product. The demonstration may consist of jar testing and pilot scale testing prior to full plant scale side-by-side comparison.

13.0 QUALITY:

- 13.1 The chemicals supplied under these specifications shall contain no inorganic or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water treated with it, nor shall it contain any substances that react with source waters to produce a substance that could be deleterious or injurious to the health of the consumer. For this purpose an injurious or deleterious effect is defined as causing the concentration of one (1) of the chemical substances regulated in drinking water by the USEPA and/or Texas Commission on Environmental Quality (TCEQ) to exceed the Maximum Contaminant Level, established and in effect at the time of delivery, for the substance or cause a significant increase in the concentration of that substance over levels currently observed. For the purposes of this contract any "Action Levels" specified by EPA and/or the TCEQ shall be considered as a Maximum contaminant Level.
- 13.2 In any regard, chemicals supplied under this agreement shall, in all respects, meet the minimum current standard specification of the American Water Works Association or the current Water Chemical Codex (as published by the National Academy Press of the National Academy of Sciences), whichever is the more restrictive for materials used in the purification of municipal water supplies.
- 13.3 Supplier will furnish proof that all materials to be supplied have been certified in accordance with National Sanitation Foundation Standard 60 for use in potable water production. Such certification must accompany the bid sample submitted as per heading entitled BID SAMPLE.

TECHNICAL SPECIFICATIONS
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14.0 TESTING OF DELIVERIES:

- 14.1 A sample of each truckload will be collected in the presence of City personnel upon arrival. Acceptance of product will be based on analysis of sample by the on-site Water Quality Control Laboratory. Successful Supplier will supply the Water Quality Laboratory with necessary instrumentation, equipment apparatus, and appropriate methodology to carry out verification tests. Shipments that fail to meet the acceptable specified range as it appearing in the "Technical Specifications" portion of this document will be returned to Supplier, at no cost to the City. The Water Quality Laboratory results will be the sole determinant as to the acceptability of any given load. No shipment may be off-loaded without prior confirmed authorization to unload from the Water Quality Staff. No connections will be allowed between the vehicle trailer and off-loading station until driver receives such authorization from the Laboratory. Driver must remain outside the vehicle to monitor the entire off-loading process, and must remain within 50 feet of the offloading station and in unobstructed view of the offloading station.
- 14.2 The City will select samples on a random basis, for analysis of inorganic and organic constituents by an independent third party laboratory certified by the Laboratory Analysts Section of The Texas Water Utilities Association, or the Texas Commission on Environmental Quality (TCEQ) for NPDES compliance testing, by the analytical method stated under CHEMICAL COMPOSITION AND PHYSICAL PROPERTIES. Cost of analysis will be borne by the City if all properties tested are within specifications as required by this document. Cost of analysis will be borne by supplier if product fails to meet contract specifications as indicated by the third party analysis. Failure to comply with contract specifications, as confirmed by independent third party analysis, may be grounds for termination of this contract.
- 14.3 Any costs incurred to supplier for handling and/or transportation, demurrage, etc. of any shipment rejected by the site laboratory, for failure to meet contract 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..

STRAIGHT BILL OF LADING
NOT NEGOTIABLE-DOMESTIC

Moore
TRANSPORTERS

EXHIBIT A

N2 9703
ICC MC-211720

DATE SHIPPED 2/27 20 12

L.D. Time 3 PM
Del. Time _____

Shipper's Order Number 598164
Polydyne, Inc.

ORIGIN Pearlington, MS

SHIPPER

DESTINATION Houston, TX

CONSIGNEE City of Houston-Federal Rd.

This is to certify that the below articles are properly described by name and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

RECEIVED THE BELOW DESCRIBED PROPERTY IN GOOD CONDITION EXCEPT AS NOTED

Trailer No. 31 Trailer T No. 792

Per Roy A. Kalist Shipper

CONSIGNEE _____ DATE RECEIVED 2-28-12

BILL FREIGHT TO:

Loading Temperature _____ °F

FREIGHT CHARGES: PREPAID COLLECT

Received subject to the tariffs in effect on the date of issuance hereof.

If C.O.D., J. Moore Transporters will not unload until payment is received.
C.O.D. _____

J. MOORE TRANSPORTERS

Signature [Signature]

QUANTITY	HM	DESCRIPTION OF COMMODITY	GROSS LBS.	TARE LBS.	NET LBS.
<u>1/T</u>		<u>Clarifloc C-308P</u>	<u>79240</u>	<u>34140</u>	<u>45100</u>
		<u>Non Hazardous Resin Compound</u>			

SEAL NUMBERS INCLUSIVE

ACCESSORIAL CHARGES	YES	NO	DROP OFF OR EXTRA UNLOADING REPORT			
			Place of Unloading	Product	Gallon	Accepted By
Pumping or air charge						
Washing charge						
Miscellaneous charge						
Assignment of Equipment						

LOADING DATA:

On Site Ready For Loading _____ Finished loading _____

Delayed 0 hours due to _____

BILL TO:

[Signature] DRIVER SIGNATURE
[Signature] SHIPPER SIGNATURE

Receiver states the hoses are connected to the proper tank for unloading and sufficient space is available for delivery in said tank.
Received by: [Signature]

DELIVERY DATA:

On Site Ready For Unloading _____ Finished Unloading _____

Delayed _____ Hours Due To _____

BILL TO:

DRIVER SIGNATURE

CONSIGNEE'S SIGNATURE

GENERAL TERMS & CONDITIONS
SOLICITATION NO.: S12-S24221

1.0 TERM OF AWARD:

- 1.1 The term of the 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 OPTIONAL EXTENSION:

Subject to the availability of funding, this Award may be extended on a month-to-month basis upon acceptance of the Supplier beyond the initial awarded term. A price increase, subject to the provisions of the Award, may be requested by the supplier for approval by the City Purchasing Agent at this time. If the price increase is approved by the City Purchasing Agent or if no price increase is requested, a letter of extension will be issued by the City Purchasing Agent for the Supplier's acceptance under the same terms and conditions as the existing award.

3.0 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).

4.0 INTER-LOCAL AGREEMENTS:

Under the same terms and conditions hereunder, the award may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products provided under this award. Separate agreements will be drawn to reflect the needs of each participating entity.

5.0 LOCAL PRESENCE/SOURCE:

With respect to any goods, materials, equipment, supplies, and parts furnished by it, Supplier shall have an authorized facility(s) located within the Houston-Galveston Region (Harris County and its seven adjacent counties, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller). The facility(s) shall have adequate stock levels to support the demand requirements set forth in the bid solicitation.

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6.0 INVOICING:

- 6.1 In order to expedite payment all invoices must be submitted and itemized as to quantity, part number, description, and applicable discount (if any) in the same order and form as in the City of Houston Purchase Order. Variations will only delay payment. In addition, invoices must show the name of the Department, Division or Section to which the merchandise was delivered, and the City of Houston Purchase Order Number.
- 6.2 All delivery tickets must have a description of the commodity delivered.
- 6.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 6.4 Delivery tickets and packing slips shall contain the same information as the invoice.
- 6.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

7.0 PAYMENT:

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

8.0 MATERIAL SAFETY DATA SHEETS (MSDS):

- 8.1 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.
- 8.2 Each sheet submitted should be identified by the Bidder's complete company name; formal bid number and bid form item number.

9.0 CONTAMINATED MATERIALS:

Each Supplier shall be required to identify their source of supply. No material will be accepted from a hazardous or toxic waste site, regardless of whether the site has been identified by either a Local, State or Federal Agency. No contaminated, toxic, hazardous waste products or heavy metal product shall be contained in these deliveries. If any material supplied to the City 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.

10.0 INSPECTIONS AND AUDITS:

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

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11.0 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.

12.0 SILENCE OF SPECIFICATIONS:

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

13.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

13.1 Wherever in the specifications any materials or processes are indicated or specified by patent or proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.

13.2 The burden of proof shall rest with the Bidder, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. **DETERMINATION AS TO WHETHER THE ITEM(S) BID IS /ARE EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.**

14.0 DELIVERIES:

14.1 The Supplier agrees in an emergency situation to make deliveries within 24 to 48 hours 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 contract implied or expressed herein.

14.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise. Material shall be available for pickup in quantities as specified by the City within six (6) hours after notification by the City has been given. If the Supplier is unable to comply with the requirement, the City reserves the right to purchase material in the open market and charge the difference in cost, if any, to the Supplier.

14.3 The Supplier's employees entering any of the Drinking Water Locations will also be required to pass a security clearance. The Supplier will provide the City of Houston with a roster of these employees, and the roster must include the employee's full name, picture, and drivers license number. Any changes to the roster must be forwarded to the City's of Houston immediately upon change.

14.4 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 may be disqualified from bidding on the solicitation if it is re-let by the City within ninety (90) days of such termination. In the event of Supplier weights that exceed the weight verified by City scales, the Supplier's invoices, will be adjusted to reflect the weights processed by the state certified City of Houston scales.. Unloading shall be by and at the expense of the supplier. The total weight of sand cement stabilized delivered shall be obtained from state certified weight tickets and must be submitted with the delivery ticket. These state certified weights must be obtained by and at the expense of the supplier.

14.5 The Bidder must demonstrate its ability to secure and deliver any item within 24 hours. Six (6) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.

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15.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on a purchase order. The Supplier shall retain title and control of all goods until they are delivered and 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.

16.0 MATERIALS:

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

17.0 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.**

18.0 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.

19.0 FORCE MAJEURE:

19.1 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.

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

19.2.1 Uses due diligence to remove the Force Majeure as quickly as possible; and

19.2.2 Provides the other party with prompt written notice of the cause and its anticipated effect.

19.3 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.

19.4 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.**

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20.0 ESTIMATED QUANTITIES NOT GUARANTEED:

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

21.0 SAMPLES:

21.1 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.

21.2 **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.**

21.3 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.

22.0 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.

23.0 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.

24.0 INDEMNIFICATION:

24.1 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

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24.0 INDEMNIFICATION (CONTINUED):

- (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.

24.2 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.

24.3 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 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 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.

25.0 WORKER'S COMPENSATION INSURANCE:

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

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26.0 INSURANCE:

26.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and 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 Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

26.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate

26.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

26.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

26.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

26.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

26.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

26.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

26.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

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27.0 DEMURRAGE:

The City will be responsible for demurrage on trucks only when such charges occur because of the City's negligence in the unloading of the material, and the unloading time exceeds two (2) hours. Delays due to extended time required for sample analysis because of questions as to the quality of the sampled shipment are not to be considered negligent on the City's part and the City shall not be responsible for any demurrage charge incurred under such circumstance. Unloading time calculations may be based upon City of Houston scale house weight tickets. It is the carrier's responsibility to properly document all demurrage charges.

27.1 It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as applicable tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine plant operations. The Supplier will ensure that the carrier's vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading. 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.

27.2 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. 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.

27.3 The Supplier may charge an order cancellation fee if the City fails to provide cancellation notice by phone or other means at least two hour prior to the scheduled delivery. The City of Houston will strive to place orders 24 hours prior to requested delivery time.

28.0 COVER FOR NON-DELIVERY:

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

29.0 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.

30.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

30.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **11%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

30.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in "Section A, Table 2".

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31.0 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.

32.0 AWARD:

32.1 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.

32.2 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.

33.0 REJECTIONS:

33.1 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.

33.2 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.

34.0 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.

35.0 CHANGE ORDER

35.1 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.

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

CHANGE ORDER

TO: [Name of Supplier]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the award between the City and [Name of Supplier]

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

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[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]

- 35.3 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:
- 35.3.1 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 \$50,000. A Change Order of more than \$50,000 over the approved awarded amount must be approved by the City Council.
- 35.3.2 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.
- 35.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.
- 35.4 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.
- 35.5 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.

36.0 TERMINATION OF AWARD

36.1 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.

36.2 By the City for Default by Supplier:

36.2.1 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.

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36.2.2 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.

36.3 By the Supplier for Default by City:

36.3.1 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.

36.3.2 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.

36.3.3 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.

37.0 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.

38.0 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, the Controller 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.

39.0 POST AWARD MEETING:

Once the bid award has been approved by City Council, the Public Works & Engineering Department (PWE) 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 contract administration.

40.0 CONTRACT COMPLIANCE:

1. The Department of Public Works & Engineering reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.
2. Monitoring may take the forms of, but will not necessarily be limited to:
 - 2.1 Site visits
 - 2.2 Review of deliveries received for accuracy and timeliness
 - 2.3 Review of Supplier's invoices for accuracy
3. The responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works and Engineering.

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41.0 PRICE LISTS:

41.1 Internet-Based Catalog/Price List

41.1.1 It is the City's desire that all price lists be provided electronically; therefore, if the Contractor/Supplier is submitting a bid on any price list item as an **INTERNET-BASED CATALOG**, it is mandatory that pricing is in a secure format, available to the City of Houston in an **INTRANET** fashion. No custom software should be required to access the electronic catalog. The Contractor/Supplier shall provide the ability for unlimited amount of users to order via on-line communication with the supplier's computer system by the City of Houston's PC terminals, printers, fax, or telephone. The supplier shall also provide the capability to conduct orders using the City of Houston Charge Cards (i.e. VISA, MASTER CARD, AMERICAN EXPRESS).

41.1.2 Contractor/Supplier shall provide initial and on-going training and the set-up of PCs for City of Houston end-users.

41.1.3 Contractor's/Supplier's electronic catalog should include the following features:

- 41.1.3.1 Support open technology and standards such as Open-Buying on the Internet (OBI)
- 41.1.3.2 Flexible and robust product search methods
- 41.1.3.3 Account and user profile control including dollar limit processing
- 41.1.3.4 On-line ordering using a shopping cart utility
- 41.1.3.5 On-line order/usage history reporting
- 41.1.3.6 Notification of price changes in accordance to City of Houston terms and conditions
- 41.1.3.7 Help functions
- 41.1.3.8 Order processing using the City's Procurement Card

41.2 The Contractor/Supplier shall furnish Price Lists to the Pricing Section of the Strategic purchasing Division for distribution to all ordering departments, divisions and sections of the City of Houston requiring these items. Within ten (10) working days from written notification by the City Purchasing Agent that the Contractor/Supplier has been awarded the contract agreement, the Contractor/Supplier shall furnish to the Pricing Section of the Strategic Purchasing Division, the number of required copies of its price list(s) bid for use by City Departments. Failure to timely furnish such price lists may result in rescinding the contract award. Each time a Contractor/Supplier submits a revised price list it shall furnish the number of revised price list(s) required to the Pricing Section within ten working (10) days of such revision. Failure to do so may result in rescinding the contract agreement. **THESE PRICE LIST(S) SHALL BE FURNISHED AT NO COST TO THE CITY OF HOUSTON.**

41.3 Original, unaltered, manufacturers' price lists and revisions are requested. If all originals cannot be obtained, at least one (1) original plus photocopies of the original price list may be furnished provided each photocopy is certified as a true and accurate unaltered reproduction of the original. Each reproduced price list must have a notarized signature of authority that is certifying on the face thereof the copy is a true and accurate unaltered reproduction of the original. Although copies may be accepted, **IT IS A MANDATORY REQUIREMENT TO SUBMIT AT LEAST ONE (1) ORIGINAL PRICE LIST IN ORDER FOR YOUR BID TO BE CONSIDERED FOR AWARD RECOMMENDATION.**

41.4 A MINIMUM OF ELEVEN (11) PRICE LISTS WILL BE REQUIRED FOR EACH ITEM AWARDED FROM THE SUCCESSFUL CONTRACTOR(S)/SUPPLIER(S) PRIOR TO CONTRACT AGREEMENT AWARD. **THIS IS ONLY A MINIMUM REQUIREMENT OF THE NUMBER OF PRICE LISTS AND IS SUBJECT TO INCREASE ACCORDING TO THE REQUIREMENTS OF THE DEPARTMENTS.** THE SAME OR LIKE QUANTITIES WILL BE REQUIRED FOR SUBMITTAL OF REVISED PRICE LISTS.

41.5 Price lists furnished for these items shall include but shall not be limited to the original manufacturer's descriptive catalogs and/or supplemental publications that clearly define each part number cost. Electronic media versions are preferred.

41.6 **THE CITY OF HOUSTON RESERVES THE RIGHT TO DUPLICATE THE PRICE LISTS AWARDED FOR DISSEMINATING TO THE DEPARTMENTS.**

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42.0 PRICE ADJUSTMENT:

42.1 The price percentage adjustment bid shall remain firm during the full term of the contract agreement. Price adjustments will be determined from the plus or minus percentage applied to the manufacturer's published price list lowest unit price column as originally bid.

42.2 The price list(s) submitted with this bid will be in effect from the date bids are received and opened by the City Secretary. A price list substitution may be made any time after the contract agreement is awarded. This substitution will be the updated version of the price list submitted with the bid. A letter from the manufacturer stating the new price list submitted is the replacement for the one submitted with your bid must accompany the request. This letter must also state when (date) the new price list was distributed to its distributors/suppliers. **The new price list will not be accepted as a price list substitute if it was distributed and/or in the possession of the Bidder(s) before the bid due date.** Once the City Purchasing Agent approves this price list substitution, no other price list substitutions will be allowed for a period of 6-months from the date of the City's approval letter. Following each 6-month period, a request to substitute the price list(s) with revised price list(s) will be allowed subject to the City Purchasing Agent's approval. Substitute price list(s) may only be later revisions to the original price list(s) bid. Acceptance of any revised price list(s) will be considered after the Contractor/Supplier submits the following to the City of Houston City Purchasing Agent; Strategic Purchasing Division; P.O. Box 1562; Houston, Texas 77251:

42.2.1 A letter clearly stating **PRICE ADJUSTMENT REQUEST AND NAME AND NUMBER OF THE CONTRACT** in the contents and on the outside of the envelope;

42.2.2 Itemized revised price list indicating effective date; and

42.2.3 Multiple copies of the revised manufacturer's price list(s) for distribution to participating City departments.

42.3 **Price list substitution(s) shall become effective only upon the Contractor's/Supplier's receipt of express written consent from the City of Houston City Purchasing Agent or his designee. No price increase shall be effective until such written consent is received.** If the Contractor/Supplier submits a request for price list(s) substitution in accordance with the above revisions and the City Purchasing Agent fails to approve such request, the Contractor/Supplier may terminate its performance under this contract with a 30-day advance notification in writing. This will be the Contractor's/Supplier's only remedy in the event a price adjustment is not approved. The effective date of the price list(s) change shall be no earlier than 30-days following receipt of written request by the City unless otherwise stated in the approval letter from the City Purchasing Agent or his designee. **No retroactive price changes will be honored for delinquent requests.** The price in effect on the date of issue of the purchase order establishes the price to be paid.

42.4 The City of Houston, through its City Purchasing Agent, reserves the right to obtain a different source(s) to meet the requirements for any item(s) on this contract agreement which has increased in price if said item(s) may be obtained at a lower price and if it is deemed in the best interest of the City to do so.

43.0 ADDENDA TO PRICE LIST:

If addenda containing new items not listed in the price list(s) submitted with the original bid are received by the Contractor/Supplier from the manufacturer, the Contractor/Supplier may submit the addendums having new items identified by part number reference and highlighted in addenda price lists for easy identification to the City Purchasing Agent for consideration. The City Purchasing Agent will allow addenda only upon written acceptance and only new items may be added to the Contract Agreement. No item(s) presently listed in the Contract Price List(s) will be considered from these addenda. All such addenda shall be subject to the requirements of Section 252.048 of the Texas Local Government Code.

44.0 CONFLICT IN TERMS:

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