



# CITY OF HOUSTON INVITATION TO BID

Issue Date: March 24, 2014

## **Bid Opening**

Sealed bids, in duplicate, must be received at the City of Houston, City Secretary's Office, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 no later than Thursday, April 17, 2014 at 10:30 A.M. No bids will be accepted after the stated deadline. All bids will be opened and publicly read in the City Council Chambers, City Hall Annex, Public Level, 900 Bagby at 11:00 A.M. on that date for the goods and services listed herein.

**CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY  
FOR THE PUBLIC WORKS & ENGINEERING DEPARTMENT  
BID INVITATION NO: S12-S24962  
NIGP CODE: 885-48**

## **Buyer**

Questions regarding this solicitation should be addressed/submitted to **Martin King at 832-393-8705** or via e-mail at [martin.king@houstontx.gov](mailto:martin.king@houstontx.gov).

## **ELECTRONIC BIDDING**

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

## **Pre-Bid**

A Pre-Bid Conference will be held for all Prospective Bidders in the Public Works and Engineering Department's Materials Management Branch, 2nd Floor Conference Room, 2805 McKinney, Houston, Texas 77003 at 10:30 a.m. Thursday, April 3, 2014.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed all aspects of the bidding documents prior to the Pre-Bid Conference. **Any revisions to be incorporated into this bidding document arising from discussions before, during and subsequent to the pre-bid conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. No verbal responses will otherwise alter the specifications, terms and conditions as stated herein.**

Bidding forms, specifications and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov>. By registering and downloading this bid document, all updates to this bid document will be automatically forwarded via e-mail to any registered bidder. This information may also be obtained from the office of the City Purchasing Agent, 901 Bagby, Basement, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph B (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph B (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

**CITY EMPLOYEES ARE PROHIBITED FROM BIDDING ON THIS SOLICITATION IN ACCORDANCE WITH THE CODE OF ORDINANCES SECTION 15 - 1.**

## **\*CONTENTS**

SECTION A. - OFFER  
SECTION B. - TECHNICAL SPECIFICATIONS  
SECTION C. - GENERAL TERMS & CONDITIONS

\*NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.

\*NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the official signature page, which must be signed by a company official authorized to bind the company.

## SECTION A.



**CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY  
FOR THE  
PUBLIC WORKS & ENGINEERING DEPARTMENT  
BID INVITATION NO. S12- S24962  
NIGP CODE 885-78**

**Honorable Mayor and City Council Members:**

The undersigned hereby proposes to furnish and deliver chemical, fine quicklime and calcium hydroxide slurry, **FOB destination point as listed on the electronic bid form and on the individual Purchase Orders**, in accordance with the Net Prices and other conditions shown herein, and in accordance with the City's Specifications and General Terms and Condition Specifications. When issued, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid. THE MANUFACTURER'S NAME, PRODUCT NAME AND PRODUCT NUMBER MUST BE DESIGNATED IN THE SPACE PROVIDED IF BIDDERS ARE BIDDING AN "OR EQUAL" ITEM.

**The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of said bid to this Bidder at any time on or before the 120th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after the bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.**

**The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.**

**BIDDING AND AWARD:**

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

**THIS IS A SIXTY (60) MONTH AWARD**

**SPECIAL BIDDERS NOTE:**

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

**LINE ITEM BIDS:**

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

## **PROTEST**

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual [http://purchasing.houstontx.gov/docs/Procurement\\_Manual.pdf](http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf) and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

## **NO CONTACT PERIOD:**

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

## **HIRE HOUSTON FIRST:**

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/onestop/hirehoustonfirstaffidavit.pdf>

## **Designation as a City Business or Local Business**

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 Office of Business Opportunity 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.

SECTION A. OFFICIAL BID FORM FOR CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY FOR THE PUBLIC WORKS & ENGINEERING DEPARTMENT, CONTINUED:

**HIRE HOUSTON FIRST (continued):**

**Designation as a City Business or Local Business (continued)**

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

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

Submit the completed application forms to: Office of Business Opportunity, Houston Business Solutions Center (HBSC), 611 Walker, Level, Houston, TX 77002 or Applications may be submitted via e-mail to [HoustonBSC@houstontx.gov](mailto:HoustonBSC@houstontx.gov) or faxed to 832.393.0952.

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

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")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

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

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")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

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

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")

- 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
- 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
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

SECTION A. OFFICIAL BID FORM FOR CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY FOR THE PUBLIC WORKS & ENGINEERING DEPARTMENT, CONTINUED:

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

**Additional Required Forms to be Included with this Bid:**

In addition to the electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

<b>Table 1</b>
<a href="#">Affidavit of Ownership</a>
<a href="#">Fair Campaign Ordinance</a>
<a href="#">Statement of Residency</a>
<a href="#">Conflict of Interest Questionnaire</a>
<a href="#">Bidders Attachments Supply</a>
<a href="#">Location of Bidders Inventory</a>
<a href="#">Contractor Ownership Disclosure Ordinance</a>

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:

<b>Table 2</b>
<a href="#">Drug Forms</a>
<a href="#">Certificate of Insurance</a>
<a href="#">Formal Instructions for Bid Terms</a>
<a href="#">Formal Instructions for Price List Bidders</a>
<a href="#">EEOC</a>
<a href="#">MWBE</a>
<a href="#">Sample Insurance Over \$50000</a>
<a href="#">EEOC</a>

**MATERIAL SAFETY DATA SHEET:**

All bidders should submit with their bid, two (2) complete, most current copies of the required Material Safety Data Sheets which shall conform to the format in ANSI Z400.1 (Latest Revision) for each product bid. Should these forms be omitted from the bid, bidder promises to deliver said forms within ten (10) days of receipt of notice from the City to do so. Failure to comply with this notice will be just cause for rejection of the bid from further consideration.

**BID SAMPLE:**

If requested by the City, bidders will be required to submit samples of the items proposed within seven (7) working days of such request. The samples will be used to determine if the proposed items meet the specifications stated herein

**If the Bidder fails to provide samples within the seven (7) working days, as required, the City may reject the bid and not consider it for further evaluation.**



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) calendar 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.

**STOCKS AND WAREHOUSE FACILITIES:**

In order to receive bid award consideration, the Bidder shall maintain sufficient stock(s) to fulfill normal City of Houston requirements as set forth herein. Bidder must demonstrate that he is able to secure all required product within a 24-hour period, and demonstrate access to sufficient production capacity to provide uninterrupted supply of fine quicklime and calcium hydroxide slurry solution during periods of peak usage.

An inspection may be made to determine whether bidder actually has access to sufficient capacity and stock. Adequate stock inventory and production capacity shall be considered a factor in determining award. Adequate is defined as having, in stock, a storage capacity of two (2) weeks supply of fine quicklime and calcium hydroxide slurry for each of the two (2) locations supplied.

Bidder must demonstrate he is able to secure all required product within a 48 hour period.

**SITE VISIT:**

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

**BIDDER'S QUESTIONNAIRE**

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

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

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

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

1. Past Performance Evaluation

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

2. Supplier Evaluation Report

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

The cost of the two reports is \$225.00

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

Past Performance Evaluation (PPE) Order Form

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

Open Ratings, Inc.

eFAX: 866-743-4239

E-MAIL: [reports@openratings.com](mailto:reports@openratings.com)

ATTN: Mary Kelly, Past Performance Evaluation Fulfillment

SECTION ONE: ABOUT YOUR COMPANY

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

\_\_\_\_\_  
(COMPANY NAME)

\_\_\_\_\_  
(DUNS NUMBER)

\_\_\_\_\_  
(STREET ADDRESS)

\_\_\_\_\_  
(CITY, STATE, ZIP)

\_\_\_\_\_  
(YOUR NAME)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(E-MAIL ADDRESS)

\_\_\_\_\_  
(COMPANY PHONE NUMBER)

\_\_\_\_\_  
(COMPANY FAX NUMBER)

If you don't know your company's DUNS number, call (800) 333-0505 or look it up online at:  
<http://www.dnb.com/dunsno/dunsno.htm>.

**SECTION TWO: REPORT RECIPIENTS**

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

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

**SECTION THREE: PAYMENT INFORMATION**

**ENCLOSED PLEASE FIND MY COMPANY CHECK**

**BILL TO MY CREDIT CARD:**

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

**CARD NUMBER:** \_\_\_\_\_ **EXP. DATE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

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

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

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

SECTION FOUR: CUSTOMER REFERENCES

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

**1. CUSTOMER NAME:** \_\_\_\_\_  
DUNS NUMBER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
NAME OF CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

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**2. CUSTOMER NAME:** \_\_\_\_\_  
DUNS NUMBER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
NAME OF CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

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**3. CUSTOMER NAME:** \_\_\_\_\_  
DUNS NUMBER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
NAME OF CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

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**4. CUSTOMER NAME:** \_\_\_\_\_  
DUNS NUMBER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
NAME OF CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

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**5. CUSTOMER NAME:** \_\_\_\_\_  
DUNS NUMBER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
NAME OF CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

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**SECTION B.**  
**TECHNICAL SPECIFICATIONS**  
**FOR**  
**CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY**

1.0 GENERAL TECHNICAL SPECIFICATIONS FOR LINE ITEM NOS. 1 & 2:

- 1.1 All chemicals used in the treatment of water supplied by public water systems must conform to Standard 60 & 61 of the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) for direct additives. The awarded vendor shall absolutely be required to furnish evidence of compliance prior to the City's acceptance of any material. Failure to obtain certification shall subject the awarded bid to immediate termination.
- 1.2 It is stressed that application with ANSI/NSF is sufficient to submit a bid for bid award consideration, but Certification of Compliance shall be required before any material will be accepted. Vendor's inability to comply and provide material under the terms of the bid awarded shall be grounds for the immediate termination of the bid award.

2.0 MATERIALS SPECIFICATIONS FOR LINE ITEM NOS. 1 & 2:

The materials supplied under these specifications shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water which has been treated with it, and shall in all respects meet the minimum standard specifications of the American Water Works Association for materials used in the purification of municipal water supplies, or as outlined in these specification for lime (A.W.W.A Specifications B202-93). Only lime produced from high calcium content limestone will be accepted. No by-product lime will be accepted. Bidders shall provide a statement along with their bid as to the source of their proposed lime.

3.0 CALCULATION AND BILLING FOR LINE ITEM NOS. 1 & 2:

The billing for each load of hydrated lime delivered is to be based upon trip tickets prepared by the Contractor and approved by the City including a description of the container number and its capacity in dry tons (dry lime-calcium hydrated) of LSS. Actual amount of dry lime for each delivery shall be calculated as follows:

Total pounds delivered X Total suspended solids\* (% of Ca(OH)<sub>2</sub> Solids) = Pounds of dry lime

\*Total suspended solids for each delivery shall be determined in an appropriate manner by Contractor of City, subject to confirmation by City, at its election.

Total pounds delivered means the "Exact amount of lime slurry unloaded will be determined by weighing each delivery transport, loaded and emptied on a certified public scale. Scale tickets must accompany each invoice."

4.0 QUALITY STANDARDS AND CHEMICAL COMPOSITION FOR LINE ITEM NO. 1:

- 4.1 Fine Quicklime shall contain a minimum of 90 percent available calcium oxide and upon slaking; the quicklime shall produce a temperature rise of at least 40 degrees C in three (3) minutes. Quicklime furnished under this contract shall be freshly burned limestone or equivalent from an approved source.
- 4.2 The quicklime shall be crushed and screened such that not more than 10 percent will be retained on a ¼ inch sieve and not more than 25 percent will pass through a No. 100 US standard sieve.
- 4.3 Each truckload shall be guaranteed not to contain impurities exceeding the limits listed below:

<u>Impurity</u>	<u>mg/kg (dry basis)</u>
Arsenic	20.0
Cadmium	20.0
Lead	100.0
Mercury	8.0
Nickel	200.0
Zinc	800.0

Failure to comply in this regard could result in rejection of the truckload.

5.0 HANDLING AND SHIPPING FOR LINE ITEM NOS. 1 & 2:

- 5.1. Prior to loading, trucks must be inspected and any necessary maintenance must be performed prior to shipment.
- 5.2. The material shall be shipped in clean bulk, weather-tight trucks. The contractor must inspect the unloading and storage facilities of the receiving plant(s) and ensure capability to hook up and discharge to the designated storage tank(s).
- 5.3 A Material Safety Data Sheet (MSDS) must accompany each shipment.

6.0 TESTING OF DELIVERIES FOR LINE ITEM NO. 1:

- 6.1 Each individual truckload lot shall be sampled and analyzed by the Contractor and a copy of the analysis shall be furnished to the City's representative present when the shipment is delivered. The Contractor shall furnish and certify, as a minimum, the following sampling information.
  - 6.1.1 Percent material passing ¼" and #100 sieves.
  - 6.1.2 Percent available CaO.
  - 6.1.3 Temperature rise after three (3) minutes of slaking time.
- 6.2 The quality of the material in each truckload lot will be determined from an analysis of samples collected on the arrival of such truckload. The Contractor may have a representative present at the time of sampling.
- 6.3 **The sample will be transported to the City laboratory and tested in accordance with ANSI/AWWA B202-93 Standard or its most recent revision. The Contractor agrees that these laboratory results shall be final and binding with respect to payment adjustments.**

7.0 CERTIFICATE OF TYPICAL ANALYSIS FOR LINE ITEM NOS. 1 & 2:

The awarded supplier shall submit upon request certificates of typical gradation, typical chemical analysis and typical trace element analysis. The certificates will be retained by the City and used for comparison of the quality of material delivered under the purchase order. Any change in raw materials source during the term of the bid award will require approval by the City before shipments from the new source can begin.



9.0 TESTING OF DELIVERIES OF LINE ITEM NO. 2, CALCIUM HYDROXIDE SLURRY, CRS 45 OR EQUAL:

- 9.1 Upon request by the City individual truckload lots shall be sampled and analyzed. A copy of the chemical analysis shall be furnished by the Contractor to the City by mail when the truckload is shipped. The Contractor shall furnish and certify, as a minimum, the following sampling information:
  - 9.1.1 Percent material retained on a No. 10 sieve.
  - 9.1.2 Percent material retained on a No. 30 sieve.
  - 9.1.3 Percent available Ca (OH)<sub>2</sub>.
- 9.2 Failure to comply in this regard could result in rejection of the car or truckload.
- 9.3 The quality of the material in each truckload lot will be determined from an analysis of samples collected on the arrival of such carload or truckload at the Houston Water Purification Plant. The Contractor may have a representative present at the time of sampling. Contractor agrees that the City of Houston laboratory results shall be final and binding in any decision to accept or reject any particular load of product.

10.0 BASIS FOR REJECTION OF LINE ITEM NO. 2, CALCIUM HYDROXIDE SLURRY, CRS 45 OR EQUAL:

- 10.1 Percent available Ca (OH)<sub>2</sub> less than 90%
- 10.2 Percent of Dry Solids Content less than 32%, sampled by specific gravity.
- 10.3 Available Ca (OH)<sub>2</sub> - Rapid sugar method as outlined in A.W.W.A. Specifications B202-93 under determination of available Calcium Oxide. (NOTE: The City will test all samples for the other rejection criteria and order the truck unloaded or returned based on their results. Due to the length of this test, it will not be used to reject loads. However, failure of this test will result in the following load to be tested upon arrival. No Demurrage will be charged by the Contractor nor paid by the City for those loads which must be tested due to a prior failure. If repeated failures occur, termination of the contract will result.)

11.0 CERTIFICATE OF GUARANTEE FOR LINE ITEM NO. 2, CALCIUM HYDROXIDE SLURRY, CRS 45 OR EQUAL:

Upon request by the City, bidders will provide a product quality Certificate of Guarantee certifying they are qualified under the Classification and Follow-up Service of Underwriters Laboratories Inc. to furnish Drinking Water Treatment Additives classified with respect to Standard ANSI/NSF 60. The certificate will be retained by the City and used for comparison of the quality of material delivered pursuant to the bid award/purchase order.

12.0 REJECTION OF ANY SHIPMENT NOT MEETING SPECIFICATIONS FOR LINE ITEM 2, CALCIUM HYDROXIDE SLURRY, CRS 45 OR EQUAL:

- 12.1 The City of Houston may reject and refuse delivery of any truckload lot of material which fails to conform to these specifications for lime slurry. The City of Houston shall not be held to have accepted any shipment until after the Houston Water Purification Plant Laboratory has made its analysis of the material, and the City of Houston has had an opportunity to exercise this right to accept or reject the shipment.
- 12.2 In the event that a shipment of lime slurry is rejected for failure to meet specifications, the supplier is to furnish a replacement shipment to the Houston Water Purification Plant within four (4) hours or as agreeable to the receiving department. Any additional expense associated with the replacement shipment over and above the contract price shall be at the expense of the supplier. In the event a replacement shipment causes City Operations and/or laboratory personnel to remain on overtime to receive and sample the replacement shipment, the Contractor shall reimburse the City the sum of fifty dollars (\$50) per hour for each hour or portion of an hour after 3:30 P.M. that City personnel must remain on site to receive the replacement shipment.

### 13.0 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.

### 14.0 SPECIFIED MATERIAL, OR EQUIVALENT:

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

14.2 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 THAT SPECIFIED SHALL REST SOLELY WITH THE CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.**

## SECTION C

### GENERAL TERMS AND CONDITIONS FOR CHEMICAL, FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY FOR THE PUBLIC WORKS AND ENGINEERING DEPARTMENT

#### 1.0 TERM OF AWARD:

- 1.1 The term of award shall be for a sixty (60) month period beginning on the date specified in the Notice of Award letter. During this period, purchase orders will be issued for items as needed. Any conflict between the terms and conditions as specified herein and said purchase orders; the term and conditions of the solicitation shall govern. The Supplier will not provide any goods/services without first having received an official City of Houston purchase order. While it is the intent to procure goods/services by issuing an Official City of Houston Purchase Order, there will be instances when a Purchasing Card (P-Card) or Petty Cash may be used. **The City requires that the prices awarded be honored on all purchases.**
- 1.2 It is emphasized that the City of Houston does not guarantee to purchase any specific quantity of any item listed; rather, the quantities may vary depending upon the actual needs of the user departments. Supplier shall remain obligated to the City under all clauses of this award that expressly or by their nature extend beyond and survive the expiration or termination of the award, including but not limited to warranties and indemnity provisions hereof.

#### 2.0 SUPPLIER'S DUTY TO PAY:

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

#### 3.0 OPTIONAL EXTENSION:

- 3.1 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.

#### 4.0 PRICE ADJUSTMENT FOR LINE ITEMS 1 & 2:

- 4.1 Quarterly Price Adjustment Formula for Line items 1 & 2:

- 4.1.1 The price of diesel will be based on published prices from the U.S. Department of Energy, Energy Information Administration (On-highway diesel prices, by week and PADD, Gulf Coast).
- 4.1.2 The price of natural gas will be based on published prices from NYMEX (Henry Hub Natural Gas Futures
- 4.1.3 The Producer Price Index will be based on Series ID #32741 (Industry Data, Lime Manufacturing).
- 4.1.4 The bid price is also the original contract price and will be in effect from the day of bid opening until the 10th of the following third calendar month. The new price will be:

$$[(\text{old Price} * 40.4) * (D2/D1)] + [(\text{old Price} * 0.3) * [(NG2/NG1)] + (\text{old Price} * 0.3) (PPI2/PPI1)]$$

**4.0 PRICE ADJUSTMENT FOR LINE ITEMS 1 & 2, CONTINUED:**

4.1 Quarterly Price Adjustment Formula for Line items 1 & 2, continued:

4.1.4 Continued:

- D1 Originally last reported Diesel price before bid opening. Later D1 will be the previous D2.
- D2 Last reported Diesel price before scheduled price change.
- NG1 Originally the Natural Gas price of the first published day of the month of the bid opening. Later, NG1 will be the previous NG2.
- NG2 First reported Natural Gas price of the month of the scheduled price change.
- PPI1 Originally the PPI price of the month of the bid opening. Later, PPI will be the previous PPI2
- PPI2 First reported PPI price of the month of the scheduled price change.

4.2 Price Adjustment Approval:

- 4.2.1 Contract pricing shall be calculated by the Supplier who shall apply the contract price for the items to the change in commodity prices as documented in the NYMEX and the PPI Markets on a dollar for dollar basis. The Supplier shall submit the prices showing the average price, the contract price, and the resulting price by the fifth (5th) day of the month, of the adjustment to be approved. Upon mutual agreement between the City and the Supplier, this price will become effective on the tenth (10th) calendar day of the month. The City reserves the right to request price adjustments on the same terms and conditions he reinstated. Supplier's letter and documentation shall be sent to the following:

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

- 4.2.2 Should there be any objection by the City and/or Supplier concerning the price adjustment, the City and Supplier shall meet by the eighth (8th) day of the month prior to the effective date of the adjustment to be approved to resolve any discrepancies.
- 4.2.3 If, at any time after approving a price increase, the City Purchasing Agent determines that the City can obtain the same item at a lower price from a different source without violating the State bid law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

**5.0 QUANTITY OF FINE QUICKLIME AND CALCIUM HYDROXIDE SLURRY:**

City's demand for fine quicklime and calcium hydroxide slurry varies over a wide range depending on plant flow and levels of production; therefore, the Supplier must guarantee availability and deliverability to meet the total needs of the system. Failure to respond, which results in operational shut down for lack of fine quicklime and calcium hydroxide slurry, shall be deemed breach of contract with all legal remedies.

## **6.0 LIQUIDATED DAMAGES:**

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

## **7.0 PAYMENT:**

Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the goods and all required documents, whichever occurs later. In order to expedite payment all invoices must be itemized as to quantity, product description and applicable discounts (if any), in the same order and form as in the City of Houston Purchase Order. In addition, invoices must show the name of the Department, Division, or Section, including facility or plant site to which the product was delivered, and the City of Houston Purchase Order Number. Invoice packages must include all relevant supporting documentation, where applicable.

7.1. Mail original invoices to the Accounts Payable Supply Contracts Section at P.O. Box 61489, Houston, Texas 77208. Electronic copies of invoices should also be sent to the designated Department, Division or Section Representative.

7.2 If the City disputes any item in an invoice the awarded Supplier submits for any reason, including lack of supporting documentation, the Contract Compliance Department shall temporarily delete the disputed item and recommend the remainder of the invoice for payment. The Contract Compliance Department shall promptly notify the Supplier of the dispute and request remedial action. If the dispute is settled in favor of the Supplier, the Supplier shall include the disputed or settled amount on a subsequent regularly scheduled invoice or a special invoice for the disputed or settled item only.

### **7.3 Early Payment Discount:**

7.3.1 Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the equipment and all required documents, whichever occurs later. Invoices received that do not agree with the provisions set forth herein shall be returned for correction and will result in payment being delayed.

7.3.2 The City of Houston's standard payment term is to pay 30 days after the City has approved the invoice or after the City has accepted the equipment and all required documents, whichever occurs later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

7.3.3 A Contractor may elect not to offer a discount for early payment and the City will make payment net 30 days. Discounts will not be considered in the award evaluation.

7.3.4 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

**8.0 SLIDING SCALE PAYMENT ADJUSTMENT FOR LINE ITEM 1:**

Since normal process operation and laboratory testing procedures do not facilitate rejection of material not meeting specifications, the following payment adjustment will be used to compensate for deviations from the specified product quality. Payment adjustment shall be made by a sliding scale factor whenever the Calcium Oxide is found to be below 90 percent.

<u>Actual Available Percent CaO</u>	<u>Percent of Contract Unit Price</u>
> or = 90.00	100%
89.99 to 89.00	98%
88.99 to 88.00	96%
87.99 to 87.00	94%
86.99 to 86.00	92%
85.99 to 85.00	90%
84.99 to 84.00	88%
83.99 to 83.00	86%
82.99 to 82.00	84%
81.99 to 81.00	82%
80.99 to 80.00	80%

No payment will be made for any Quicklime shipment that is received with less than 80% available CaO.

**9.0 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 fine quicklime and calcium hydroxide slurry 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.

**10.0 CONTAMINATED MATERIALS:**

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

**11.0 INSPECTIONS AND AUDITS:**

- 11.1 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.
- 11.2 Representatives of the City have the right to examine the books of all suppliers supplying goods and/or services under the issued purchase order insofar as those books and records relate to performance under the issued purchase order.
- 11.3 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with the issued purchase order. Supplier shall keep its books and records available for this purpose for at least three years after this Award terminates. This provision does not affect the applicable statute of limitations.

## 12.0 DELIVERY:

- 12.1 The Supplier agrees to make deliveries only "**after**" receipt of duly signed and approved Purchase Orders issued by the City of Houston, "**and only after ordered by an authorized representative of the user department.**"
- 12.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.
- 12.3 Full tare must be allowed and no charges made for packages.
- 12.4 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 Contractor/Supplier will be deemed non-responsible and will be disqualified from bidding on the contract if it is relet by the City within ninety (90) days of such termination.
- 12.5 The Bidder must demonstrate its ability to secure and deliver any item within five (5) working days. Forty-eight (48) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.
- 12.6 Deliveries shall be made to the Houston Water Purification Facilities at Federal Road, Clinton Drive, Genoa Red Bluff, the Northeast Water Purification Facility and any other location that may become necessary during the life of the contract. All locations are within the Houston City Limits. Deliveries shall be made at such intervals as required against purchase orders issued by the Purchasing Agent. It is the responsibility of the **Contractor** 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. **Contractor** 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. **Contractor** assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks.
- 12.7 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 Contractor 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 Contractor at their expense. In the event that a load is returned for failure to meet security provisions, Contractor 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.
- 12.8 Delivery tickets must have a description of the product being delivered, company name, address, contact person's name, contact phone number, and be accompanied by a weight ticket showing Gross, Net, and Tare weights for each shipment. **All weights for bulk chemicals deliveries are to be determined at scales maintained at the Drinking Water Purification Facilities, or by other methods previously approved, in writing, by the Purchasing Agent and the User Department.** These scales meet Weights and Measures Standards through the N.I.S.T. Handbook 44. Weight of material delivered shall be determined by weighing the fully loaded truck on Water Purification scales before it is unloaded, and weighing the empty truck on the same scales after it is unloaded. The weight of the empty truck will be subtracted from the weight of the fully loaded truck to determine the actual weight of material delivered, and will be the weight used for billing purposes. The driver must be away from the scale during all weighing operations. If weights are subsequently approved at other than the Water Purification Facilities, such weights are subject to verification at the discretion of the City.

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

12.9 The Supplier's carrier and personnel must comply with site-specific training, regulations and personal protective equipment (PPE) requirements while at the plant. In addition, **it will be the responsibility of the supplier's carrier to equip each vehicle entering the facility with appropriate PPE required for the safe offloading and spill cleanup of the product. The City reserves the right to request the Supplier to replace any delivery personnel who refuses to comply with City regulations and normal offloading procedures.**

**13.0 WARRANTY:**

The Bidder shall warranty that all fine quicklime and calcium hydroxide slurry delivered, by the successful Bidder, is of at least as good a quality as that of the sample submitted with its bid, within accepted analytical tolerance for error in determination.

**14.0 BASIS FOR REJECTION:**

The City of Houston may reject and refuse delivery of any truckload lot of fine quicklime and calcium hydroxide slurry solution that is not within the specific maximum and minimum limits of the listed parameters as enumerated in the "QUALITY" specification section.

**15.0 SHIPPING TERMS:**

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

**16.0 MATERIALS:**

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

**17.0 ADDITIONS & DELETIONS:**

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

## **18.0 FORCE MAJEURE:**

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

## **19.0 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 and one-half (2-1/2) hours in total plant time. Delays due to extended time required for sample analysis because of questions as to the quality of the sampled shipment are not to be considered negligent on the City's part and the City shall not be responsible for any demurrage charge incurred under such circumstance. It is the carrier's responsibility to properly document all demurrage charges.

- 19.1 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.
- 19.2 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.

## **20.0 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.

**21.0 SUPPLIER SUPPLY OF SAFETY TRAINING:**

- 21.1 The awarded supplier shall agree to supply as a result of the bid award, formal safety training sessions to the user department at no additional cost to the City. Such safety training sessions are to consist of the following:
- 21.2 A videotape, DVD, filmstrip, slide presentation or live trainer presentation on the general safe handling of the awarded bid material.
- 21.3 Coverage in such presentation of the main safety hazards and general information as covered in the material safety data sheet.
- 21.4 Coverage in such presentation of the general characteristics and behavior of the awarded bid material.
- 21.5 Such training sessions are to be conducted on site at the user department. At least two (2) such presentations of sixty (60) minutes each shall be supplied to the user department during the first two (2) months of the bid award, and during the first (1st) month of each twelve (12) month period thereafter. Should the awarded bid be longer than twelve (12) months, but not be for a period that is an even multiple of twelve (12) months, the training shall be supplied within the first two (2) months of the last increment as well. The user department and the Supplier shall agree on a training schedule within 15 days of the bid award.

**22.0 RELEASE AND INDEMNIFICATION:**

22.1 RELEASE:

SUPPLIER RELEASES THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AWARD, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.

22.2 INDEMNIFICATION:

SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FOR ALL THIRD PARTY CLAIMS, LIABILITIES, FINES, AND EXPENSES (INCLUDING ALL DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AWARD INCLUDING THOSE CAUSED BY:

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

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

## 22.2.1 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.

## 23.0 WORKER'S COMPENSATION INSURANCE:

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

## 24.0 INSURANCE:

24.1 If performance of this award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have and maintain in effect insurance coverage and furnish certificates of insurance showing the City as an additional insured, in duplicate form, prior to the beginning of the award. The City shall be named as an additional insured on all such policies except Worker's Compensation. **The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.** Comprehensive General Liability including Contractual Liability and Automobile Liability insurance shall be in at least the following amounts: Automobile Liability Insurance for autos furnished or used in the course of performance of this award including Owned, Non-owned, and Hired Auto coverage (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto coverage.) If no autos are owned by Supplier, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. **EACH AUTO USED IN PERFORMANCE OF THIS AWARD MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.**

## **24.0 INSURANCE (CONTINUED):**

- 24.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 24.3 All insurance policies required by this award shall require by endorsement that the insurance carrier waive any rights of subrogation against the City, and that it shall give thirty (30) days written notice to the City before they may be cancelled. Within such thirty (30) day period Supplier, covenants that it will provide other suitable policies in lieu of those about to be cancelled so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this award at once.
- 24.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.
- 24.5 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/Sample\\_Insurance\\_Endorsements.pdf](http://purchasing.houstontx.gov/forms/Sample_Insurance_Endorsements.pdf). The Director will consider all other forms on a case-by-case basis.

## **25.0 SUCCESSORS AND ASSIGNMENTS:**

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

## **26.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:**

- 26.1 These provisions apply to goal-oriented Awards. A **goal-oriented** Award means any City solicitation awarded for the supply of goods or non-professional services of approximately \$100,000.00 for which competitive bids are required by law and which the City Purchasing Agent has determined to have City of Houston Certified MWBE subcontracting potential.
- 26.2 The City of Houston, through Ordinance No. 84-1309 and Council Motion 86-2204, encourages the participation of Minority and Women Business Enterprises in the performance of City Awards. Pursuant to the aforesaid Ordinance and Council Motion, the City has classified the Award that will result from this bid as a Goal-Oriented Award and the recommended Supplier shall be required to make good faith efforts to subcontract at least **4%** 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.

## **27.0 TAXES:**

The City is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the Bid Form or Specifications specifically indicate otherwise, the price bid must be net exclusive of above-mentioned taxes, and will be so construed. A Supplier desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the City Purchasing Agent, if satisfied as to the facts, will approve or issue the necessary certificates.

## **28.0 AWARD:**

- 28.1 The City reserves the right to consider and make awards of bids on articles of similar nature that will in all respects serve the purpose for which the purchase is being made. The City reserves the right to be the sole judge as to whether such articles will serve the purpose.
- 28.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informality for the best interest of the City.

**29.0 REJECTIONS:**

- 29.1 Articles not in accordance with samples and specifications must be removed by the Supplier and at its own expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the City Purchasing Agent or designated representative.
- 29.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and 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.

**30.0 BRAND NAME**

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other Suppliers, but are intended to approximate the quality design or performance, which is desired. Any bid, which proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific exception is made, assumption will be that the item is bid exactly as specified in the Invitation to Bid.

**31.0 CHANGE ORDER**

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

**CHANGE ORDER**

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

Subject to all terms and conditions of the Awarded Bid, the City requests that Supplier provide the following:  
 [Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

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

- 31.3 The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
  - 31.3.1 Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$50,000. A Change Order of more than \$25,000 over the approved Award amount must be approved by the City Council.
  - 31.3.2 If a Change Order describes items that Supplier is otherwise required to provide under this Award, the City is not obligated to pay any additional money to Supplier.
  - 31.3.3 The Total of all Change Orders issued under this section may not increase the Original Award amount by more than 25%.
- 31.4 Whenever the Supplier receives a Change Order, Supplier shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Supplier shall complete the work within the time prescribed. If no time for completion is prescribed, Supplier shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Supplier is required to perform under this Award, Supplier may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

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

## **32.0 TERMINATION OF AWARD**

### **32.1 By the City for Convenience:**

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

### **32.2 By the City for Default by Supplier:**

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

- (a) Terminate the Award for default and the City shall have no further obligation under the Award.
- (b) Allow the Supplier to cure default within a reasonable time as specified in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Award as of such date and have no further obligation under the Award.

32.2.2 In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Supplier and that which the City was forced to pay for covering Supplier's failure to deliver or perform services.

### **32.3 By the Supplier for Default by City:**

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

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

32.3.3 If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Supplier may terminate its performance under this Award as of such date.

## **33.0 PATENTS**

The Supplier agrees to indemnify and save harmless the City, the City Purchasing Agent and assistants from all suits and actions of every nature and description brought against them or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted, upon request of the City Purchasing Agent, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used

#### **34.0 SUPPLIER DEBT:**

If Supplier, at any time during the term of this Award, incurs a debt, as the word is defined in section 15-122 of the Houston city code of ordinances, it shall immediately notify the city controller in writing. If the city controller becomes aware that Supplier has incurred a debt, she shall immediately notify Supplier in writing. If Supplier does not pay the debt within 30 days of either such notification, the city controller may deduct funds in an amount equal to the debt from any payments owed to Supplier under this Award, and Supplier waives any recourse therefore.

#### **35.0 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.

#### **36.0 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.

#### **37.0 INTERLOCAL 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/services provided under the bid award. Separate contracts will be drawn to reflect the needs of each participating entity.