



# CITY OF HOUSTON INVITATION TO BID

Issue Date: April 4, 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 24, 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, CALCIUM NITRATE  
FOR THE PUBLIC WORKS & ENGINEERING DEPARTMENT  
BID INVITATION NO: S12-S24993  
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 17, 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, CALCIUM NITRATE  
FOR THE  
PUBLIC WORKS & ENGINEERING DEPARTMENT  
BID INVITATION NO. S12-S24993  
NIGP CODE 885-78**

**Honorable Mayor and City Council Members:**

The undersigned hereby proposes to furnish and deliver CHEMICAL, CALCIUM NITRATE, **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, CALCIUM NITRATE 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.

**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 LIQUID CALCIUM NITRATE 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 LIQUID CALCIUM NITRATE 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 LIQUID CALCIUM NITRATE 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, CALCIUM NITRATE 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**

**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, CALCIUM NITRATE**

**1.0 BIDDER QUALIFICATIONS:**

The purpose of this bid is to determine the best value respondent for Liquid Calcium Nitrate Solution used in the treatment of the City's wastewater. Liquid calcium nitrate quality and supply is of utmost importance to the health and safety of the citizens of Houston. As a result, Bidders as a minimum must:

- 1.1 Be an established liquid calcium nitrate distributor and currently have liquid calcium nitrate manufacturing facilities and/or supplier(s) in operation that can produce and delivery sufficient stocks to meet City of Houston's daily requirements as herein stated and in the electronic bid form.
- 1.2 Have a satisfactory record of past performance and contract compliance with the City of Houston.
- 1.3 Have adequate financial resources, or the ability to obtain such resources as required during the performance of the Agreement.
- 1.4 Upon 10-working days of request, bidder(s) must provide the City proof of financial stability by submitting your company's Dunn & Bradstreet report and/or audited annual financial statements, prepared by a certified public accountant for the past two years or copies of your Federal Tax forms filed to the Internal Revenue Service (IRS) for the past two years.
- 1.5 The material to be furnished in this Contract will be used by the Wastewater Operations Division, of the City of Houston at facilities utilized by the City to prevent and control hydrogen sulfide generation and odors associated with wastewater collection transmission, and treatment. The service provided by this Contract shall be for the supply and delivery of a liquid nitrate solution.
- 1.6 The liquid nitrate solution is to be used for sulfide odor control in raw domestic wastewater or sludge, and must cause no adverse effects to these processes or equipment. The nitrate shall control hydrogen sulfide odors and corrosion by providing an alternative oxygen source for those organisms responsible for generating hydrogen sulfide from the reduction of sulfate in municipal wastewater. The addition of the liquid nitrate solution to wastewater or sludge shall not result in the formation or production of any compounds or by-products in the sludge produced at the treatment plants, which would preclude land application of this sludge.

**2.0 SPECIAL CONDITIONS AND QUALITY:**

- 2.1 The Contractor recognizes that the City's successful operation of all wastewater treatment and sludge processing facilities as well as its odor abatement and hydrogen sulfide corrosion control programs are dependent upon the use of liquid nitrate solutions compliant with the minimum quality standards stated in these specifications.
- 2.2 The Contractor shall provide within seven (7) days of notification by the City a written detailed quality control plan. The plan shall include a description of all procedures, which will be used to insure compliance with the quality control requirements of this contract. The plan shall include, but shall not be limited to, a description of the batching method the supplier intends to use, source of raw materials, the size of the batch, a plan to prevent contamination or alteration during batching, storage, or prior to or during shipment and any other special quality control procedures used.

## 2.0 **SPECIAL CONDITIONS AND QUALITY:**

- 2.3 The contractor shall provide at least three (3) references with contact names and phone numbers where the product bid has been successfully applied for odor control.
- 2.4 The Contractor shall certify, in writing, that each load of liquid nitrate solution delivered to the City is compliant with the quality requirement of these specifications. In any event, the Contractor recognizes that delivery of liquid nitrate solution meeting the requirements of these specifications is the Contractor' sole responsibility and that the City shall not be required to accept delivery of any amount of Liquid Nitrate Solution not complying with the quality requirements of these specifications. Acceptance of Delivery shall for the purpose of this agreement occur when the City transfers a deli very of liquid nitrate solution from the Contractor's delivery vehicle to the City's own storage facilities.
- 2.5 The Contractor remains solely responsible for the quality of liquid nitrate solution prior to, and following acceptance of the delivery. Acceptance of the delivery by the City shall not, in any respect release the Contractor from liability for damages to the City as a result of delivery by the Contractor of any load which at the time of delivery did not meet the City's minimum quality standards.
- 2.6 The Contractor's failure to provide liquid nitrate solution of proper quality will constitute a breach of the agreement, for which the City may seek alternative sources of suitable materials at the Contractor's expense remedies herein, or other remedies as otherwise available at law or equity. In any event, the City shall not be responsible for payment of compensation to the Contractor for delivery of liquid nitrate solution, which does not conform to the quality control requirements stated in these specifications.

## 3.0 **GUIDELINE QUALITY CONTROL PARAMETERS:**

The liquid nitrate solution shall meet the guideline quality control parameters as outlined below and shall have a composition, which includes the following components in similar amounts. The City may consider the use of nitrate solutions, which vary from the amounts for these parameters, as alternates. Usage may be expanded to other facilities as treatment of hydrogen sulfide at other locations is initiated into the City's program.

### 3.1 **PHYSICAL AND CHEMICALS PROPERTIES:**

The material shipped shall be free of dirt and debris.

#### 3.1.1 Typical physical and CHEMICAL properties shall be as follows:

Oxygen (as NO <sub>3</sub> -O)	3.5 lbs/gallon of solution (minimum) for Calcium Nitrate
Oxygen (as NO <sub>3</sub> -O)	3.7 lbs/gallon of solution (minimum) for Calcium Nitrate pH
	5.0 – 11.0
Insoluble	0.5% maximum
Ammonia (as NH <sub>4</sub> )	0.7% maximum

#### 3.1.2 **Trace elements in the following maximum amount:**

Cadmium	1.0 mg/l
Chromium	3.0 mg/l
Copper	3.0 mg/l
Lead	5.0 mg/l
Mercury	0.02 mg/l
Arsenic	1.0 mg/l
Zinc	6.0 mg/l
Nickel	5.0 mg/l
Selenium	1.0 mg/l

- 3.1.3 The percentages are based on weight. Metals analyses shall be in accordance with Method 3110 in Standard Methods for the Examination of Water and Wastewater, 17<sup>th</sup> Edition.

GENERAL TERMS AND CONDITIONS FOR CHEMICAL, LIQUID CALCIUM NITRATE, CONTINUED:

- 3.1.4 The liquid nitrate solution shall be free of objectionable odor-producing compounds and shall contain no hazardous substances as defined by the CERCLA (Comprehensive Environmental Response Compensation and Liability Act) List.
- 3.1.5 Note: All prospective bidders that would like to visit various sites to take samples at the four locations may schedule the visit by contacting Sal Manno (713) 731-6067.
- 3.1.6 All bidders should submit with their bid a Material Safety Data Sheet (OSHA Form 174), manufacturers' safety data sheet, or such other sheet, which contains the same information as the IOSHA Form 174.
- 3.1.7 Each sheet submitted shall be identified by the bidders compete company nave, formal bid number, and bid form item number.

SECTION C

**GENERAL TERMS AND CONDITIONS FOR  
CHEMICAL, CALCIUM NITRATE 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 SITE VISIT:**

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

**3.0 POST AWARD MEETING:**

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

**4.0 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).

**5.0 OPTIONAL EXTENSION:**

- 5.1 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.

**6.0 PRICE ADJUSTMENTS:**

6.1 Direct Cost:

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

6.2. Price Decreases:

- 6.2.1 **If the Supplier's Direct Cost decreases at any time during the term of this Contract, Supplier shall immediately pass the decrease on to the City and lower its prices by the amount of the decrease in Direct Cost as determined by the U.S. Department of Labor Chemical and Allied Products Index, Series ID No.WPU061.**

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

6.3. Price Increases:

6.3.1 Suppliers may request a price increase after three (3) months from the bid opening date of the bid received by the City Secretary of the City of Houston. Price increase requests must be supported by three (3) months of sustained price increases documented in U.S. Department of Labors Chemical and Allied Products Index, Series ID No.WPU061. Subsequent price increase requests may be submitted three (3) months from the date of the previous approved price increase. The amount of the first increase shall not exceed actual documented increase as determined by U.S. Department of Labor Chemical and Allied Products Index, Series ID No.WPU061.

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

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

6.3.3 If the City Purchasing Agent approves the price increase, he or she shall notify Supplier in writing; no price increase will be effective until Supplier receives this notice. If the City Purchasing Agent does not approve Supplier's price increase, Supplier may terminate its performance under the agreement upon sixty (60) days advance written notice to the City Purchasing Agent. Termination of performance is Supplier's only remedy if the City Purchasing Agent does not approve the price increase.

6.3.4 If, at any time after approving a price increase, the City Purchasing Agent determines that the City can obtain the same item at a lower price from a different source without violating the State bid law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

**5.0 QUANTITY OF LIQUID CALCIUM NITRATE:**

City's demand for LIQUID CALCIUM NITRATE 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 LIQUID CALCIUM NITRATE, 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.

7.3 All delivery tickets must have a description of the commodity delivered

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**

**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 LIQUID CALCIUM NITRATE 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 City Purchasing Agent, "**and only after ordered by an authorized representative of the user department.**"

Deliveries will be made to the following facilities or other City sites or locations which may become necessary:

<b>SITE</b>	<b>ADDRESS</b>	<b>FACILITY NUMBER</b>	<b>KEY MAP</b>
<b>Gulfton Lift Station</b>	5905 Gulfton @ Renwick	099	531-B
<b>Westheimer</b>	5882 Westheimer Rd. @ Fountainview	209	491-T
<b>San Felipe</b>	5910 San Felipe @ Fountainview	140	491-N
<b>Alder</b>	7275 ½ Alder	363	531-F
<b>Cullen (Storage Only)</b>	7440 Cullen	985	533-V

SITE	ADDRESS	FACILITY NUMBER	KEY MAP
Bintliff	6810 ½ Bintliff	015	530-H
Willowbend	6331 Willowbend	213	530-Z

11<sup>th</sup> Street Lift Station 2100 West 11<sup>th</sup> Street

\*Contact Yogesh Mehta, Senior Engineer, @ (713)641-9152, located @ 4545 Groveway, H.T. 77087

- 12.2 Deliveries shall be made at such intervals as required, against Purchase Orders issued by the User Department. It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine plant operations. Unloading shall be by and at the expense of the Supplier. The City of Houston's chemical offloading equipment is to be used for backup or emergency use only. The City will not be responsible for demurrage charges resulting from use of City offloading equipment in lieu of adequate carrier offloading equipment. The Supplier assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks.
- 12.3 The quantity per delivery shall be no more than 4,000 gallons.
- 12.4 Deliveries are to be made to the appropriate City facility between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, with standard provisions to be made for deliveries on holidays and weekends, during these same hours, and during periods of high product demand. **There can be no extra charges to the City for Pre-Loaded trailers or Weekend and Holiday deliveries if deliveries are requested for these times.** The successful Bidder must make adequate provisions for product supply and transportation, and must maintain close contact with user department at all times. If there is a delay in the delivery schedule, the supplier must notify the ordering/ship to City facility immediately; at (713 )641-9152. Additionally, the successful Bidder must make provisions for emergency delivery outside of the above listed normal delivery hours, at all times, to maintain adequate supply. Additional supplies may occasionally be required on an emergency basis.
- 12.5 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and feed systems at the affected user site, if the source of such contamination is found, subsequent to initial acceptance, to originate with any individual, or series of chemical deliveries.
- 12.6 All clean up and disposal activities will be conducted in a manner consistent with the best available technology and conform to all local, state, and federal regulations. The Supplier shall assume the responsibility as the generator of such contaminated material, along with all inherent obligations to ensure proper disposal of contaminated material, and any responsibilities arising from future lawsuits or clean-up costs associated with disposal of such contaminated materials.
- 12.7 Orders will normally be placed to allow a number of calendar days for delivery. However the Supplier must be able to deliver within 1 to 2 calendar days when required in an emergency.
- 12.8 The Supplier must provide the following paperwork with each load of liquid calcium nitrate delivered: bill of lading, delivery ticket, weight ticket from a state certified scale showing gross weight, tare weight and net weight, product MSDS sheets (with specific chemical name) and specification sheet.

## 12.0 DELIVERY:

- 12.9 The Supplier's carrier is responsible for containment and cleanup of any product material released during offloading. The offloading area is to be free of any product material after offloading has been completed. The City reserves the right to delay final weighing of the carrier vehicle, at no cost to the City for demurrage or other costs, until any spilled product has been cleaned to the City's satisfaction or an acceptable agreement for cure has been reached between the Supplier and the City.
- 12.10 Contractor shall be liable for any damages caused by the delivery vehicle, delivery agent, or delivered material; and such damages shall be corrected within seventy-two (72) hours unless normal operations are impaired or interrupted in which case the repairs will be started within eight (8) hours and continued nonstop until completed. The only exceptions to these conditions must have written recommendations by the Branch Manager, Wastewater Operations Branch subject to approval by the Public Works & Engineering Director.
- 12.11 If the Contractor fails to make repairs within the time limits, the City may procure suitable substitute service, equipment and/or material from other suppliers, and the Contractor shall be liable for any and all costs.
- 12.12 The Contractor shall be responsible for the safe delivery of the Liquid Calcium Nitrate Solution from the point of origin to the containers at each designated location. The Contractor shall be responsible for the proper cleanup of any spills and the environmental and aesthetic liability resulting from spills.
- 12.13 The Supplier's carrier must comply with site-specific safety training and regulations while in the plant. It will be the responsibility of the supplier's carrier to equip each vehicle entering the facility with appropriate personal protective equipment (PPE) such as safety shoes, safety glasses with side shields and NIOSH/MSHA approved respirators for the safe offloading and spill cleanup associated with normal offloading procedures. The City reserves the right to request the Supplier to replace any delivery personnel who refuses to comply with City regulations
- 12.14 The Supplier must provide a roster of its employees and/or designated drivers to the respective Wastewater Plant locations for required security clearance. Roster must include employee's and/or designated agent's full name, driver's license number, and must be accompanied by clear photos of each employee and/or designated driver and copies of their drivers' licenses. Employees who have been screened will then be issued a visitor's badge. Any changes to the roster must be forwarded to the City prior to such employees arriving at any of the Wastewater Plant locations. **Employees and/or designated agents not listed on the Supplier's roster will not be allowed entry into the facility.**
- 12.15 Delivery personnel will be required to check in at the administrative building upon arrival at the plant and must provide all required paperwork to the designated plant personnel for each delivery prior to unloading. The delivery personnel will not be permitted to offload the product unless the designated plant personnel accompanies the delivery personnel and the required documents have been provided to same.

## 13.0 PRODUCT SAMPLING AND TESTING

- 13.1 The quality of LIQUID CALCIUM NITRATE solution in each truck lot will be determined from the analysis of a sample collected upon arrival at the Point of Delivery for each truckload; at no time will a sample be taken without City Operation personnel present. The contractor shall take three (3) half pints, (minimum 4 ounces) representative product samples from each load through the access hatch prior to unloading or from the sample tap in the unloading line while unloading. No product is to be off-loaded until the test samples have been pulled. No shipment may be offloaded without prior confirmed authorization to unload from the Wastewater Operation personnel.
- 13.2 After samples are collected, tamper evident seals, provided by the Contractor, shall be signed by the City representative receiving the load and shall be placed across the top of each one of the tightly closed sample containers. This seal shall also contain the date, time of sampling, facility name, and Bill of Lading number. One sealed sample shall be retained by the Contractor for testing, one sample shall be retained by the City for testing, and the third sample shall be delivered by the Contractor to the designated Independent Laboratory for testing.

- 13.3 The successful bidder will supply the City's Water Quality Laboratory with necessary instrumentation, equipment, apparatus and appropriate methodology to carry out **preliminary** verification testing of the product at the time of delivery. Shipments that fail to meet the acceptable specified range as it appears in the 3.0-Guidelines on Quality Control Parameters section of this document will be returned to the Vendor at no cost to the City.
- 13.4 A qualified independent laboratory selected by the Supplier, and subject to the approval by the Wastewater Operations Division, shall test sample provided from each truckload for compliance with the product specifications contained herein. The results of the laboratory analysis will be final. The Supplier shall require the remaining portion of the sample, left after testing, to be retained by the laboratory for fifteen (15) business days before disposal. Should the City find the laboratory results submitted by the independent laboratory to be in error, testing procedures will be reviewed to attempt to resolve the discrepancies. If the errors are confirmed and discrepancies continue to occur, a new independent laboratory will be selected. The results of the independent laboratory's analysis and the weight tickets from a State Certified scale will form the basis for payment.
- 13.5 The independent laboratory shall be subject to inspection by the City personnel. This inspection process may require that City request additional analysis on QC/QA samples provided to the City. Costs for laboratory analysis of additional quality assurance samples provided to the City will be paid separately and directly by the City.
- 13.6 The City will select samples, on a random basis, for analysis of inorganic and organic constituents by an independent third party laboratory certified by the Laboratory Analysts Section of the Texas Water Utilities Association for the analysis of water and waste water, or by the Texas Commission on Environmental Quality for NPDES compliance testing, for any and all parameters represented in the "QUALITY" section of these specifications. Cost of analysis will be borne by the Supplier if the delivered product fails to meet specifications, as determined by third party analysis. Failure to comply with specifications, as confirmed by such independent third party analysis, may be grounds for termination for this Award.
- 13.7 Any costs incurred to the Supplier for handling, transportation, and/or demurrage, etc. from any shipment rejected by the on-site laboratory for failure to meet specifications, shall be the responsibility of the Supplier. The City shall, in no way be held vulnerable to any charges associated with such rejected shipments.
- 13.8 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and process feed systems at the affected user site, if the source of contamination is found, subsequent to initial acceptance, to have originated from any individual, or series of individual LIQUID CALCIUM NITRATE solution deliveries. All clean-up and disposal activities will be conducted in a manner consistent with the best available technology, and conform to all local, state, and federal regulations for the management of hazardous wastes. The supplier assumes responsibility as the Generator of such contaminated material, along with all inherent obligations to insure proper disposal of contaminated material, and any and all responsibilities arising from future lawsuits or clean-up costs associated with disposal of such contaminated material.

#### **14.0 WARRANTY:**

The Bidder shall warranty that all LIQUID CALCIUM NITRATE 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.

#### **15.0 BASIS FOR REJECTION:**

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

#### **16.0 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.

#### **17.0 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.

#### **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 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.

#### **19.0 FORCE MAJEURE:**

19.1 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.

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 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.

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 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.

#### **20.0 DEMURRAGE:**

The City will be responsible for demurrage on trucks only when such charges occur because of the City's negligence in the unloading of the material, and the unloading time exceeds two 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.

20.1 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.

20.2 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.

**21.0 COVER FOR NON-DELIVERY:**

The Supplier agrees that if, for any reason, at any time, it shall be unable to deliver in quantities and/or quality ordered by the City of Houston 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.

**22.0 SUPPLIER SUPPLY OF SAFETY TRAINING:**

- 22.1 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:
- 22.2 A videotape, DVD, filmstrip, slide presentation or live trainer presentation on the general safe handling of the awarded bid material.
- 22.3 Coverage in such presentation of the main safety hazards and general information as covered in the material safety data sheet.
- 22.4 Coverage in such presentation of the general characteristics and behavior of the awarded bid material.
- 22.5 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.

**23.0 RELEASE AND INDEMNIFICATION:**

23.1 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.

23.2 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.

### 23.2.1 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.

### 24.0 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.

### 25.0 INSURANCE:

25.1 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.**

## **25.0 INSURANCE (CONTINUED):**

- 25.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 25.3 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.
- 25.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.
- 25.5 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.

## **26.0 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.

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

- 27.1 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.
- 27.2 The City of Houston, through Ordinance No. 84-1309 and Council Motion 86-2204, encourages the participation of Minority and Women Business Enterprises in the performance of City Awards. Pursuant to the aforesaid Ordinance and Council Motion, the City has classified the Award that will result from this bid as a Goal-Oriented Award and the recommended Supplier shall be required to make good faith efforts to subcontract at least **11%** of the total dollar amount of this award ("City of Houston Certified MWBE goal") to either Minority Business Enterprises, Women Business Enterprises, or both, unless otherwise stated in the Bid Form or Specifications. The City Purchasing Agent with the concurrence of the Affirmative Action Director reserves the right to adjust upwards or downwards the designated percentage goal.

## **28.0 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.

## **29.0 AWARD:**

- 29.1 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.
- 29.2 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.

**30.0 REJECTIONS:**

- 30.1 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.
- 30.2 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.

**31.0 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.

**32.0 CHANGE ORDER**

- 32.1 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.
- 32.2 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]

- 32.3 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:
  - 32.3.1 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.
  - 32.3.2 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.
  - 32.3.3 The Total of all Change Orders issued under this section may not increase the Original Award amount by more than 25%.
- 32.4 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.

32.5 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.

### **33.0 TERMINATION OF AWARD**

33.1 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.

33.2 By the City for Default by Supplier:

33.2.1 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.

33.2.2 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.

33.3 By the Supplier for Default by City:

33.3.1 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.

33.3.2 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.

33.3.3 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.

### **34.0 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

**35.0 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.

**36.0 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.

**37.0 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.

**38.0 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.