



CITY OF HOUSTON

Administration and Regulatory Affairs Department
Strategic Purchasing Division

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June 6, 2011

Subject: Letter of Clarification No. 4 to Invitation to Bid No. S12-L23945 for Fuel, Low Emission Diesel and Unleaded Gasoline for the Fleet Management Department.

To: All Prospective Bidders:

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

1} **To revise the above referenced solicitation as follows:**

- **The bid opening time and date are hereby changed from 10:30 A.M., June 16, 2011 to 10:30 A.M, June 23, 2011.**
- **Electronic Bid Form:**
 1. The electronic bid form has been modified to include additional e-bidding items. Due to the aforementioned change(s) all bidders must edit and resubmit its bid. To do so, please select the "Bid Number" and proceed accordingly.
- **SECTION B, entitled SCOPE OF WORK/SPECIFICATIONS is hereby changed as follows:**
 - I. Remove pages 5 and 6 of 31 and replace with the attached pages 5 and 6 of 31, marked **"Revised 06/01/2011"**.
- **SECTION C, entitled GENERAL TERMS AND CONDITIONS is hereby changed as follows:**
 - II. Remove pages 17, 18, 19, 20 and 25 of 31 and replace with the attached 17, 18, 19, 20 and 25 of 31, marked **"Revised 06/01/2011"**.
- **The following are questions posed by a prospective bidder(s) and the answers thereto:**

Question #1 On page 5 concerning point 1.1 – Do we have to own the refinery? Just for clarification, the City will use its own trucks to pick up the fuel at the terminal/refinery??

Answer: *Bidders do not have to own the refinery from which the fuel will be produced; however, the successful bidder shall be the "owner" or "have control" of the racks from which the fuel will be dispensed. The awarded supplier will not be required to deliver product. The City will either contract with local common carriers or utilize City fuel delivery vehicles to pick up the fuel at the awarded supplier's terminal/refinery.*

Question #2 Should our price include freight?

Answer: **No.**

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- Question #3** What is the anticipated award date?
- Answer:** *On or before September 7, 2011.*
- Question #4** When is the first council meeting after the opening?
- Answer:** *City council meetings are held on Tuesdays and Wednesdays of each week unless otherwise announced. The following link can be accessed to view the weekly City Council agenda schedule: <http://www.houstontx.gov/citysec/agenda.html>.*
- Question #5** Would you consider a firm fixed price?
- Answer:** *Refer to Scope of Work/Specification, 3.0 - Fixed Price Option which specifies that the awarded contractor may offer/propose a fixed price option.*
- Question #6** Can the award be split between vendors?
- Answer:** *"The City reserves the right to accept or reject, in whole or in part, any or all bids received and make award on the basis of individual items or a combination of items as is deemed in the best interest of the City."*
- Question #7** Will the bid opening be open to the public?
- Answer:** *Yes, all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on the bid's due date.*
- Question #8** Site Inspection: this should be limited to Contractor's equity terminals.
- Answer:** *Yes, the site inspection is limited to the awarded contractor's equity terminals.*
- Question #9** P. 5 – 1.3 and 2.2: these provisions should be stricken if gasoline is not being sold.
- Answer:** *This bid is for the supply of unleaded gasoline and low emission diesel fuel.*
- Question #10** P.17 – 8.2: this paragraph should be stricken as it is not applicable to this type of sales agreement.
- Answer:** *No change.*
- Question #11** P.18 – 9.3 and 9.7 need to be stricken and the following needs to be added to this section.
- Answer:** *No change.*
- Question #12** -P.19 – 3.1: "by ACH" should be added after the word "payments" in the second sentence.
- Answer:** *"ACH" reference added.*
- Question #13** P.20 – 5.5: the second sentence should be stricken so as to make it clear the City has to pay for product it receives regardless of the Allocated Funds.
- Answer:** *No change.*
- Question #14** P.21 – 6.4: this should be stricken as it is not applicable to this type of sales agreement.
- Answer:** *No change.*

Question #15 P.25 – 9.0: “in connection with this Agreement” should be added to the end of the first parenthetical.

Answer: *Revised.*

Question #16 P.27 – 17.0: this should be stricken as it is not applicable.

Answer: *No change.*

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

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

Furthermore, it is the responsibility of each Contractor to obtain any previous Letter of Clarification associated with this solicitation.

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

Attachments: Pages 5, 6, 17, 18, 19, 20 and 25 of 31 marked "*Revised 06/01/2011*"

SECTION B
SCOPE OF WORK/SPECIFICATIONS**1.0 General**

- 1.1 The Contractor shall have a refinery in the Houston area and the capability of providing the specified fuel from a secondary source in the event of a natural or man-made disaster. The contractor shall have two delivery points at separate refinery racks, with limited rack movement.
- 1.2 The Contractor shall furnish low emission, ultra low sulfur diesel TxLED fuel that shall meet or exceed the requirements of the latest edition of the test methods listed in the "American Society for Testing and Materials Test Methods" (Exhibit BB). The low emission, ultra low sulfur diesel TxLED fuel shall comply with all local, state and federal regulations as applicable to the awarded contract.
- 1.3 The Contractor shall furnish 87 octane reformulated gasoline (RFG/Southern Region) with 10% ethanol on an "as needed basis". The 87 octane reformulated gasoline shall comply with all local, state and federal regulations as applicable to the awarded contract.

2.0 Pricing Formula

- 2.1 The Contractor agrees to supply as ordered, **Texas Low Emission, Ultra Low Sulfur Diesel (ULSD)**. A firm fixed price for **ULSD** shall be determined daily by applying the firm-fixed differential bid (plus or minus) for the **ULSD** to the prior days **average price** per gallon for the **ULSD** listed in the **PLATTS OILGRAM PRICE REPORT, Product Price Assessments, U.S. Gulf Coast** for Ultra Low Sulfur Diesel Pipeline. Weekend pricing will be as follows: Saturday, Sunday and Monday pricing will be based on the prior Friday's posted price. Prices for holidays will be the same as the prior valid day. The differential price bid shall remain firm throughout the contract term, to include the contract option years.
- 2.2 The Contractor agrees to supply as ordered, **Unleaded Reformulated Gasoline (Southern Region) with 10% ethanol**. A firm fixed price for **Unleaded Reformulated Gasoline** shall be determined daily by applying the firm-fixed differential bid (plus or minus) to the total of the prior days average of 90% USGC Platts pipeline mean for RBOB plus 10% USGC Platts EtOH, listed in the **PLATTS OILGRAM PRICE REPORT, Product Price Assessments, U.S. Gulf Coast**. Weekend pricing will be as follows: Saturday, Sunday and Monday pricing will be based on the prior Friday's posted price. Prices for holidays will be the same as the prior valid day. The differential price bid shall remain firm throughout the contract term, to include the contract option years.
- 2.3 The City of Houston reserves the right to purchase up to 10% of the total estimated contract quantity at the SPOT Market price, via a separate agreement, if the SPOT price is more favorable than the Platts formula contract price.
- 2.4 Prices quoted shall be F.O.B. contractor's Houston area fuel terminal. The City will provide fuel transportation services through an independent fuel delivery contractor/transporter and/or with its own vehicles.

3.0 Fixed Price Option

At any time during the agreement term, the contractor may offer/propose, and the City may accept, a fixed price option for a specific quantity of fuel during an agreed upon time period. The time period may be for 1 to 24 months. The City of Houston shall approve/disapprove the fixed price option proposal and the contractor shall be notified in writing of such approval/disapproval.

4.0 Fuel Formulation Change

4.1 The formulation for the various fuel types specified herein is subject to change during the term of this agreement as a result of **changes made by the refinery or** in federal, state and local regulations ("Alternate Formula Fuel"). The Contractor shall provide the Alternate Formulation Fuel at the per gallon fixed differential/multiplier as set out in the contract Fee Schedule for the entire contract term, including option years, for fuel formulation changes **made by the refinery or** mandated by federal, state and local regulations.

5.0 Product Quality

5.1 The Contractor shall provide diesel fuel and unleaded gasoline in compliance with the product specifications mandated by the State of Texas for the Houston area.

5.2 Any aftermarket additive used shall be identified by brand and/or trade name. The manufacturer's additive specifications shall be provided to the City of Houston upon request.

6.0 Additional Provisions

6.1 The estimated quantity stated for each Line Item is an estimate only.

7.0 Interlocal Agreements

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

8.0 Invoicing and Payment

8.1 The Contractor shall submit an original invoice for each delivery order within thirty (30) days to:

City of Houston
Fleet Management Department
900 Bagby, 2nd Floor
Houston, Texas, 77002

Each Invoice shall contain:

- 1. City's Purchase Order/Service Release Order Number.**
- 2. The item number, type of fuel, total gallons delivered, the unit price and the total amount for each item.**
- 3. Applicable Taxes.**
- 4. The total amount of the invoice.**
- 5. Corresponding bill of lading**

8.2 The City of Houston will make ACH payment within ten (10) to thirty (30) days as applicable, excluding official City holidays as determined by City Council after receipt of Contractor's invoice. The City reserves all rights to review all payments made to the Contractor by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Contractor. The City and Contractor agree that the terms of this contract and all rights otherwise reserved by law, shall constitute the sole, controlling contract terms with respect to attorney's fees and interest owed on delayed, disputed or delinquent payments in lieu of Article 601f, Vernon's Texas Civil Statutes.

5.0 LICENSES AND PERMITS

The Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule or regulation.

6.0 NON-EXCLUSIVE CONTRACT

This contract award does not create an exclusive right in Contractor to supply all fuel products described herein. The City may procure and execute contracts with other contractors for the same or similar products subject to the limitations set out in Section 2.3 of the bid solicitation or in the event of force majeure, such as natural disasters, epidemics, terrorists acts or acts of war.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

The Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "D."

8.0 ENVIRONMENTAL LAWS

8.1 The Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations "Environmental Laws" in connection with the Contractor's performance under this Agreement. Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

8.2 The Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

9.0 INSURANCE REQUIREMENTS

9.1 The Contractor shall purchase and maintain in effect during the entire period of this contract, including any maintenance period thereof:

COMMERCIAL GENERAL LIABILITY INSURANCE including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$1,000,000	Each Occurrence Combined Single Limit for Bodily Injury and Property Damage
\$2,000,000	Annual Aggregate Limit for Products and Completed Operations
\$2,000,000	General Aggregate for Other Than Products and Completed Operations

9.2 The policies providing Commercial General Liability shall be endorsed to name the City of Houston and its directors and employees, as Additional Insureds as respects Contractor's operations in performance of this contract. Such insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the City of Houston.

- 9.3 All policies providing Contractor's insurance shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the City of Houston at the address designated elsewhere in the contract for Notices.
- 9.4 The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.
- 9.5 All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by the City of Houston All such insurance policies shall be provided by insurance companies having Best's ratings of A- or greater and VII or greater (A-VII) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or having Best's ratings lower than A-VII will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of contract
- 9.6 Contractor agrees to waive all rights of subrogation or recovery against the City of Houston and its directors and/or employees arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this agreement and/or the use of any the City of Houston premises or equipment in the performance of this agreement. The Commercial General Liability shall be endorsed to recognize this required waiver of subrogation.
- 9.7 Proof of compliance with these insurance requirements shall be furnished City of Houston in the form of an original certificate of insurance (including the ADDITIONAL INSURED endorsements; PRIMARY AND NON-CONTRIBUTORY GENERAL LIABILITY INSURANCE endorsements; and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS endorsements) signed by an authorized representative or agent of the insurance company(ies), within fourteen (14) days of notice of award of contract and before any work under this contract will be allowed to commence. Certificates will be unacceptable unless they clearly show that all of the above stipulated requirements have been met. Renewal or replacement certificates shall be furnished the City of Houston not less than seven (7) days prior to the expiration or termination date of the applicable policy(ies). Otherwise, the City of Houston may halt all work under this contract upon expiration or other termination of any required coverage, and work will not be allowed to resume until a satisfactory renewal certificate is received.
- 9.8 Contractor shall require any and all subcontractors performing work under this contract to carry insurance of the types and with limits of liability as Contractor shall deem appropriate and adequate for the work being performed. Contractor shall obtain and make available for inspection by the City of Houston upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.
- 9.9 **Notwithstanding any conflicting provisions of this Agreement, Contractor's liabilities and obligations regarding the additional insured status, primary insurance relationship, and waivers of subrogation requirements shall be solely to the extent of the Contractor's indemnity obligations to the City under this Agreement and for the minimum amounts stated herein.**

10.0 EMERGENCY FUEL SUPPLY PROVISIONS

The Contractor shall guarantee that the City of Houston or it's assignees will be able to withdraw a minimum of 30,000 bbl of Ultra Low Sulfur Diesel or Gasoline during hurricanes or similar emergencies over a 30 calendar day period following the event. Should a United States Federal agency waive restrictions on different types of diesel fuel during a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative diesel fuel if the Contractor has a shortage of ULSD TxLED. The Contractor shall guarantee that the City of Houston or it's assignees will be given priority to load fuel from the Contractor's racks during such emergencies. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS

1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "C" (Fees and Costs) for all services rendered and the deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

1.2 Any quantities of services or deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will purchase more or less of those services or deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out

2.0 TAXES

2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF ACH PAYMENT

3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make ACH payments to Contractor at its address for notices within 10 to 30 days upon receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director/designee shall temporarily delete the disputed item and pay the remainder of the invoice. The Director/designee shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.
- 5.4 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.
- 5.5 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement. THE CITY WILL BE RESPONSIBLE FOR ALL FUEL ORDERED/WITHDRAWN.

7.0 NOTICES

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records in connection with this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 RISK OF LOSS

10.1 The Title to, and all risk of loss of or damage to any deliverable shall pass as follows: when into any truck, tank car or pipeline, as the deliverable enters the receiving equipment, or, if received by a common carrier, when accepted by the carrier for shipment; when into storage (other than from vessels), as the Product enters the tank; and when by book or stock transfer, on the effective date of the transfer. It is expressly understood that the passage of title and risk of loss as set forth above is not conditioned on delivery or receipt of Bills of Lading.

11.0 AMBIGUITIES

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.