



CITY OF HOUSTON

INVITATION TO BID

Issued: March 12, 2021

BID OPENING:

Sealed bids, in duplicate, will be received during normal business hours by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Room P101, Houston, Texas 77002, until **10:30 a.m. Thursday, April 15, 2021**. Bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY
FOR
HOUSTON PUBLIC WORKS
BID INVITATION NO. S17-N29741
NIGP CODE(S): 890-04, 560-15: MWBE 11%**

BUYER

Murdock Smith III is the buyer for this solicitation and any questions regarding this solicitation should be submitted via e-mail to murdock.smith@houstontx.gov.

ELECTRONIC BIDDING

The technical specifications and any other information for this solicitation may be viewed and downloaded from <http://purchasing.houstontx.gov>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to any registered bidder. To submit an electronic bid for the items in this procurement, you must enter information in the required fields of the e-bid document through the "PLACE BID" icon which allows the registered bidder to print, sign, and submit the original sealed bid with the required bid documents to the address referenced above.

PRE-BID CONFERENCE:

The City of Houston's Strategic Procurement Division has suspended ALL onsite Pre-Bid Conferences until further notice. Therefore, there will be a teleconference held for this Pre-Bid Conference **Tuesday, March 23, 2021 at 2:00 P.M. CST**. The dial in number is **+1 936-755-1521, Conference ID: 589 238 511#**. It is the bidder's responsibility to ensure they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference.

Any revisions to be incorporated into this solicitation document arising from discussions before, during and after the pre-bid conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms, and conditions as stated herein.

Additional Information and Specification Changes

Requests for additional information and questions should be addressed no later than **April 5, 2021 at 4:00 P.M. CST**. The City of Houston (the City) shall provide a written response to all questions received in writing before the solicitation due date. Questions received from all Bidder(s) shall be answered and sent to all Bidder(s) who are listed as having obtained the ITB.

Important Notice about the City's Early Payment Discount Program

The City's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City may pay in less than 30 days, at its option, in return for an early payment discount from vendor.

Bidding forms, specifications and all necessary information should be downloaded from the Internet at <http://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.

INVITATION TO BID FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

The place of the bid opening may be transferred in accordance with Paragraph Section 15-45 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (c) of said Section 15-45.

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. – OFFICIAL BID FORM

SECTION B. - TECHNICAL SPECIFICATIONS

SECTION C. - GENERAL TERMS & CONDITIONS

**SECTION A
OFFICIAL BID FORM**



**ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY
FOR
HOUSTON PUBLIC WORKS
BID INVITATION NO. S17-N29741
NIGP CODE(S): 890-04, 560-14 MWBE 11%**

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver rotary scum screens and waste conveyor assembly **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 Conditions. 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 bid must be signed by an individual(s) legally authorized to bind the bidder(s) and the bidder shall hold the pricing contained therein for a minimum of 180 days.

The City may accept this bid offer by issuance of a Purchase Order on or before the 120th day following the day this Official Bid Form is opened by the City. This offer shall be firm for 120 days after the bid opening or until City Council awards the bid, whichever comes last, and this binding period may be extended by written agreement of the parties.

BIDDING AND AWARD

It is the intent of the City to award, on the basis of overall low net 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 an individual item, combination of items or overall best value, as it is deemed in the best interest of the City. Bid tabulations are posted after the award is approved by City Council and made available on the Strategic Procurement Division's website.

BID DISQUALIFICATION

The City may disqualify a Bid if the Bidder: 1) improperly or illegibly completes information required by the Bid Documents; 2) fails to sign the Official Signature Page or improperly signs the Official Signature Page; 3) qualifies its Bid; or 4) improperly submits its Bid.

When requested, the apparent Low Bidder shall present satisfactory evidence that Bidder has regularly engaged in providing the commodities or performing the services as proposed, and has the capital, labor, equipment, and material to deliver the required commodities or perform the work.

THIS IS A ONE-TIME FORMAL BID

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.

SECTION A. OFFICIAL BID FORM FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLICS WORKS CONTINUED:

COMPETITION INTENDED

It is the City's intent that this ITB permits competition. It shall be the bidder's responsibility to advise the Buyer in writing if any language, requirement, specifications, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in the ITB to a single source. Such notification must be received by the Buyer no later than seven (7) days prior to the date set for bids to open.

PROTESTS

A protest shall comply with and be resolved according to the City of Houston Protest Administrative Policy 5-12 and rules adopted thereunder. For more information, go to: <http://www.houstontx.gov/adminpolicies/5-12.pdf>.

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, 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 date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, 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, 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, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

ANTI-BOYCOTT OF ISRAEL

Bidder certifies that Bidder is not currently engaged in and agrees for the duration of this Award not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

ZERO TOLERANCE FOR HUMAN TRAFFICKING

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Purchase Order for all purposes. Vendor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the issuance of a Purchase Order. Vendors shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Vendor or its subcontractors providing services or goods under this Purchase Order, if any, within 7 days of Vendor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED

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 Buyer 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 Buyer, 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.

SECTION A. OFFICIAL BID FORM FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS CONTINUED:

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.

Designation as a City Business or Local Business

In an effort to promote economic opportunity for Houston businesses and to support job creation, the Hire Houston First Program grants the City the ability to give a preference to eligible local companies, as long as their pricing is competitive. To be eligible for the preference, a company must be designated as a **City Business (CB) or Local Business (LB)** under the Hire Houston First Program **prior** to submittal of bid. Bidders must provide *Declaration of Hire Houston First Designation* form at bid time.

To complete an application for the Hire Houston First program, visit <http://www.houstontx.gov/obo/hirehoustonfirst.html>. Applications can be submitted to the City of Houston Office of Business Opportunity via the online application system, by e-mail to HIREHOUSTONFIRST@houstontx.gov, by fax to 832-393-0646, or hand delivered.

Note: Participation in the Hire Houston First program is not required to bid on City of Houston contracts.

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

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **5%** OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **3%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

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

SECTION A. OFFICIAL BID FORM FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

PRESERVATION OF CONTRACTING INFORMATION

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid [or solicitation] and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

ADDITIONAL REQUIREMENTS

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov> by registering and downloading this solicitation document.

NOTE: IF BIDDER IS RECOMMENDED FOR AN AWARD, THE BUYER OF RECORD WILL REQUEST FORMS AT A LATER DATE.

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.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level Room P101, 900 Bagby, Houston, Texas 77002. **IDENTIFY THE BID SUBMITTAL WITH THE ITB NO.:**

TABLE 1 - REQUIRED FORMS
Ownership of Information.doc
MWBE.doc
Certificate of Insurance.doc
Conflict of Interest Questionnaire.doc

Table 2 lists other documents and forms that should be viewed/downloaded from the City’s website but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

TABLE 2 - DOCUMENTS & FORMS
Drug Forms
EEOC
Formal Instructions for Bid Terms
Sample Insurance Over \$50,000.00
Sample Insurance Endorsements

SECTION B.

CITY OF HOUSTON TECHNICAL SPECIFICATIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS

1.0 OVERVIEW

Houston Public Works (HPW) requests a one-time formal bid to purchase (3) three rotary scum screens and (1) one waste conveyer assembly that will be used at the Keegans Bayou Wastewater Treatment Plant (WWTP). This equipment includes a service for turn-key removal and installation which includes all parts, materials, and labor on each piece of equipment.

2.0 GENERAL

2.1 The specifications herein state the minimum requirements of the City of Houston. All bids must be regular in every respect. Unauthorized conditions, limitations, or provisions shall be cause for rejection. The CITY may consider as "irregular" or "non-responsive", any bid not prepared and submitted in accordance with the bid documents and specification, or any bid lacking sufficient technical literature to enable the City of Houston to make a reasonable determination of compliance to the specification. It shall be the bidder's responsibility to carefully examine each item of the specification, failure to offer a completed bid or failure to respond to each section of the technical specification (exception yes or no) will cause the proposal to be rejected without review as "non-responsive". All variances, exceptions, and/or deviations shall be fully described in the appropriate section; deceit in responding to the specification will be cause for rejection.

2.2 EQUIVALENT PRODUCT: Bids will be accepted for consideration on any make and model that is a city approved substitute for the Rotary Scum Screens & Waste Conveyer Assembly as interpreted by the City of Houston. A blanket statement that equipment proposed will meet all requirements will not be sufficient to establish equivalence but will require replay an explanation at each deviation or substitution.

2.3 INTERPRETATIONS: In order to be fair to all bidders, no oral interpretations will be given to any bidder as to the meaning of the specification documents or any part thereof. Every request for each a consideration shall be made in writing to the City of Houston. Based upon such inquiry, the City of Houston may choose to issue an Addendum in accordance with Local Public Contract Laws.

2.4 GENERAL SPECIFICATIONS: Units described shall be new, unused and of the current year's production. Units shall be of the latest design and in current production completely serviced, ready for work and shall include all standard and optional equipment as specified herein. The supplier shall be required to provide the Scum Static Screen & Conveyer Assembly system and all fittings, parts and modifications required for the Scum Static Screen & Conveyer Assembly. All bidders must have demonstrated the Units they are bidding prior to bid date.

2.4.1 Bidders shall have a fully stocked parts and service facility. The City of Houston will have the right to inspect the office and will be the sole judge of its adequacy to fulfill this requirement.

2.4.2 Bidders, on request of the City of Houston, must be prepared to review their specifications with the City of Houston and must, if requested. These services, if needed are considered as part of the bidder's proposal and will be provided without cost or obligation to the City of Houston.

3.0 DESIGN REQUIREMENTS

3.1 Rotary Screen (Quantity of 3) Size 8" flanged inlet. Motor 50HP, 1700 RPM, 230/460V, 60Hz. Model: Hycor RSA2548UBCR, Model: RAS2548-2 or an approved equal.

3.2 Wasting conveyor and compactors (Quantity 1): Conveyor 5" Roll Diameter, 20-degree angle, 18" Belt Width, Standard Ball Bearing. Frame Type: Trougher Equal Motor (Conveyor): 1.5HP, 1735 RPM, 230/460V, 60Hz or an approved equal.

SECTION B. TECHNICAL SPECIFICATIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

4.0 TOOLS AND SPARE PARTS

- 4.1 Four (4) Operations and Maintenance manuals for HPW.

5.0 Delivery

- 5.1 Entire assembled Units shall be delivered at COH's Keegans Bayou WWTP, at 9400 White Chapel Ln., Houston, TX 77074, with sufficient capabilities of delivery vehicle to suitably off-load the assembled Units.
- 5.2 The assembled units shall be packaged to prevent any damage to the Units during travel and off-loading.
- 5.3 The delivery and installation company must coordinate with the appropriate City of Houston Staff to ensure the units are off-loaded safely in the appropriate place and manner desired.
- 5.4 Final delivery and installation details should also be coordinated with Don Williams at (713)392-9679.

6.0 WARRANTY

The vendor shall furnish the following to the owner:

- 6.1 Units shall be warranted against defects in materials and workmanship for a period of 18 months from shipment or 12 months from set-up, whichever is less, and shall cover 100% of parts and labor for each unit. **Should the manufacturer's warranty exceed these requirements; the manufacturer's warranty shall be in effect.** Warranty work shall be completed without cost to the City. It shall begin within seven (7) days after notification of the equipment failure or faulty material and shall be completed within a reasonable time frame, but no greater than 90 days. **All freight charges to and from the vendor's repair facility shall be borne by the seller during the warranty period.**

SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS
FOR
ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY
FOR
HOUSTON PUBLIC WORKS

1.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

It is the City's policy to ensure that Minority and Women Business Enterprises (MWBE) have full opportunity to compete for and participate in City Contracts. Vendor shall comply with the City's MWBE Program as set forth in Chapter 15, Article V of the City of Houston Code of Ordinances. Vendor shall make good faith efforts to award subcontracts and supply agreements in at least **11%** of the value of the Agreement to certified MWBEs. Vendor acknowledges that they have reviewed the requirements for good faith efforts on file with the Office of Business Opportunity (OBO), available at <http://www.houstontx.gov/obo/docsandforms/goodfaithefforts.pdf>, and will comply with the set forth requirements.

2.0 PROMPT PAYMENT OF SUBVENDORS:

Vendor shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this award. **VENDOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF VENDOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.0 TAXES:

3.1 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 Vendor desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the Chief Procurement Officer, if satisfied as to the facts, will approve or issue the necessary certificates.

3.2 The tax exemption numbers are 74-600-1164 (Federal) and 1-74-600-1164-0 and (State/City).

4.0 VENDOR DEBT

If Vendor, 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 Vendor has incurred a debt, the Controller shall immediately notify Vendor in writing. If Vendor 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 Vendor under this award, and Vendor waives any recourse, therefore.

5.0 REJECTIONS:

5.1 Articles not in accordance with samples and specifications must be removed by the Vendor and at his expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the Chief Procurement Officer or designated representative.

5.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the Chief Procurement Officer who shall have the right to reject the whole or any part of the same.

SECTION C. GENERAL TERMS AND CONDITIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

6.0 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 Vendors but are intended to approximate the quality design or performance, which is desired. Any bid, which proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific exception is made, assumption will be that the item is bid exactly as specified on the Invitation to Bid.

7.0 SPECIFIED EQUIPMENT OR EQUIVALENT:

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

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

8.0 MEASUREMENTS:

The measurement stated for these items are approximates. The City reserves the right to accept items that are similar in size, if in the City's judgment, the item bid fulfills the intended purpose.

9.0 SILENCE OF SPECIFICATIONS:

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

10.0 SUCCESSORS AND ASSIGNMENTS:

Vendor may not assign this award or dispose of substantially all of its assets without the written consent of the Chief Procurement Officer. Vendor's failure to obtain such consent shall be an event of default, authorizing the Chief Procurement Officer to terminate this award according to its terms.

11.0 SHIPPING TERMS:

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

SECTION C. GENERAL TERMS AND CONDITIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

12.0 DELIVERY:

- 12.1 The Vendor agrees to make delivery only upon receipt of duly signed and approved Purchase Order issued by the City's Chief Procurement Officer or designee. Delivery made without such Purchase Order shall be at Vendor's risk and shall leave the City the option of canceling any award implied or expressed herein.
- 12.2 Unless otherwise stated in the Bid Form or Specifications, delivery must be new and unused.
- 12.3 In the event that the deliveries of the supplies covered in the solicitation are not made within the number of days specified, or in the event that the supplies delivered are rejected and are not removed and replaced within the number of days specified in the official notice of rejection, the City reserves the right to terminate. The defaulting Vendor will be deemed non-responsible and will be disqualified from bidding on the solicitation if it is re-let by the City within ninety (90) days of such termination.

13.0 FORCE MAJEURE:

- 13.1 Timely performance by both parties is essential to the award. However, neither party is liable for delays or other failures to perform its obligations to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 13.2 This relief is not applicable unless the affected party does the following:
 - 13.2.1 Uses due diligence to remove the Force Majeure as quickly as possible; and
 - 13.2.2 Provides the other party with prompt written notice of the cause and its anticipated effect.
- 13.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.
- 13.4 If the Force Majeure continues for more than 30 days, the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may terminate this award by giving 30 days' written notice to Vendor. This termination is not a default or breach. **VENDOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE AT THE TIME OF THE TERMINATION.**

14.0 INVOICING:

- 14.1 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on the individual purchase order.
- 14.2 Delivery tickets and packing slips shall contain the same information as the invoice.
- 14.3 Invoices shall reflect the purchase order number's, quantities, unit cost, and extended cost for prompt payment.

15.0 PAYMENT:

- 15.1 The City's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is 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
- 15.2 A vendor 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.

SECTION C. GENERAL TERMS AND CONDITIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

15.3 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.

16.0 RELEASE:

PRIME VENDOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

17.0 INDEMNIFICATION:

17.1 PRIME VENDOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) PRIME VENDOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', VENDORS', OR SUBVENDORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME VENDOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND PRIME VENDOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME VENDOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND PRIME VENDOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME VENDOR IS IMMUNE FROM LIABILITY OR NOT.

17.2 PRIME VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME VENDOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. PRIME VENDOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

17.0 INDEMNIFICATION (continued):

17.3 INDEMNIFICATION PROCEDURES:

- (1) Notice of Claims. If the City or Prime Vendor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Prime Vendor is prejudiced, suffers loss, or incurs expense because of the delay.

SECTION C. GENERAL TERMS AND CONDITIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

(2) Defense of Claims

- (a) Assumption of Defense. Prime Vendor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Vendor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Vendor must advise the City as to whether or not it will defend the claim. If Prime Vendor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(2) Defense of Claims:

- (b) Continued Participation. If Prime Vendor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Vendor 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 Vendor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

18.0 WORKER'S COMPENSATION INSURANCE:

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

19.0 INSURANCE:

19.1 If performance of this award requires Vendor to provide labor in addition to supplies, labor and materials, the Vendor 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 Vendor, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Vendor, 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.

19.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.

19.3 All insurance policies required by this award shall require by endorsement that the insurance carrier waive any rights of subrogation against the City, Vendor shall give 30 days written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within such thirty (30) day period Vendor, 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 Vendor to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this award at once.

19.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.

SECTION C. GENERAL TERMS AND CONDITIONS FOR ROTARY SCUM SCREENS & WASTE CONVEYOR ASSEMBLY FOR HOUSTON PUBLIC WORKS, CONTINUED:

19.5 All certificates of insurance submitted by Vendor 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. The Director will consider all other forms on a case-by-case basis.

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