



CITY OF HOUSTON INVITATION TO BID

Issued: June 4, 2010

Bid Opening

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 until **10:30 a.m. Thursday, June 24, 2010**, and all bids will be opened and publicly read in the City Council Chamber at 11:00 A.M. on that date for the purchase of:

**CHEMICAL, CARBON DIOXIDE
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT
NO. S12-S23316
NIGP CODE 430-42-31**

Buyer

Martin L. King is the Buyer for this solicitation and he may be reached at 832-393-8705. Any questions regarding this solicitation should be submitted in writing to 832-393-8750 (fax) or via e-mail at martin.king@houstontx.gov

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Public Works & Engineering's Materials Management Branch, 319 St. Emanuel, H.T. 77002, at 10:00 a.m. on Thursday, June 17, 2010, 1st floor conference room.

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.

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.

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SECTION A.



**CHEMICAL, CARBON DIOXIDE
FOR THE
PUBLIC WORKS & ENGINEERING DEPARTMENT
BID INVITATION NO. S12-S23316
NIGP CODE 430-42-31**

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver **carbon dioxide, 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.

THIS IS A THIRTY-SIX (36) MONTH AWARD

WITH TWO TWELVE (12) MONTH RENEWAL PERIODS FOR A TOTAL SIXTY-MONTH TERM

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.

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 Chemical, Carbon Dioxide it will purchase during the term of this award. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this 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.

SECTION A. OFFICIAL BID FORM FOR CARBON DIOXIDE FOR VARIOUS DEPARTMENTS, CONTINUED:

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

Additional Required Forms to be Included with this Bid:

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

Table 1
Affidavit of Ownership
Fair Campaign Ordinance
Statement of Residency
Conflict of Interest Questionnaire
Contractor References
Bidders Attachments Supply
Location of Bidders Inventory

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

Table 2
MWBE
Sample Insurance Over \$50000
Formal Instructions for Bid Terms
EEOC

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 Carbon Dioxide that is similar in quantity and scope as specified in 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 Carbon Dioxide.**

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: _____

SECTION B.
THE CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
CARBON DIOXIDE
FOR
THE PUBLIC WORKS & ENGINEERING DEPARTMENT

1.0 GENERAL TECHNICAL SPECIFICATIONS:

These specifications are written as guidelines and standards of quality and performance in the supply and delivery of Liquid Carbon Dioxide, including setup, installation and maintenance of two thirty ton carbon dioxide tanks (See Technical Section 5.0 and Attached Exhibits A, B, & C), to the City of Houston's North East Water Purification Plant(s), also referred to in this document as NEWPP, or other City sites or locations which may become necessary:

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

2.0 MATERIALS SPECIFICATIONS:

The materials supplied under these specifications shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water which has been treated with it, and shall in all respects meet the minimum standard specifications of the American Water Works Association for materials used in the purification of municipal water supplies, or as outlined in these specification for carbon dioxide (A.W.W.A Specifications B501-06). Each bidder shall provide a statement along with its bid as to the source of their proposed supply.

3.0 QUALITY STANDARDS AND CHEMICAL COMPOSITION:

The Bidder shall specify whether the carbon dioxide delivered is the product of an original manufacturing process using raw "virgin" materials, or supplied as the recovered by-product of a manufacturing process not specifically designed for the product of carbon dioxide from raw "virgin" materials. If obtained as a by-product, would the source raw materials be listed as hazardous waste under the Resource Conservation and Recovery Act Regulation (RCRA) 40 CFR261 if not re-processed for resale? If raw materials would be considered hazardous wastes (either listed or characteristic), what specific constituent(s) or characteristics cause the material(s) cause the material(s) to be classified as a hazardous waste?

- 3.1 If the Bidder proposes supplying carbon dioxide produced as the product of an original manufacturing process using "virgin" raw materials. Bidder should supply the following documents to the City of Houston as an "ATTACHMENT TO ITS BID." If not supplied as an attachment to bid, bidder must supply requested documents within (5) working days after receipt of a written request from the City of Houston to do so. Failure to supply the requested documentation will be just cause to reject bid.
 - (1) Material Safety Data Sheets for each "virgin" material (where applicable) consumed in the Manufacturing process, as well as the produced carbon dioxide.
 - (2) A brief description of the manufacturing process producing the carbon dioxide.
- 3.2 If Bidder proposes to supply carbon dioxide produced in whole or as the by-product of an other than original manufacturing process, or proposes use of "by-product", as opposed to "virgin" raw materials for producing carbon dioxide, bidder must supply, the following documents to THE CITY OF HOUSTON as an "ATTACHMENT TO BID." If not supplied as an attachment to bid, bidder must supply requested documents within (5) working days after receipt of a written request from the City of Houston to do so. Failure to supply the requested documentation will be just cause to reject bid.
 - (1) Material Safety Data Sheets for all raw materials consumed in the process producing the "by-products" used as raw material in the manufacturer of carbon dioxide.
 - (2) A brief description of all of the manufacturing processing generating any by-product to be used as raw material in the manufacturer of the carbon dioxide.

TECHNICAL SPECIFICATIONS FOR CARBON DIOXIDE, CONTINUED:

(3) If the “by-product” material, repurchased for delivery as “product” of carbon dioxide or for use as a raw material in the manufacture of carbon dioxide, would be a listed or characterized as hazardous waste under the Resource Conservation and Recovery Act Regulation (RCRA) 40 CFR261, if not resold for reuse, the Bidder will supply THE CITY OF HOUSTON the following as a required “ATTACHMENT TO BID”:

- a. The exact nature of the hazardous characteristics and/or constituents if all or some of the by-product material has been disposed, in the past, as a hazardous waste, a copy of the Texas Water Code (or other appropriate State agency if not Texas) waste registration for each material, including appropriate Texas Water Code 9 or other state) waste code number, description, and an analysis of the hazardous constituents, and
- b. Purchase price of the by-product material(s) to determine if “fair market value” requirements for resale and reuse of a hazardous waste material are being met, and the carbon dioxide product is Bid at fair market value for a recovered material.

3.3 If the bidder is not the original manufacturer of material to be supplied, bidder should supply the following documents to THE CITY OF HOUSTON as an “ATTACHMENT TO BID.” If not supplied as an attachment to bid, bidder must supply requested documents within ten (10) working days after receipt of a written request from the City of Houston to do so. Failure to supply the requested documentation will be just cause to reject bid.

- (1) Name, address, telephone number, and contact person of the original manufacturer,
- (2) Actual site(s) of manufacturer.
- (3) Shipping point(s) of manufacture.
- (4) Whether original manufacturer produces material to be supplied as a primary product or as a by-product.
- (5) If material to be supplied is a recovered by-product, or manufactured from raw materials obtained as a by-product of another manufacturing process, the Bidder must submit, as part of the original bid package a description of each manufacturing process used for the production of by-product carbon dioxide supplied. Bidder must identify the potential for chemical contamination from the other materials used or stored at each site of manufacturer of virgin or the by-product carbon dioxide, or raw materials used in the production of the carbon dioxide, or raw materials used in the production of the carbon dioxide. If such potential exists, bidder must specify what chemical substances are likely to be present.
- (6) During the awarded period, any change in ownership of the original manufacturer must be reported to THE CITY OF HOUSTON at least sixty (60) days in advance of transfer of ownership.
- (7) During the awarded period, prior notification of , and the written approval must be obtained from THE CITY OF HOUSTON for any significant changes in the original manufacturing processes(es), or the source materials used, from those described in the original bid package, if carbon dioxide is supplied as any primary product: If the material is a by-product, notification of any significant changes in the manufacturing process(es) and/or source materials used by the process generating the by-product(s). Failure to make such notification, and obtain required approvals, shall be grounds for termination of the bid award.
- (8) Material Safety Data Sheet(s) which shall conform to the format in ANSI Z400.1 (latest revision), or newest update, for the product(s) manufactured by the process generating carbon dioxide as a by-product, as well as source materials used in the primary process.

TECHNICAL SPECIFICATIONS FOR CARBON DIOXIDE, CONTINUED:

3.4 In the event that bidder is an original manufacture of material to be supplied, but not supply all (or any) of the awarded material from his manufacturing process, bidder should supply the following documents to THE CITY OF HOUSTON as an "ATTACHMENT TO ITS BID." If not supplied as an attachment to its bid, bidder must supply requested documents within ten (10) working days of receipt of a written request from the City to do so. Failure to supply the requested documentation will be just cause to reject bid.

- (1) All items listed in Section 3.3, 1 thru 8.
- (2) The proportion of awarded material to be supplied from bidder's manufacturing process, and the proportions to be supplied from each manufacturer listed in Items 1 and 2 of Section 3.1 and Section 3.2.

3.5 In the event that bidder is the original manufacturer of the awarded item, and will supply 100% of the carbon dioxide from his own process. Bidder should supply the following documents to THE CITY OF HOUSTON as an "ATTACHMENT TO ITS BID." If not supplied as an attachment to bid, bidder must supply requested documents within ten (10) working days of receipt of a written request from the City to do so. Failure to supply the requested documentation will be just cause to reject bid.

- (1) All items listed in Section 3.3, 1 thru 8.

Bidder shall submit, as part of the "ATTACHMENTS TO ITS BID" and AFFIDAVIT OF COMPLIANCE, signed by a responsible officer of the Bidding Firm, stating the product to be supplied complies with specifications stated in the AWWA STANDARD FOR CARBON DIOXIDE (AWWA B501-06) and the "SPECIAL REQUIREMENTS FOR CARBON DIOXIDE" as set forth below as part of this award. If not supplied as an attachment to bid, bidder must supply requested documents within ten (10) working days of receipt of a written request from the City to do so. Failure to supply the requested documentation will be just cause to reject bid.

4.0 CHEMICAL COMPOSITION AND PHYSICAL PROPERTIES FOR CARBON DIOXIDE:

In all instances, the delivered carbon dioxide shall meet the following criteria, at a minimum. Materials having characteristics not within these parameters shall be rejected for failing to meet specifications, and shipment(s) returned to the supplier at the supplier's expense.

4.1 **IMPURITIES:** CARBON DIOXIDE CONFORMING TO THIS STANDARD SHALL CONTAIN NO SUBSTANCES IN QUANTITIES CAPABLE OF PRODUCING DELETERIOUS OR INJURIOUS EFFECTS ON THE HEALTH OF THOSE CONSUMING WATER THAT HAS BEEN PROPERLY TREATED WITH THE PRODUCT. MATERIAL SHOULD BE CERTIFIED AS SUITABLE FOR CONTACT WITH OR TREATMENT OF DRINKING WATER BY AN ACCREDITED CERTIFICATION ORGANIZATION IN ACCORDANCE WITH ANSI/NSF STANDARD 60.

4.2 An injurious or deleterious effect is defined as causing the concentration of any one of the chemical substances regulated in drinking water by the USEPA and/or Texas Department of Health to exceed the Maximum Contaminant Level, established and in effect at the time of delivery, for the substance, or cause a significant increase in the concentration of such regulated substance over levels currently observed.

<u>Parameter</u>	<u>SPECIFICATION</u>
Percent CO ₂	99.5% by weight
Water Content	<120 (v/v)
Nonvolatile Residue	<10 ppm
Total Hydrocarbons	<50 ppm
Oxygen	<30 ppm
Carbon Monoxide	<10 ppm (vapor)
Nitric Oxide	<2.5 ppm (vapor)
Nitrogen dioxide	<2.5 ppm (vapor)
Ammonia	<2.5 ppm
Benzene	<.021 ppm
Hydrogen Sulfide	<0.5 ppm
Sulfur Dioxide	<0.5 ppm (vapor)
Carbonyl Sulfide	<0.5 ppm
Total Sulfides	<0.5 ppm as Hydrogen Sulfide
Odor	No odor is acceptable

4.3 The product shall contain no contaminant in an amount sufficient to increase the concentration of any contaminant regulated, at the time of delivery, above current levels in drinking water, or cause any violation of a Maximum Contaminant Level. *The product supplied SHALL NOT exceed these specifications.

5.0 CHEMICAL CARBON DIOXIDE RECEIVERS/STORAGE TANKS:

The 30-ton liquid carbon dioxide storage receivers shall be equipped with (1) refrigeration unit, (2) vaporizer, (3) vapor heater and (4) first stage pressure regulator. The tanks should also include a 4" PSF carbonic acid feed panel with automatic pH control. The awarded supplier will need to work with the current lessee on the transition of changing out the existing storage receivers (See Attached Exhibits A, B, & C).

TECHNICAL SPECIFICATIONS FOR CARBON DIOXIDE, CONTINUED

**THE CITY OF HOUSTON
CERTIFIED ANALYSIS FOR
CARBON DIOXIDE
NORTHEAST WATER PURIFICATION FACILITY**

THIS SHEET MUST BE SUBMITTED IN DUPLICATE WITH THE BID SAMPLES WITHIN TEN (10) WORKING DAYS OF REQUEST. THIS IS A MANDATORY REQUIREMENT, EVEN IF BIDDING AS SPECIFIED.

<u>PARAMETER</u>	<u>RESULT</u>	<u>UNIT</u>
Percent CO ₂	_____	% by weight
Water Content	_____	(v/v)
Nonvolatile Residue	_____	ppm
Total Hydrocarbons	_____	ppm
Oxygen	_____	ppm
Carbon Monoxide	_____	ppm (vapor)
Hydrogen Sulfide	_____	ppm (vapor)
Nitric Oxide	_____	ppm (vapor)
Nitrogen dioxide	_____	ppm (vapor)
Ammonia	_____	ppm
Sulfur Dioxide	_____	ppm
Benzene	_____	ppm
Carbonyl Sulfide	_____	ppm

Additional analyses may be required prior to bid award as deemed necessary by the CITY OF HOUSTON.

Source of Supply: _____

Laboratory: _____

Supplier: _____

Analyzed By: _____

Supplier Representative: _____

Certified By: _____

Title: _____

Signature: _____

Address: _____

Telephone: _____

All bidders agree by their participation in the bidding process to supply WITHIN 10 WORKING DAYS OF REQUEST, ONE CERTIFIED ANALYSIS, performed by a third party independent analytical laboratory, and signed by said laboratory's management and analysts. Such analysis is to be used for comparative purposes with other bids submittals.

EXHIBIT A



EXHIBIT B



EXHIBIT C



**SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS FOR
CHEMICAL, CARBON DIOXIDE
FOR THE
PUBLIC WORKS AND ENGINEERING DEPARTMENT**

1.0 TERM OF AWARD:

- 1.1 The awarded bid term shall be for a three year period beginning on or about July 2010, with two automatic one year option periods to renew for a total of sixty (60) months. 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 this document shall govern. The awarded Supplier will not perform the specified 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 awarded prices be honored on all purchases.**

THIS IS A THIRTY-SIX (36) MONTH AWARD

WITH TWO TWELVE (12) MONTH RENEWAL PERIODS FOR A TOTAL SIXTY-MONTH TERM

2.0 SUPPLIER'S DUTY TO PAY:

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

3.0 OPTIONAL EXTENSION:

- 3.1 Upon expiration of the Awarded Term, the term will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director/Chief of the City Department elects not to renew this Award, the City Purchasing Agent shall notify the Supplier in writing of non-renewal at least 30-days before the expiration of the then current term.
- 3.2 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 and option periods. A price increase, subject to the provisions of the Award, may be requested by the Supplier for approval by the City Purchasing Agent at this time. If the price increase is approved by the City Purchasing Agent or if no price increase is requested, a letter of extension will be issued by the City Purchasing Agent for the Supplier's acceptance under the same terms and conditions as the existing Award."

4.0 PRICE ADJUSTMENTS:

4.1. 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.

4.2. Price Decreases:

4.2.1 **If the Supplier's Direct Cost decreases at any time during the term of this Contract, for a sustained three (3) month period, 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 Pentasul Sulfuric Acid Index.**

4.2.2 **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.**

4.3 Producer Price Index (PPI)

Price adjustments will be based on the Producer Price Index for Chemicals and Allied Products (Group), Carbon Dioxide (Item), Series ID WPU06790302 as published by the U.S. Department of Labor, Bureau of Labor Statistics.

4.4 Adjustment Frequency

A price adjustment review will be conducted quarterly (quarterly = every three months). If the PPI changed up or down compared to the three months prior, an adjustment will be done. The price adjustment will become effective on the 10th of the following month (See Example 4.5 - Methodology).

4.5 Methodology

4.5.1 Formula:

Price adjustments shall be calculated by applying the simple percentage method to the PPI data. This method is defined as dividing the index value at the time of the calculation by the index value of the base period (three months earlier), then multiplying the percentage by the base price.

Example 1:

Award date: June 10, 2010

Bid Price: \$0.14

PPI for March 2010: 137.1

PPI for June 2010: 177.4

First price adjustment: July 10th, 2010

Calculation: $(\text{PPI } 06/10 / \text{PPI } 03/10) * \text{old price} = \text{new price}$

$(177.4 / 137.1) * \$0.14 =$

$1.29 * \$0.14 = \underline{\$0.18}$

Example 2:

PPI for June 2010: 177.4

PPI for September 2010: 137.1

Second price adjustment: October 10th, 2010

Calculation: $(137.1 / 177.4) * \$0.18 =$

$0.96 * \$0.18 = \underline{\$0.17}$

4.6 Adjustment Request:

The supplier will notify the City of Houston in writing every three months of the changes in the PPI. The supplier must either state that there were no changes in the PPI and no price adjustment will be requested/implemented at this time, or the supplier will use the formula referenced in Sub-section 4.5.1 to calculate the new price. The supplier's price adjustment notification, accompanied by the applicable PPI data, must be sent to the following address:

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

4.6.1 The City Purchasing Agent (CPA) shall approve/disapprove all price adjustments and the supplier shall be notified in writing of such approval/disapproval. 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 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.

4.6.2 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 laws, the City may then purchase the item from the lower price source without any obligation to the Supplier.

5.0 INVOICING:

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

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, whichever occurs later.

8.0 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 its own 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 removal and disposal costs incurred.

9.0 INSPECTIONS AND AUDITS:

- 9.1 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.
- 9.2 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.
- 9.3 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.

10.0 DELIVERY:

- 11.1 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.**" **Delivery must be made within 10-working calendar days after notification to do so by an authorized representative of the user department. Supplier/Delivery personnel are required to check in with the East Water Purification Control Center at 713-330-2561 1-hour before delivery and give all necessary information required.**
- 11.2 Deliveries will be made to the following facilities or other City of Houston facilities, which may become necessary during the life of the Award:
- 10.2.1 Northeast Water Purification Plant - 12121 North Sam Houston Parkway East, Humble, TX 77396.
- 11.3 Deliveries shall be made to the designated Houston Water Purification Facilities at such intervals as specified in the purchase orders issued by the user department's authorized representative. It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as tools, fittings, hoses, couplings, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine purification plant operations. The Supplier will ensure that carrier vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading. 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.
- 10.4 **Deliveries are to be made to the appropriate purification facility between the hours of 7:30 a.m. and 4:00 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. **These hours are subject to change upon Operations needs. Supplier must have a Certificate of Analysis with the bill of lading at time of delivery.** The successful Bidder must make adequate provisions for product supply and transportation, and must maintain close contact with the user department's authorized representative at all times. Additionally, the successful Bidder must make provisions for emergency delivery within 24-hours of the above listed normal delivery hours, at all times, to maintain adequate supply. Additional supplies may occasionally be required on an emergency basis.
- 10.5 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.
- 10.6 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.
- 10.7 The Supplier's carrier is responsible for containment and clean up of any product material released during offloading. The offloading area is to be free of any product material after offloading has been completed. In the event of product spillage, there will be 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.
- 10.8 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/contactors carrier to equip each vehicle entering the facility with appropriate personal protective equipment (PPE) **provided on the MSDS** 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.**

11.0 TESTING OF DELIVERIES:

The quality of CARBON DIOXIDE in each truck lot will be determined from the accompanying representative certificate of analysis and/or a sample collected upon arrival at the Point of Delivery for each truckload. The supplier may have a representative present at the time of sampling. These samples will be pulled at random to and analyzed to ensure product being delivered meets specification parameters.

12.0 WARRANTY:

The Bidder shall warranty that all CARBON DIOXIDE 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.

13.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on the City's 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.

14.0 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.

15.0 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 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.

16.0 FORCE MAJEURE:

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

17.0 BID SAMPLE:

- 17.1 Upon request by the City, the Bidder is required to submit duplicate, one liter, bid samples of CARBON DIOXIDE solution in tightly capped glass containers. These samples must be representative of the material to be supplied and must be accompanied by the applicable Certified Analysis Sheet, using the attached forms. The Bid Samples and Certified Analysis Sheets are to be delivered to the City of Houston, Water Quality Control Laboratory, 2300 Federal Road, Houston, Texas 77015, between the hours of 8:00 a.m. and 3:00 p.m., Monday thru Friday within ten (10) working days after receipt of a written request from the City of Houston to do so. Failure to supply the requested documentation will be just cause to reject bid.
- 17.2 Each sample shall be labeled with the Bidder's name, Bid Invitation Number, and Bid Form Item Number. Should bidder(s) have any problems with submission of these samples, please contact the Water Quality Lab at (713) 450-5142.
- 17.3 Prior to award to the low responsive/responsible bidder, the City shall verify, by means satisfactory to itself that the Bid sample submitted conforms to specifications. Failure of the samples to meet any one of the requirements specified shall be sufficient grounds for rejection of the bid.
- 17.4 The "CERTIFIED ANALYSIS" shall be obtained from an independent third party analytical laboratory certified by the Laboratory Analysts Section of the Texas Water Utilities Association for the testing of contaminants in water and waste water, or by the Texas Commission on Environmental Quality (TCEQ) or other State Primacy Agency if other than Texas) for National Pollutant Discharge Elimination System compliance testing. If the laboratory is located outside the extra-territorial jurisdiction of the City of Houston, proof of laboratory certification may be required. Analyses to be performed are listed on the attached sheet, "CITY OF HOUSTON, CERTIFIED ANALYSIS FOR CARBON DIOXIDE AWARD, FOR THE PUBLIC WORKS AND ENGINEERING DEPARTMENT".
- 17.5 Bidders will provide a product quality "Certificate of Guarantee" certifying they are qualified under the Classification and Follow-up Service of Underwriters Laboratories Inc. to furnish Drinking Water Treatment Additives classified with respect to Standard ANSI/NSF 60. The certificate will be retained by the City and used for comparison of the quality of material delivered under the contract.

18.0 DEMURRAGE:

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

19.0 PENALTY 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 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.

20.0 SUPPLIER SUPPLY OF SAFETY TRAINING:

The successful Bidder shall agree to supply as a result of participation in the bidding process, formal safety training sessions to the user department. Such safety training sessions are to consist of the following:

- 20.1 A videotape, DVD, filmstrip, slide presentation or live trainer presentation on the general safe handling of the awarded bid material.
- 20.2 Coverage in such presentation of the main safety hazards and general information as covered in the material safety data sheet.
- 20.3 Coverage in such presentation of the general characteristics and behavior of the awarded bid material.
- 20.4 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.

21.0 STOCKS AND WAREHOUSE FACILITIES:

- 21.1 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 it is able to secure all required product within a 24-hour period, and demonstrate access to sufficient production capacity to provide uninterrupted supply of CARBON DIOXIDE solution during periods of peak usage.
- 21.2 An inspection may be made to determine whether the 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 CARBON DIOXIDE for each storage location.
- 21.3 Bidder must demonstrate it is able to secure all required product within a 48-hour period.

22.0 RELEASE AND INDEMNIFICATION:

22.1 RELEASE:

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

22.2 INDEMNIFICATION:

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

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

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

22.2.1 INDEMNIFICATION PROCEDURES:

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

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

(2) Defense of Claims

- (a) Assumption of Defense Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Supplier must advise the City as to whether or not it will defend the claim. If Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation If Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

23.0 WORKER'S COMPENSATION INSURANCE:

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

24.0 INSURANCE:

- 24.1 If performance of this Award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have 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, Automobile Liability and Pollution Liability insurance shall be in at least the following amounts. Automobile Liability Insurance for autos furnished or used in the course of performance of this Award. Including Owned, Non-owned, and Hired Auto coverage. (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto coverage.) If no autos are owned by Supplier, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS AWARD MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.
- 24.2 \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate, per 12-month policy period. Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 24.3 All insurance policies required by this Award shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation against the City, and that it shall give thirty (30) days written notice to the City before they may be cancelled. Within such thirty (30) day period Supplier, covenants that it will provide other suitable policies in lieu of those about to be cancelled so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Award at once.
- 24.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.

25.0 SUCCESSORS AND ASSIGNMENTS:

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

26.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 26.1 These provisions apply to goal-oriented Awards. A **goal-oriented** Award means any City solicitation awarded for the supply of goods or non-professional services of approximately \$100,000.00 for which competitive bids are required by law and which the City Purchasing Agent has determined to have City of Houston Certified MWBE subcontracting potential.
- 26.2 The City of Houston, Ordinance Nos. 95-336 and 98-1213, 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 **0%** of the total dollar amount of this award ("City of Houston Certified MWBE goal") to either Minority Business Enterprises, Women Business Enterprises, or both, unless otherwise stated in the Bid Form or Specifications. The City Purchasing Agent with the concurrence of the Affirmative Action Director reserves the right to adjust upwards or downwards the designated percentage goal.

27.0 TAXES:

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

28.0 AWARD:

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

29.0 REJECTIONS:

- 29.1 Articles not in accordance with samples and specifications must be removed by the Supplier and at its own expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the City Purchasing Agent or designated representative.
- 29.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the City Purchasing Agent who shall have the right to reject the whole or any part of the same.

30.0 BRAND NAME

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

31.0 CHANGE ORDER

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

CHANGE ORDER

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

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

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

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

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

32.0 TERMINATION OF AWARD

32.1 By the City for Convenience:

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

32.2 By the City for Default by Supplier:

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

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

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

32.3 By the Supplier for Default by City:

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

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

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

33.0 PATENTS

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

34.0 SUPPLIER DEBT:

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

35.0 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 Suppliers 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, to be deemed a material breach leading to termination of this Award).

36.0 CONTRACT COMPLIANCE

36.1 The Department of Public Works & Engineering reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable levels of service are provided. Monitoring may take the form of but not necessarily be limited to (I) review of contractor's invoices for accuracy, (II) site visits, and (III) review of permits and certifications. The primary responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Department of Public Works & Engineering. The contact number is (713) 837-7135.

36.2 All written inquiries pertaining to this contract should be directed to the Materials Management Branch, 319 St. Emanuel, Houston, Texas, 77002 or by telephone to (713) 238-5288.

37.0 SITE VISIT:

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

38.0 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

**NO BID SHEET
FOR
CHEMICAL, CARBON DIOXIDE
FOR
THE PUBLIC WORKS & ENGINEERING DEPARTMENT**

BID INVITATION NO. S12-S23316

If your firm has chosen not to submit a bid for this procurement, please complete this form and submit to:

City Hall - City of Houston
Finance & Administration Department
Strategic Purchasing Division
P.O. Box 1562
Houston, Texas 77251

Please check the items that apply:

- Do not sell the item(s) required.
- Cannot be competitive.
- Cannot meet the Specifications highlighted in the attached Bid.
- Cannot provide Insurance required.
- Cannot provide Bonding required.
- Cannot comply with Indemnification requirements.
- Job too large.
- Job too small.
- Do not wish to do business with the City.
- Other reason / OR please state by you can not bid for this Procurement.

Company Name: _____
(Print or Type Name of Company)

By: _____
(Signature of Authorized Officer or Agent)

Vendor Number: _____

Telephone Number: (____) _____

FAX Number: (____) _____

→→ RETURN TO: Buyer – **MARTIN L. KING**
City Hall - City of Houston
Administration & Regulatory Affairs Department
Strategic Purchasing Division
P.O. Box 1562
Houston, Texas 77251