



CITY OF HOUSTON INVITATION TO BID

Issued: December 4, 2009

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, January 7, 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:

**AUTOMOTIVE LUBRICANTS
FOR
VARIOUS DEPARTMENTS
BID INVITATION NO. S32-S23377
NIGP CODE: 405-51**

Buyer

Veronica Douglas, CPPB is the Buyer for this solicitation and she may be reached at 832-393-8745. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at veronica.douglas@cityofhouston.net

Electronic Bidding

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

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Conference Room 1, Tunnel Level, City Hall Annex, 900 Bagby St., Houston, TX 77002 on Wednesday, December 16, 2009 at 10:00 a.m.

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.



AUTOMOTIVE LUBRICANTS FOR VARIOUS DEPARTMENTS BID INVITATION NO. S32-S23377

Honorable Mayor and City Council Members:

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

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

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

BIDDING AND AWARD:

It is the intent of the City to award, on the basis of 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 individual item, combination of items or overall best bid, as it is deemed in the best interest of the City.

THIS IS A SIXTY (60) MONTH AWARD

FIRM PRICES ARE TO BE QUOTED FOR THE FIRST TWELVE (12) MONTH PERIOD

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.

SECTION A. OFFICIAL BID FORM FOR AUTOMOTIVE LUBRICANTS 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
Conflict of Interest Questionnaire
Fair Campaign Ordinance
Statement of Residency
Bidders Attachments Supply

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
EEOC
Formal Instructions for Price List Bidders
MWBE
Sample Insurance Over \$50000

SECTION B.

CITY OF HOUSTON TECHNICAL SPECIFICATIONS FOR AUTOMOTIVE LUBRICANTS FOR VARIOUS DEPARTMENTS

1.0 GROUP 1, MOTOR AND ENGINE OIL:

1.1 Line Item No. 8, Oil, Engine Two-Cycle:

Shall have an API service designation of API TC.

1.2 Line Item No. 9, Oil, Motor Detergent:

Shall be for automotive engines introduced after November 2004. API Category SM.

2.0 GROUP NO. 3, TRANSMISSION FLUID:

2.1 Group No. 3, Item No. 5 (Allison Type TES-295):

BP Autran Syn 295 is a fully synthetic universal shift and automatic transmission fluid designed to increase efficiency through extended drain intervals. BP Autran Syn 295 is formulated to maintain its stability even under the most severe operating conditions.

2.1.1 Application:

BP Autran Syn 295 can be used in a variety of applications including:

- Inter/intra-city buses, school buses
- Delivery trucks and vans
- Refuse fleets
- Emergency vehicles
- Light duty pickup trucks and passenger cars (where DEXRON-III is approved)
- Recreational vehicles/motor homes
- On/off-highway vehicles

2.1.2 Features and benefits:

- Superior high/low temperature performance due to high VI synthetic base fluids
- Excellent shear stability provides a stable viscosity, providing wear protection throughout the drain interval
- Excellent corrosion and foaming resistance
- Allows for extended drain intervals and extended filter change intervals reducing operating costs
- Compatible with most other automotive transmission fluids and seals
- Offers flexibility of one fluid for year-round use in all geographic locations
- Provides durable and consistent transmission shifts
- Provides excellent thermal and oxidation stability resulting in lower deposit formation

In addition, BP Autran Syn 295 meets or exceeds the performance requirements set forth by OEMs and is listed or approved under the following specifications:

Allison TES-295 (AN-031002)
Allison C-4 (33014203)
DEXRON®-III (G-34746)

ZF Transmissions
Voith Transmission

2.0 GROUP NO. 3 – TRANSMISSION FLUID (CONTINUED):

Item No. 5, (Allison Type TES-295) (continued):

2.1.3 Typical Properties:

Viscosity, ASTM D-445, cSt @40°C (104°F) @100°C(212°F)	37.7 7.35
Brookfield Viscosity, ASTM D-2983, cP@-40°C (-40°F)	8,150
Viscosity Index, ASTM D-2270	165
Specific Gravity, ASTM D-287, @ 16°C (60°F)	0.845
Flash Point, ASTM D-92, °C/°F	235/455
Fire Point, ASTM D-92, °C/°F	272/522
Pour Point, ASTM D-97, °C/°F	-60/-76
Foam Resistance Test, QM6417M @95°Cand135°C	No Foam
KRL Shear Test, % Viscosity Loss @ 20 hrs	3.8
Rust Protection, ASTM D1748 (modified)	No Rust

2.2 Item No. 7, Fluid, Transmission:

This item shall meet the following specifications, General Motor GM6173M, Ford M2C138J, Dexron IIIH Mercon and Allison C-4.

Recommended for:
API Service CF2, CF (SAE 30, 40, 50)
API Service CF (SAE 10W, 20W-20)
Allison C-4 (SAE 30)

<u>API Service Classifications</u>	<u>SAE</u>
SAE GRADE	30
API Service	CF-2, CF
Product Code	36540
Density, g/cm ³ @15°C	0.881
Color, ASTM	2.5
Flash Point, COC, C° (°F)	240 (465)
Pour Point, °C (°F)	-33 (-27)
Viscosity	
cSt @ 40° C	89.0
cSt @ 100° C	11.5
SUS @ 100° F	460
SUS @ 210° F	65.7
Viscosity Index	116
Viscosity, Cold Cranking (CCS), cP @ ° C	----
Viscosity, High Shear (HTHS), cP @ 150° C	3.5
Ash, Sulfated, ASTM D874, w%	0.88
Copper Corrosion, ASTM D130	1A
Foam Test, ASTM D892	Pass
Total Base Number, ASTM D2896	7.2
Zinc, wt%	0.098

3.0 GROUP NO. 4 – MULTI-PURPOSE GREASE & GEAR LUBRICANT:

3.1 Item No. 14, Triton Synthetic Gear Lube:

Triton Synthetic Gear Lube is a synthetic, multipurpose, extreme-pressure, API GL-5 automotive gear lubricant. It is specifically designed for use in passenger car and truck axles with hypoid gear sets operating in extreme temperatures or under severe driving conditions. It is formulated to provide long service life and extended gear life in automotive differentials operating under varying conditions of speed, load, temperature and torque. The carefully balanced formulation is designed to minimize oxidative sludge and varnish formation, reduce wear, prevent scoring damage, and protect against metal fatigue and spalling damage under shock-load conditions. The full-synthetic formulation provides enhanced oxidation resistance and thermal stability at high temperatures and better low-temperature properties compared with conventional automotive gear oils, resulting in longer service intervals and better performance over a wider temperature range.

Triton Synthetic Gear Lube is fully approved for extended drain service in ArvinMeritor, Dana and Eaton final drive axles. The SAE 75W-90 viscosity grade meets the performance requirements of the Dana SHAES-256 Rev. C specification.

3.1.1 Applications:

Triton Synthetic Gear Lube is recommended for service fill of conventional differentials and for top-off of limited-slip differentials in passenger cars and trucks. It is also recommended for service fill of differentials, final drives and transfer cases in some off-highway equipment. It may be used in non-synchronized manual transmissions in trucks, buses and heavy equipment where the manufacturer specifies an API GL-5 or MT-1 gear oil. It is approved for 500,000-mile drain intervals in heavy-duty axles under ArvinMeritor, Dana (SAE 75W-90) or Eaton Roadranger extended warranties.

Triton Synthetic Gear Lube meets or exceeds the requirements of:

- API Service GL-5, MT-1
- ArvinMeritor 076-N (SAE 75W-90), 076-B (SAE 80W-140)
- Dana SHAES-256 Rev. C (SAE 75W-90)
- Eaton Roadranger* E500™ (formerly PS-163)
- International TMS 6816
- Mack GO-J Plus (SAE 75W-90), GO-J (SAE 80W-140)
- MIL-PRF-2105E
- SAE J2360

3.1.2 Features/Benefits:

- Extended drain, all-season performance.
- Outstanding oxidation resistance and thermal stability to minimize sludge and varnish formation.
- Excellent thermal durability and extreme-pressure properties for extended gear life.
- High load-carrying capacity for protection against scuffing and wear.
- High shear stability.
- Outstanding low-temperature properties.
- Protects against rust and corrosion.
- Good foam resistance.
- Potential fuel economy savings compared with conventional SAE 80W-90 or SAE 85W-140 gear oils.

3.0 GROUP NO. 4 – MULTI-PURPOSE GREASE & GEAR LUBRICANT (CONTINUED):

3.1.3 Typical Properties:

Triton Synthetic Gear Lube Typical Properties		
SAE Grade	75W-90	80W-140
Density, q/cnf @ 15.6°C	0.891	0.902
Density, lbs/qal @ 15.6°C	7.42	7.51
Color, ASTMD1500	8.0	8.0
Flash Point (COC), °C (°F)	204 (399)	200 (392)
Pour Point, °C (°F)	-45 (-49)	-40 (-40)
<u>Viscosity,</u>		
cP @ -26°C (Brookfield)	—	75,000
cP @ -40°C (Brookfield)	125,000	—
cSt @ 40°C	122	284
cSt@100°C	16.6	30.6
SUS@100°F	627	1,476
SUS@210°F	86.2	149
Viscosity Index	147	146

3.2 Item Nos. 15 & 16, 76 Extra Duty Gear Lube:

76 Lubricants Extra Duty Gear Lube is a premium quality, heavy-duty, extreme-pressure (EP) industrial gear oil developed for use in enclosed gearboxes operating under moderate to severe service conditions. It is specially formulated to minimize deposit formation and provide excellent gearbox cleanliness.

Extra Duty Gear Lube is available in eight viscosity grades ranging from ISO 68 to ISO 1500 (AGMA 2 EP to AGMA 9 EP). It is formulated with high-quality paraffinic base oils and select additives that provide extreme-pressure and antiwear properties, excellent deposit control, protection against rust and corrosion, and resistance to foaming. It has high load-carrying capacity for protection against scuffing and wear. It has excellent oxidation resistance and thermal stability at high temperatures to minimize sludge and varnish formation, and provides long service life. It has excellent water-separating properties to minimize the formation of emulsions, and is resistant to excessive foam buildup that can interfere with proper lubrication.

3.2.1 Applications:

- Enclosed industrial gear sets operating under heavy loads, high peak loads or intermittent shock loads.
- Enclosed spur, bevel, helical, herringbone and planetary gear sets where the equipment manufacturer specifies an AGMA EP gear oil.
- Heavily loaded plain and rolling-element bearings.

Extra Duty Gear Lube meets the performance requirements of:

- AGMA Standard 9005-E02 (formerly 250.04)
- Aluminum Company of America (ALCOA)
- Cincinnati Machine Specifications P-63 (2 EP), P-76 (3 EP), P-77 (4 EP), P-74 (5EP), P-59 (6 EP), P-35 (7 EP), P-78 (8A EP)
- DIN 51517 Part 3, Lubricating Oils, Type CLP
- German Steel Industry Specification SEB 181226, Type CLP
- ISO 12925-1:1996, Type L-CKC
- U.S. Steel 224
- Most major gearbox manufacturers, including Amarillo, David Brown, Falk, Hansen and Lufkin

3.2.2 Features/Benefits

- High load-carrying capacity for protection against scuffing and wear
- Excellent oxidation resistance and thermal stability
- Excellent deposit control for gearbox cleanliness
- Protects against rust and corrosion
- Fast water separation

- Quick foam release

3.0 GROUP NO. 4 – MULTI-PURPOSE GREASE & GEAR LUBRICANT (CONTINUED):

Item Nos. 15 & 16, 76 Extra Duty Gear Lube (Continued):

3.2.3 Typical Properties:

76 Extra Duty Gear Lube Typical Properties								
ISO Grade	68	100	150	220	320	460	680	1500
AGMA Grade	2EP	3EP	4EP	5EP	6EP	7EP	8EP	9EP
Density, q/cm ³ @ 15.6°C (60°F)	0.875	0.878	0.882	0.88	0.89	0.89	0.901	0.91
Density, lbs/qal @ 15.6°C (60°F)	7.29	7.31	7.34	7.39	7.44	7.49	7.50	7.60
Color, ASTM D1500	3.0	3.0	4.0	5.0	5.0	6.0	7.5	8.0
Flash Point								
°C	235	235	243	249	254	254	260	291
°F	455	455	469	480	489	489	500	556
Pour Point,								
°C	-30	-36	-36	-27	-15	-9	-10	-3
°F	-22	-33	-33	-17	5	16	14	27
Viscosity,								
cSt @ 40°C	68.0	100	150	220	320	460	680	1,50
cSt@100°C	8.9	11.5	15.2	19.4	24.5	31.0	39.0	65.0
SUS@100°F	352	521	786	1,16	1,70	2,46	3,673	8,21
SUS@210°F	56.2	65.8	80.5	98.5	122	152	190	316
Viscosity Index	104	102	102	99	98	97	95	96
Acid Number, ASTM D974, mg KOH/p	0.73	0.73	0.73	0.73	0.73	0.73	0.60	0.60
Copper Corrosion, 1a ASTM D130	1a	1b						
Four-Ball EP, ASTM D2596,								
Weld Load, kqf	200	250	250	250	250	250	315	315
Four-Ball Wear, ASTM D4172,								
Scar Diameter, mm	0.30	0.30	0.30	0.30	0.30	0.30	0.47	0.47
FZG Gear Test, ASTM D5182,								
Failure Load Stage	>12	>12	>12	>12	>12	>12	>12	>12
Timken OK Load, 65 ASTM D2782, lb	70	70	70	70	70	70	60	60

3.0 GROUP NO. 4 – MULTI-PURPOSE GREASE & GEAR LUBRICANT (CONTINUED):

3.3 Item No. 17, White Oil Specifications:

White Oil is a highly refined, premium quality mineral oil developed for use in food processing plants, consumer products and in other applications that require an exceptionally pure white mineral oil. It meets or exceeds the highest industry standards for purity and stability. It is registered by NSF International as an H1 lubricant for use where incidental food contact may occur. It also meets former 1998 USDA H1 guidelines, and is certified Kosher and Pareve.

White Oil is manufactured with a mixture of paraffinic and naphthenic hydrocarbons of the highest purity. It is available in five grades: 50/60 (ISO VG 7), 65/75 (ISO VG 10/15), 80/90 (ISO VG 15), 200/215 (ISO VG 32/46) and 340/365 (ISO VG 68). It contains Vitamin E as a natural oxidation inhibitor and remains colorless, odorless and tasteless during normal storage and service life. It is nontoxic and has outstanding storage stability.

White Oil meets FDA requirements for use in applications where direct, indirect or incidental contact with food may occur. It may be used to lubricate machinery, protect against moisture or control dust on grains and animal feed. It also is used as a component in certain consumer products, such as cosmetics and pharmaceuticals and may be used as smoke oil at air shows.

3.3.1 Applications:

- Food processing, bottling and canning equipment
- Protective coating for raw fruits and vegetables
- Eggshell sealant in facilities operating under the USDA voluntary shell egg grading program
- Dust suppressant for grain or animal feed
- Drip oil for deep well water pumps
- Process oil or diluent in adhesives, sealants, caulks, pharmaceuticals, cosmetics, rubber extender oils and plastics
- Smoke oil
- Textile lubricants
- Household cleaners and polishes

3.3.2 White Oil meets the requirements of:

- CTFA (Cosmetics, Toiletries and Fragrances Association)
- FDA Code of Federal Regulations
- 21 CFR 172.878 for direct food contact 21 CFR 178.3620 for indirect food contact 21 CFR 573.680 for animal feed
- NSF International H1 and former 1998 USDA H1 guidelines for incidental food contact
- USDA voluntary shell egg grading program, for protective coating (grades 50/60, 65/75 and 80/90)
- United States Pharmacopoeia (USP) and National Formulary (NF)

3.3.3 Features/Benefits:

- Meets NSF International requirements for direct, indirect and incidental food contact
- Certified Kosher and Pareve
- Colorless, odorless and tasteless
- Excellent color stability
- Contains vitamin E for oxidation inhibition
- Nonstaining

GROUP NO. 4 – MULTI-PURPOSE GREASE & GEAR LUBRICANT:

3.3 Item No. 17, White Oil Specifications (Continued):

3.3.4 Typical Properties:

White Oil – Typical Properties					
Grade	50/60	65/75	80/90	200/215	340/36
ISO Grade	7	10/15	15	32/46	68
Density, q/cnf @ 15.6°C (60°F)	0.827	0.850	0.855	0.862	0.875
Density, lbs/gal @ 15.6°C	6.89	7.08	7.12	7.18	7.29
Color, ASTMD1500	L0.5	L0.5	L0.5	L0.5	L0.5
Color, Saybolt	+30	+30	+30	+30	+30
Flash Point (COC), °C (°F)	153(307)	177(3)	186(367)	210(410)	225
Pour Point, °C (°F)	-9(16)	-15(5)	-15(5)	-15(5)	-15(5)
Viscosity					
cSt @ 40°C	6.9	12.3	15.2	39.5	66.2
cSt@100°C	2.4	2.9	3.4	6.1	8.0
SUS@100°F	50	71	83	204	345
SUS@210°F	34	36	38	47	53
Viscosity Index	89	68	88	98	84

4.0 RE-FINED OIL:

No re-fined oil shall be used.

5.0 DRUM RETURN:

The supplier shall pick up emptied 55 gallon drums provided by the award at time of delivery/shipment to City facilities. The department will notify the supplier should any additional emptied 55 gallon drums need to be picked up. The supplier shall label or imprint each 55 gallon drum with their company logo and/or company name and phone number. These services shall be at no additional cost to the City.

6.0 COMPLIANCE:

6.1 The Public Works & Engineering Department reserves the right to monitor this award for compliance to ensure legal obligations are fulfilled and acceptable levels of service are provided.

6.2 Monitoring may take the form of, but shall not necessarily be limited to:

- 6.2.1 Inspecting, testing, and/or sampling of goods delivered or to be delivered
- 6.2.2 Review of deliveries received for accuracy and timeliness
- 6.2.3 Review of Supplier's invoices for accuracy
- 6.2.4 Review of certifications and/or licenses
- 6.2.5 Site visits

6.3 The primary responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works & Engineering.

7.0 PRE-PERFORMANCE MEETING:

Subsequent to award approval/execution, the supplier(s) shall be required to attend a pre-performance conference. The Strategic Purchasing Division or the primary user department will host the pre-performance conference. The purpose of the pre-performance conference is for the supplier to introduce his or her project manager to the City staff and for City staff to introduce the end-users, compliance and accounts payable representatives.

8.0 SITE INSPECTION:

The City reserves the right to inspect the bidder's current place of business to evaluate equipment conditions and capabilities, staff experience, and training and storage capabilities as they relate to the performance of this contract.

9.0 PRICE ADJUSTMENT:

9.1 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.

9.2 Price Decreases:

9.2.1 If the Supplier's Direct Cost **decreases** at any time during the full term of this award, Supplier shall **immediately** pass the decrease on to the City and lower its prices by the amount of the decrease in Direct Cost.

9.2.2 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.

9.3 Price Increases:

9.3.1 Suppliers may request a price increase after six months from the bid opening date of the bid received by the City Secretary of the City of Houston. Subsequent price increases may be requested six months from the date of the previous approved price increase. The amount of the first increase shall not exceed actual documented increase in Supplier's Direct Cost and shall not ever be more than 25% above the previous bid price. The amount of the subsequent price increase shall also not exceed this percentage.

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

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

9.3.3 If the City Purchasing Agent approves the price increase, he or she shall notify Supplier in writing; no price increase will be effective until Supplier receives this notice. If the City Purchasing Agent does not approve Supplier's price increase, Supplier may terminate its performance 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.

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

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 automotive lubricants that is similar in size and scope to this solicitation. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the supplier's responsibility. Bidder must have references documenting that it has delivered automotive lubricants.**

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 C.

CITY OF HOUSTON GENERAL TERMS AND CONDITIONS FOR AUTOMOTIVE LUBRICANTS FOR VARIOUS DEPARTMENTS

1.0 TERM OF AWARD:

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

2.0 SUPPLIER'S DUTY TO PAY:

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

3.0 INVOICING:

- 3.1 In order to expedite payment all invoices must be submitted in triplicate, 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.
- 3.2 All delivery tickets must have a description of the commodity delivered.
- 3.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 3.4 Delivery tickets and packing slips shall contain the same information as the invoice.
- 3.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

4.0 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.

5.0 MATERIAL SAFETY DATA SHEETS (MSDS):

- 5.1 All Bidders should submit with their bid, two (2) complete, most current copies of the required Material Safety Data Sheet (OSHA Form 174), manufacturer's safety data sheet, or such other sheet that contains the same information as the OSHA Form 174 for each product bid. Should these forms be omitted from the bid, Bidder promises to deliver said forms within ten (10) working days of receipt of notice from the City. Failure to comply with this notice will be just cause for rejection of the bid from further consideration. A Material Safety Data Sheet must accompany each shipment.
- 5.2 Each sheet submitted should be identified by the Bidder's complete company name; formal bid number and bid form item number.

6.0 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 is found to be contaminated or contain heavy metal products, it will be the responsibility of the Supplier to remove and replace the contaminated product at their expense and at no cost to the City. The City has the option to solicit the removal of any contaminated material and charge back the Supplier any and all costs involved.

7.0 INSPECTIONS AND AUDITS:

- 7.1 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.
- 7.2 Representatives of the City have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime award insofar as those books and records relate to performance under the prime award.
- 7.3 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 this award. 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.

8.0 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 Supplier of the items bid.

9.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

- 9.1 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.
- 9.2 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 CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.**

GENERAL TERMS AND CONDITIONS FOR AUTOMOTIVE LUBRICANTS FOR VARIOUS DEPARTMENTS. CONTINUED:

10.0 DELIVERIES:

- 10.1 The Supplier agrees to make deliveries only upon receipt of duly signed and approved Purchase Orders issued by the City of Houston City Purchasing Agent or designee. Delivery made without such Purchase Order shall be at Supplier's risk and shall leave the City the option of canceling any award implied or expressed herein.
- 10.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.
- 10.3 Full tare must be allowed and no charges made for packages.
- 10.4 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 Supplier 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.
- 10.5 The Bidder must demonstrate its ability to secure and deliver any item within five (5) working days. Forty-eight (48) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.

11.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on a purchase order. The Supplier shall retain title and control of all goods until they are delivered and award of coverage has been 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.

12.0 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.

13.0 RESTOCKING (EXCHANGES AND RETURNS):

There will be no restocking charge to the City for return or exchange of any item purchased under the terms of this award. If the City wishes to return items purchased under this award, the Supplier agrees to exchange, these items for other items, with no additional charge incurred. Items must be returned to Supplier within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Supplier shall invoice the City for increase price or provide the City with a credit or cash refund for any decrease in price. On items returned, a credit or cash refund will be issued by the Supplier to the City. This return and exchange option shall extend for thirty (30) days following the expiration date of the award. All items returned by the City must be unused and in the same merchantable condition as when received. **Items that are special ordered and/or stocked by the Supplier at the specific request of the City may be returned only upon approval of the Supplier.**

14.0 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 solicitation 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 awarded, the charges therefore 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.

15.0 FORCE MAJEURE:

- 15.1 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.
- 15.2 This relief is not applicable unless the affected party does the following:
 - 15.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 15.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 15.3 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.
- 15.4 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. SUPPLIER 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.

16.0 SAMPLES:

- 16.1 If requested by the City, the two (2) apparent low Bidders will be required to submit samples of the items proposed within seven (7) days of such request. The samples will be used to determine if the proposed items meet the specifications stated herein.
- 16.2 **If the Bidder fails to provide samples within the seven (7) day period, as required, the City may reject your bid and not consider it for further evaluation.**
- 16.3 These samples, if not subject to destructive testing, will be returned to the supplying Supplier. A notice will be mailed to the Supplier when samples are ready to be released by the City. Supplier will have fourteen (14) days to redeem the samples. If samples are not redeemed within this time period the City cannot be responsible for condition or loss of the subject items.

17.0 WARRANTY:

A minimum warranty of twelve (12) months from Supplier and the manufacturer's warranty will be furnished on materials and workmanship shall be provided. The warranty period shall begin the day the City officially accepts the item. Any warranty work is to be completed within five (5) working days after receipt of item.

18.0 RELEASE:

PRIME SUPPLIER 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.

19.0 INDEMNIFICATION:

- 19.1 PRIME SUPPLIER 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)

19.0 INDEMNIFICATION (CONTINUED):

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

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

19.3 INDEMNIFICATION PROCEDURES:

- (1) Notice of Claims. If the City or Prime 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.

This 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 Prime Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

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

20.0 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.

21.0 INSURANCE:

- 21.1 If performance of this award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have and maintain in effect insurance coverage and furnish certificates of insurance showing the City as an additional insured, in duplicate form, prior to the beginning of the award. The City shall be named as an additional insured on all such policies except Worker's Compensation. **The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.** Comprehensive General Liability including Contractual Liability and Automobile Liability insurance shall be in at least the following amounts: Automobile Liability Insurance for autos furnished or used in the course of performance of this award including Owned, Non-owned, and Hired Auto coverage (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto coverage.) If no autos are owned by Supplier, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS AWARD MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.
- 21.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 21.3 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.
- 21.4 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.

22.0 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.

23.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 23.1 These provisions apply to goal-oriented contracts. A goal oriented contract means any contract 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.
- 23.2 Prime Supplier agrees to comply with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances insofar as such programs apply to this Contract. Prime Supplier further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Contract to Minority and Women-owned Business Enterprises certified by the City's Affirmative Action Division. In addition, Prime Supplier acknowledges that it has reviewed the requirements for good faith efforts that are on file with the City's Affirmative Action Division, is familiar with such requirements, and will comply with them.
- 23.3 Prime Supplier shall require written subcontracts with all MWBE subcontractors and suppliers, which must contain the terms, set out in the documents attached herein. If Prime Supplier is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.
- 23.4 Refer to "City of Houston Goal-Oriented Minority and Women Business Enterprises Contract Provisions" attachment, which is incorporated in the specifications herein by this reference for all purposes, for more detailed information on this requirement.

GENERAL TERMS AND CONDITIONS FOR AUTOMOTIVE LUBRICANTS FOR VARIOUS DEPARTMENTS. CONTINUED:

24.0 TAXES:

The City is exempt from Federal Excise and Transportation Tax & limited Sales & Use Tax. Unless Bid Form or Specs 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 City Purchasing Agent, if satisfied as to the facts, will approve or issue the necessary certificates.

25.0 AWARD:

25.1 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.

25.2 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.

26.0 REJECTIONS:

26.1 Articles not in accordance with samples and specifications must be removed by the Supplier and at his expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the City Purchasing Agent or designated representative.

26.2 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.

27.0 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.

28.0 CHANGE ORDER:

28.1 At any time during the term of the award, 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.

28.2 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]

Subject to all terms and conditions of the award, 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]

28.0 CHANGE ORDER (CONTINUED):

- 28.3 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:
- 28.3.1 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 awarded amount must be approved by the City Council.
 - 28.3.2 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.
 - 28.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.
- 28.4 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, 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.
- 28.5 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.

29.0 TERMINATION OF AWARD:

- 29.1 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 and not previously paid.

- 29.2 By the City for Default by Supplier:

29.2.1 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.
- (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 as of such date and have no further obligation under the award.

29.2.2 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.

29.0 TERMINATION OF AWARD (CONTINUED):

29.3 By the Supplier for Default by City:

- 29.3.1 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.
- 29.3.2 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.
- 29.3.3 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 as of such date.

30.0 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.

31.0 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.