



CITY OF HOUSTON INVITATION TO BID (ITB)

Issued: July 26, 2013

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, August 15, 2013**, 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:

**READY MIX CONCRETE, 5-7 SACK MIX
FOR
VARIOUS DEPARTMENTS
BID INVITATION NO. S06-S24632
NIGP CODE: 750-70**

Buyer

Tywana L. Rhone is the Buyer for this solicitation and she may be reached at 832.393.8754. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at tywana.rhone@houstontx.gov.

Electronic Bidding

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

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Basement, City Hall, 901 Bagby, Houston, Texas 77002 at 10:00 a.m. Wednesday, July 31, 2013 in Conference Room No. 1

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.



READY MIX CONCRETE 5-7 SACK MIX FOR VARIOUS DEPARTMENTS BID INVITATION NO. S06-S24632

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver **ready mix concrete 5-7 sack mix, FOB destination point as listed on the electronic bid form and on the individual Purchase Orders**, in accordance with the Net Prices and other conditions shown herein, and in accordance with the City's Specifications and General Terms and Condition Specifications. When issued, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid. THE MANUFACTURER'S NAME, PRODUCT NAME AND PRODUCT NUMBER MUST BE DESIGNATED IN THE SPACE PROVIDED IF BIDDERS ARE BIDDING AN "OR EQUAL" ITEM.

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

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

BIDDING AND AWARD:

It is the intent of the City to award, on the basis of low overall net bid meeting specifications for the service areas; 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 service area, combination of service area or overall best bid, as it is deemed in the best interest of the City.

THIS IS A TWENTY FOUR (24) MONTH AWARD WITH THREE (3) ONE (1) YEAR OPTIONS TO EXTEND

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 READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

PROTEST

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

NO CONTACT PERIOD:

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

HIRE HOUSTON FIRST:

THIS PROCUREMENT IS SUBJECT TO THE HIRE HOUSTON FIRST PROGRAM, WHICH GIVES A PREFERENCE TO CERTAIN LOCAL BIDDERS IN AWARD OF THE PROCUREMENT. FOR MORE INFORMATION, GO TO:

<http://www.houstontx.gov/onestop/hirehoustonfirststaffidavit.pdf>

Designation as a City Business or Local Business

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit ("HHF Affidavit")** to the Director of the Office of Business Opportunity and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

Download the HHF Affidavit from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirststaffidavit.pdf>

Submit the completed application forms to: Office of Business Opportunity, Houston Business Solutions Center (HBSC), 611 Walker, Level, Houston, TX 77002 or Applications may be submitted via e-mail to HoustonBSC@houstontx.gov or faxed to 832.393.0952.

SECTION A. OFFICIAL BID FORM FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

HIRE HOUSTON FIRST (CONTINUED):

Award of a Procurement of \$100,000 or More for Purchase of Goods:

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

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

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

Award of Procurement under \$100,000 for Purchase of Goods:

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

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

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

Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

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

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

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

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

SECTION A. OFFICIAL BID FORM FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

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
Bidders Attachments Supply
Location of Bidders Inventory
Reference Form B

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
Drug Forms
MWBE
Certificate of Insurance
Formal Instructions for Bid Terms
EEOC
Sample Insurance Endorsements
Criminal Justice Information Services Addendum (CJIS)

SECTION B.
CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
READY MIX CONCRETE 5-7 SACK MIX
FOR THE
VARIOUS DEPARTMENTS

1.0 FACILITIES AND SERVICE REQUIREMENTS:

1.1 Supplier must meet the following requirements:

1.1.1 Supplier must warrant and agree that all materials supplied herein shall be produced in compliance with the guidelines, regulations, codes, terms, standards, and laws of all Federal, State and local authorities and all other authorities having jurisdiction.

1.1.2 Supplier must be able to comply with the required delivery schedule as defined in Section 2.0.

1.2 The Supplier will be required to complete and return (see Reference Form B , in Table 1) a list of all plant locations that may be utilized to fulfill the scope of work for this solicitation. The City of Houston reserves the right, prior to award, to visit any and all locations.

1.3 Bids for Free on Board (FOB) Supplier's plant will be accepted only from Suppliers who operate a plant in the area for which the Supplier is submitting a bid, as defined in Section 4.0 (Geographical Service Boundaries). The successful Supplier shall allow City of Houston trucks to pick up from any of their plant operations in its awarded area.

1.4 Supplier(s) will be required to have facilities at each location that provide an area to clean-out or discharge unused product from City of Houston trucks. The Supplier will have to purchase and provide a hydration stabilizer as defined in the bid package, American Society for Testing Materials (ASTM) C-494 Type D retarder, for cleaning (WR Grace & Co., Recover brand or equal).

1.5 The City may request additional information or visit any of the facilities to determine supplier's ability to service requirements under this award.

TECHNICAL SPECIFICATIONS FOR READY MIX CONCRETE 5-7 SACK MIX CONTINUED:

2.0 DELIVERY AND/OR PICKUP:

- 2.1 The Supplier agrees that no delivery and/or pick up shall be made until Supplier receives a purchase order, duly signed and approved by the City of Houston Purchasing Agent. Deliveries and/or pick up 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.
- 2.2 Supplier must have its facility opened Monday through Friday from 7:00 AM until 5:00 PM for pick-up and delivery. The City must provide a minimum forty-eight (48) hours advanced notice for the plant to be opened on Saturdays from 7:00 AM through 5:00 PM for special projects.
- 2.3 **Delivery Orders:** The Supplier must provide all personnel, supplies and equipment needed to deliver an acceptable product in the required amount within twenty-four (24) hours after receipt of order. Delivery locations will vary and will be designated by the City with each order.
- 2.4 **Pickup Orders:** Material shall be available for pickup in quantities as specified by the City of Houston within four (4) hours after notification has been provided.
 - 2.4.1 If Supplier is unable to comply with above requirements (sub-provisions 2.3 and 2.4) after notification, the Supplier will coordinate with City personnel to develop a delivery process that is mutually agreeable to both parties.
- 2.5 If Supplier is unable to comply with this requirement after delivery has been requested, the City reserves the right to purchase material in the open market and charge the difference in cost to the Supplier.
- 2.6 In case of inclement weather conditions, the City shall notify the Supplier if any deliveries will be cancelled or re-scheduled.
- 2.7 There are not to be any fuel surcharges on pickups or deliveries

3.0 MEASUREMENT AND PAYMENT:

- 3.1 The measurement and batching of fine and coarse aggregate shall be by weight. The measurement of bulk cement shall be by weight. All scales must be certified by the State.
- 3.2 The batching shall be done at a plant built specifically for weighing and proportioning concrete aggregate and Portland cement. The scales shall be designed and maintained so that the accuracy shall be not more than 0.5% of the net load of each type of material.
- 3.3 Payment shall be made at unit bid price per cubic yard for all concrete delivered to various locations or into City Transit Drum mix trucks as specified on individual purchase orders.

4.0 GEOGRAPHICAL SERVICE BOUNDARIES:

- 4.1 Northwest Area: Five (5) miles of the outer limits of Beltway 8
- 4.2 Northeast Area: Five (5) miles of the outer limits of Beltway 8
- 4.3 Southeast Area: Five (5) miles of the outer limits of Beltway 8
- 4.4 Southwest Area: Five (5) miles of the outer limits of Beltway 8
- 4.5 Successful Bidders for F.O.B. Bidder's plant for 5, 6 and 7 sack ready-mix concrete will only be accepted from Bidders who operate a plant located within five (5) miles of the outer limits of Beltway 8.

4.0 GEOGRAPHICAL SERVICE BOUNDARIES (CONTINUED):

4.6 City of Houston Cement Truck Locations and No of Trucks:

LOCATION	NO. OF TRUCKS
8430 New Castle, 77027	2
5500 McCarty, 77013	1
5900 Teague, 77041	6
1700 E. Crosstimbers, 77093	2
7101 Renwick, 77081	2
2700 Dalton, 77017	1
718/802 E. Burrese, 77076	2
5900 Teague, 77041	1

5.0 MATERIALS FOR 5 THROUGH 7 SACK MIX CONCRETE TYPE I:

5.1 DETAILED MATERIAL:

- 5.1.1 The Supplier furnishing these items shall be experienced in formulation and production of such items and shall furnish evidence, if requested, to the City of having supplied similar items. The bidder shall be an established Supplier of the items bid.
- 5.1.2 The mix furnished shall be of the highest quality as to formulation and materials used, meeting both Texas Department of Transportation (TXDOT) and City of Houston Specification Standards Section: (02751 Sections 1.03 and 2.01), (02753 Sections 1.03, 2.01 and 3.01 thru 3.06), (02754 Sections 2.01 (a) 3.01, 3.02, 3.04 and 3.05) and 02771 Section 2.01 (a) and 3.05 which may be viewed at the following link:
http://documents.publicworks.houstontx.gov/documents/specifications/2012_standard_specifications.pdf

5.2 MIX:

- 5.2.1 The concrete mix shall consist of Portland cement coarse aggregate, fine aggregate and mineral filler if required. It shall be proportioned according to these specifications.
- 5.2.2 The aggregate mix shall be of the size and type specified by City of Houston personnel who order ready mix concrete. Each material number for ready mix concrete designates the size of the aggregate. Smaller mix is designated as 3/8 to 1". Larger aggregate mix is designated as >1" to 1.5". City of Houston personnel will designate limestone or gravel for the aggregate mix.
- 5.2.3 The mixture shall contain from five (5) to seven (7) sacks of cement, whichever is specified, per cubic yard of concrete. There shall be not more than 0.85 cubic foot of coarse aggregate (dry loose volume) in each cubic foot of concrete. If ordered, mineral filler shall be added to the mixture.
- 5.2.4 City of Houston personnel who order the ready mix concrete will designate:
 - 5.2.4.1 Summer Mix that contains retarder to slow the setting time of ready mix concrete in hotter weather, and
 - 5.2.4.2 Winter Mix that does not contain retarder to slow the setting time during cooler weather
- 5.2.5 There will be no additional charges for Summer Mix or Winter Mix for 5, 6 and 7 sack ready-mix concrete.

5.3 MINERAL FILLER:

- 5.3.1 A mineral filler may be used, if necessary, to improve the workability or plasticity of the concrete mixture. It shall be stone dust, sand or crushed oyster shell dust or a combination of any of them. It shall be clean and of acceptable quality. When tested with standard laboratory sieves, the mineral filler shall conform to the following requirements:

Passing	30 mesh sieve	90-100%
Passing	200 mesh sieve	50-100%

TECHNICAL SPECIFICATIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

5.0 MATERIALS FOR 5 THROUGH 7 SACK MIX CONCRETE TYPE I, CONTINUED:

5.3 MINERAL FILLER (CONTINUED):

5.3.2 When mineral filler is used, it must be batched and weighted separately and the amount shall not exceed fifteen percent (15%) of the weight of the fine aggregate.

5.4 CEMENT:

The cement used shall be a standard brand of Portland cement. It shall conform to the latest specifications of ASTM Designation C-150.

5.5 COARSE AGGREGATE:

5.5.1 The coarse aggregate shall be crushed stone or gravel as specified. It shall be clean, hard and free from excessive adherent coatings. When tested by standard laboratory methods, the aggregate shall conform to the following requirements and the maximum amounts of deleterious substances shall not exceed the following percentages by weight:

Removed by decantation	1.00%
Shale	0.025%
Clay lumps	0.025%
Soft fragments	3.00%
Other local deleterious substances such as friable pieces	3.00%
The total of the percentages of all the above constituents shall not exceed	5.00%

5.5.2 The coarse aggregate shall not wear more than forty-five percent (45%) when tested according to the American Association of State Highways Officials (AASHO) Method T-96 (Los Angeles Rattler Test).

5.5.3 When tested by standard laboratory methods, the coarse aggregate shall conform to the grading requirements given below:

<u>RETAIN ON</u>	<u>PERCENTAGE BY WEIGHT</u>
2-1/2" Sieve	0
1-1/2" Sieve	0 to 5
3/4" Sieve	25 to 60
No. 4 Sieve	95 to 100

5.5.4 Coarse aggregate from different material sources or having different characteristics shall not be mixed either in stockpiling or batching. All aggregates shall be handled and stored in a manner that will prevent size aggregation and contamination by foreign substances. Aggregate that has become segregated shall be remixed to conform to the above grading. Aggregate that has become contaminated with foreign substances will be rejected.

5.6 FINE AGGREGATE:

5.6.1 The fine aggregate shall be washed sand consisting of clean, hard, durable, uncoated grains free from soft or flaky particles and all other injurious material. It shall be graded from coarse to fine and when tested by standard laboratory methods, shall meet the following grading requirements:

<u>RETAIN ON</u>	<u>PERCENTAGE BY WEIGHT</u>
3/8" Sieve	0
No. 4 Mesh Sieve	0 to 5
20 Mesh Sieve	25 to 60
100 Mesh Sieve	95 to 100

5.6.2 The weight removed by the elutriation test shall be not more than two percent (2%).

TECHNICAL SPECIFICATIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

5.0 MATERIALS FOR 5 THROUGH 7 SACK MIX CONCRETE TYPE I, CONTINUED:

5.6 FINE AGGREGATE (CONTINUED):

- 5.6.3 When subjected to the color test for organic impurities, (ASTM Designation C-40), the fine aggregate shall not show a color darker than the standard color.
- 5.6.4 Fine aggregate from different material sources or having different characteristics shall not be mixed in stockpiling. All aggregates shall be handled and stored in a manner that will prevent size segregation and contamination by foreign substances. Aggregate that has become segregated shall be remixed to conform to the above grading. Aggregate that has become contaminated with foreign substances will be rejected.

6.0 POST AWARD MEETING:

Once the award has been approved by City Council, the Public Works & Engineering Department (PWE) will schedule a post award meeting with the successful Supplier and the PWE Department's end users. This meeting will cover procurement requirements, Supplier invoicing, Supplier payment, and other matters related to administering the award.

7.0 EXPERTISE/EXPERIENCE/QUALIFICATION STATEMENT:

- 7.1 Supplier must be a firm, corporation or partnership, who engages in the sale and distribution of the commodity as specified herein.
- 7.2 Supplier must be able to provide verifiable (Company brochure, website) organization, facilities, equipment and personnel to ensure prompt and efficient service to the City of Houston.
- 7.3 Supplier must have a satisfactory record of performance, integrity and ethics.
- 7.4 The Supplier must be able to demonstrate that they are currently providing or have provided in the past two years, ready-mixed concrete that is similar in size and scope to this solicitation. The prospective Suppliers will be required (see Bidder's Questionnaire) to provide the name, address, telephone number and e-mail address of at least three (3) sources who are either, Municipalities, Government or Private Company references. References will be checked prior to award.

8.0 FINANCE STATEMENTS:

Supplier must have verifiable financial resources (Dunn & Bradstreet or Tax Statement), or the ability to obtain such resources as required.

9.0 PRICE ADJUSTMENT:

9.1 Producer Price Index (PPI):

Price adjustments may be authorized based upon the latest version of the Producer Price Index (PPI) for Ready- Mix Concrete Industry Code: 327320; Product Codes 327320-0 as published by the U. S. Department of Labor, Bureau of Labor Statistics.

9.2 Methodology:

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 time of calculation (latest version of the PPI published as of the date of request for price adjustment) divided by the index value of base period (final published data of the PPI) for the base period (time of award), then multiplying the sum by the base price (price at time of award). Formula is as follows:

$$\text{Index value at time of calculation} / \text{Index Value of Base period} \times \text{Price at time of Award} = \text{Adjusted Price}$$

TECHNICAL SPECIFICATIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

9.0 PRICE ADJUSTMENT (CONTINUED):

9.3 Price Increases:

9.3.1 Suppliers may request a price increase in accordance with the methodology outlined in this section after twelve months from the bid close date. Subsequent price increases may be requested twelve months from the date of the previous approved increase.

9.3.2 To request a price increase, Supplier must submit a letter setting the amount of the increase by line item. The letter must illustrate the methodology as outlined in this section by stating the index value of base period, index value at time of calculation, base price, adjusted price, actual dollar difference, and percentage of the price increase. The letter must be sent to the following address:

9.3 Price Increases (continued):

**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.

9.4 Price Decreases:

9.4.1 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.

9.4.2 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.

10.0 CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) COMPLIANCE (Applicable to Houston Police Department (HPD) Occupied Facilities :

The Houston Police Department recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Bidders/Respondents, therefore, agree to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

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 ready mix concrete 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 ready mix concrete.**

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
READY MIX CONCRETE 5-7 SACK MIX
FOR THE
VARIOUS DEPARTMENTS

1.0 TERM OF AWARD:

- 1.1 The term of the award shall be for a twenty four (24) 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.
- 1.3 "Upon written notice to the Supplier from the City Purchasing Agent or his designee, the term of this award shall be extended on the same terms and conditions on a month-to-month basis until (1) approval of a new award or (2) spending authority has been reached, whichever occurs first."

2.0 OPTIONAL EXTENSION:

This award may be extended for three (3) additional one (1) year periods upon acceptance of the Supplier and thirty (30) days prior written notice from the City Purchasing Agent. A price increase subject to the provisions of this 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.

3.0 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).

4.0 INTER-LOCAL AGREEMENTS

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

5.0 LOCAL PRESENCE/SOURCE:

With respect to any goods, materials, equipment, supplies, and parts furnished by it, Supplier shall have an authorized facility(s) located within the Houston-Galveston Region (Harris County and its seven adjacent counties, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller). The facility(s) shall have adequate stock levels to support the demand requirements set forth in the bid solicitation.

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

6.0 INVOICING:

- 6.1 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.
- 6.2 All delivery tickets must have a description of the commodity delivered.
- 6.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 6.4 Delivery tickets and packing slips shall contain the same information as the invoice.
- 6.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

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 SAFETY DATA SHEETS (SDS):

- 8.1 All Bidders should submit with their bid, two (2) complete, most current copies of the required 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
- 8.2 Each sheet submitted should be identified by the Bidder's complete company name; formal bid number and bid form item number.
- 8.3 A Safety Data Sheet must accompany each shipment. If a Safety Data Sheet does not accompany each shipment, the City has the right to reject each shipment.

9.0 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.

10.0 INSPECTIONS AND AUDITS:

- 10.1 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.
- 10.2 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.
- 10.3 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.

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

10.0 INSPECTIONS AND AUDITS (CONTINUED):

10.3 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.

11.0 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.

12.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

12.1 Wherever in the specifications any materials or processes are indicated or specified by patent or 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.

12.2 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.**

13.0 SITE VISITS:

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.

14.0 AWARD COMPLIANCE:

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

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

- 14.2.1 Site Visits
- 14.2.2 Testing and sampling of goods and services
- 14.2.3 Review of deliveries received for accuracy and timeliness
- 14.2.4 Review of permits certifications and/or licenses
- 14.2.5 Review of Supplier's invoices for accuracy

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

15.0 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.

16.0 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.

17.0 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.**

18.0 ADDITIONS & DELETIONS:

The City, by written notice from the City Purchasing Agent to the Supplier, at any time during the term of this award, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the award shall be in accordance with the 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.

19.0 FORCE MAJEURE

19.1 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.

19.2 This relief is not applicable unless the affected party does the following:

19.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and

19.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

19.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.

19.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this award by giving 30 days' written notice to Supplier. This termination is not a default or breach. **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.**

20.0 MEASUREMENTS:

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

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

21.0 SAMPLES:

- 21.1 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.
- 21.2 **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.**
- 21.3 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.

22.0 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.

23.0 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.

24.0 INDEMNIFICATION:

- 24.1 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) 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.
- 24.2 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.

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

24.0 INDEMNIFICATION (CONTINUED):

24.3 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 estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime 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.

25.0 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.

26.0 INSURANCE:

26.1 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.

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

26.0 INSURANCE (CONTINUED):

- 26.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 26.3 All insurance policies required by this award shall require by endorsement that the insurance carrier waive any rights of subrogation against the City, Supplier shall give 30 days written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within such thirty (30) day period 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.
- 26.4 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.
- 26.5 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement, forms see http://purchasing.houstontx.gov/forms/Sample_Insurance_Endorsements.pdf. The Director will consider all other forms on a case-by-case basis.

27.0 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.

28.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

- 28.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **13%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.
- 28.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in "Section A, Table 2".

29.0 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.

30.0 AWARD:

- 30.1 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.
- 30.2 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.

GENERAL TERMS AND CONDITIONS FOR READY MIX CONCRETE 5-7 SACK MIX, CONTINUED:

31.0 REJECTIONS:

- 31.1 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.
- 31.2 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.

32.0 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.

33.0 CHANGE ORDER

- 33.1 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.
- 33.2 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]

- 33.3 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:
 - 33.3.1 Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved awarded amount must be approved by the City Council.
 - 33.3.2 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.
 - 33.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.

33.0 CHANGE ORDER (CONTINUED):

- 33.4 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.
- 33.5 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.

34.0 TERMINATION OF AWARD

34.1 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.

34.2 By the City for Default by Supplier:

34.2.1 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.

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.

34.3 By the Supplier for Default by City:

34.3.1 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.

34.3.2 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.

34.3.3 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.

35.0 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.

36.0 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, the Controller 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.