CITY OF HOUSTON
INVITATION TO BID (ITB)

Issued: February 13, 2015

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, March 12, 2015,** 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:

PRESCRIPTION SAFETY GLASSES
FOR THE
DEPARTMENT OF PUBLIC WORKS AND ENGINEERING
BID INVITATION NO. S35-S25234
NIGP CODE: 625-26

Buyer
John Dearmon is the Buyer for this solicitation and he may be reached at 832.393.8744. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at john.dearmon@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 Procurement Division, Basement, City Hall, 901 Bagby, Houston, Texas 77002 at 2:00 p.m. Tuesday, February 24, 2015 Conference Room No. 2.

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 http://purchasing.houstontx.gov. By registering and downloading this bid document, all updates to this bid document will be automatically forwarded via e-mail to any registered bidder. 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.

CONTENTS

SECTION A. – OFFICIAL BID FORM
SECTION B. - TECHNICAL SPECIFICATIONS
SECTION C. - GENERAL TERMS & CONDITIONS

SECTION A.
OFFICIAL BID FORM

PRESCRIPTION SAFETY GLASSES
FOR THE
DEPARTMENT OF PUBLIC WORKS AND ENGINEERING
BID INVITATION NO. S35-S25234

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver, **prescription safety glasses FOB destination point as listed on individual Purchase Orders,** the items listed below 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 undersigned hereby proposes to furnish and deliver **prescription safety glasses FOB destination point as listed on individual Purchase Orders,** parts and components in accordance with the percentage (plus or minus) applied to the stated Manufacturer's List Price Schedules identified herein, or from the Price List's most current published revision, in accordance with the City's Specifications and General Terms and Conditions. Most current published revision means latest price list in effect between the "first advertised date" as shown on the "Notice to Bidder" and the Bid Opening Date. 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 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 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 THIRTY-SIX (36) MONTH AWARD WITH TWO (2) ONE (1) YEAR OPTIONS TO EXTEND

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.

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 date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City 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, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

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/hirehoustonfirstaffidavit.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.

SECTION A. OFFICIAL BID FORM FOR PRESCRIPTION SAFETY GLASSES FOR THE DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, CONTINUED:

HIRE HOUSTON FIRST (continued):

Designation as a City Business or Local Business (continued)

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/hirehoustonfirstaffidavit.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.

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.

SECTION A. OFFICIAL BID FORM FOR PRESCRIPTION SAFETY GLASSES FOR THE DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, CONTINUED:

Documents/forms must be downloaded from the City's Website http://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
Bidders Attachments Supply
Conflict of Interest Questionnaire
Fair Campaign Ordinance
Location of Bidders Inventory
Statement of Residency

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
Formal Instructions for Bid Terms.doc
MWBE.doc
EEOC.doc
Sample Insurance Endorsements.doc
Certificate of Insurance.doc
Early Payment Discount.doc
Formal Instructions for Price List Bidders.doc
Criminal Justice Information Services Addendum (CJIS)

SECTION B

CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
PRESCRIPTION SAFETY GLASSES
FOR THE DEPARTMENT OF
PUBLIC WORKS AND ENGINEERING

1.0 SAFETY GLASSES AND EYEWEAR:

Specifications for eye and face protection are established by the American National Standards Institute (ANSI). The specifications include characteristics such as impact resistance, frame strength, and chemical resistance. Protective eyewear which conforms to the standards can be identified by the marking "Z-87" on the frame. Occupational Safety and Health Administration (OSHA) regulations require that safety glasses conform to ANSI standards. All styles must be ANSI Z87.1-2010 certified.

2.0 DEFINITIONS

2.1 Face shield—A supplementary protective device worn to shield the wearer's face from certain hazards. Face shields are secondary protectors only and must be worn with safety glasses or goggles, as stated in ANSI Z87.1. or latest **version**

2.2 Impact Resistance—The ability of safety eyewear to withstand impact when tested according to ANSI requirements.

2.3 Infrared radiation—Electromagnetic energy with wavelengths from 780 to 2000 nanometers (nm).

2.4 LASER—An acronym for Light Amplification by Stimulated Emissions of Radiation.

2.5 Lens impact resistance—A lens capable of withstanding the appropriate impact tests of ANSI Z87.1.

2.6 Luminous transmittance—The fraction of light (380 to 780nm) passing through a medium.

2.7 Nanometer (nm)—One billionth of a meter, 10-9 meter.

2.8 Optical radiation—the part of the electromagnetic spectrum with wavelengths between 200 and 2000nm.

2.9 Sideshield—a part of safety glasses, commonly attached to spectacles, that provides protection to the side of the eye.

2.10 Spectacle—A protective device to shield the wearer's eyes from a variety of hazards, depending on the spectacle type.

2.11 Ultraviolet radiation—Electromagnetic energy with wavelengths from 200 to 380nm, per ANSI Z87.1.

2.12 Welding helmet—A protective device intended to shield the eyes and face from optical radiation and impact. Welding helmets are secondary protectors and shall be used only in conjunction with primary protectors.

3.0 SAFETY GLASS LENS COATINGS:

3.1 Anti-fog coating for safety glasses provides excellent fog prevention in high humidity environments where sudden shifts in temperature occur.

3.2 Scratch-resistant coating for safety glasses extends lens life in abrasive environments where scratches are possible.

3.0 SAFETY GLASS LENS COATINGS, CONTINUED:

3.3 Anti-static coating for safety glasses reduces dust and particulate attraction to all lenses.

3.4 Hard coating for safety glasses is permanently bonded to lens to extend lens life.

3.5 Anti-UV coating for safety glasses absorbs more than 99.9% of harmful ultraviolet radiation.

4.0 SPECIFICATIONS:

4.1 The Supplier shall furnish all labor, tools, supplies, parts, materials, equipment, and facilities necessary to provide repair services for prescription safety glasses and deliver on as need basis FOB Destination.

4.2 Specifications for eye and face protection are established by the American National Standards Institute (ANSI). These specifications include characteristics such as impact resistance, frame strength, and chemical resistance. Protective eyewear which conform to these standards can be identified by the marking "Z-87" on the frame. Occupational Safety and Health Administration (OSHA) regulations require that safety glasses conform to ANSI standards. All styles must be ANSI Z87.1-2010 certified.

5.0 REPAIR TECHNICIANS:

5.1 The Supplier's technicians must be trained or certified in the repair of all types of prescription safety glasses. The technicians must be aware and knowledgeable on the ANSI 287.1-2010 standard for eye and face protection, have appropriate experience on providing prescription safety glasses, and be able to provide proof to the City if requested. The supplier is responsible for technician's certifications.

5.2 The supplier is responsible for testing frames, lenses and shields to ensure materials meet the ANSI Z87 standards. Protective frames, unlike cress ophthalmic frames, must pass rigorous, impact tests in order to be marked Z87 2.

6.0 SPECTACLE FRAMES AND SIDE SHIELDS TEST:

6.1 This testing is designed to test the ability of the frame to retain a lens upon impact and to evaluate the temples and/or side shields. Retained is defined as no more than 25% separation of the lens periphery from the frame.

6.1.1 The High Mass Impact Test:

When a 500g (17.6 oz.) pointed projectile is dropped from a height of 127cm (50 in.) onto a glazed frame, no piece shall be detached from the inner surface of any spectacle component and the lens shall be retained in the frame.

6.1.2 The High Velocity Impact Test:

When the frame, with lenses, is shot with a 6.35mm (1/4 in.) steel ball traveling at 45.7m/s (150 ft/s), no contact with the eye of the head form is allowed and no piece shall be detached from the inner surface of any spectacle component. The lenses must be retained in the frame.

6.1.3 The Side Shield Test:

Side shields are DESIGNED to provide impact resistance with the intention of protecting the wearer. Lateral protection must be assessed using a rotation point 10mm behind the corneal vertex. The side shield must be impacted 10mm above and 10mm below the plane of the eyes of the head form at the 90° rotated angle.

7.0 ANSI Z87 1-2010 FRAME REQUIREMENTS:

7.1 Test Requirements:

Spectacle frame test is designed to test the ability of the frame to retain a lens upon impact and to evaluate the strength of the temples and/or side shields. Retained is defined as no more than 25% separation of the lens periphery from the frame.

7.2 High Mass Impact Test:

When a 500g (17 .6 oz.) pointed projectile dropped from a height of 127cm (150 in.), no piece shall be detached from the inner surface of any spectacle component. The lens shall be retained in the frame.

7.3 High Velocity Impact Test:

A 6.35mm (1/4 in.) steel ball traveling at 45 .7m/s (150 ft/s) no contact with the eye of the head form is allowed, no piece shall be detached from the inner surface of any spectacle component and the lens shall be retained in the frame.

8.0 FRAME MARKING:

Spectacle frames intended for non-Plano lenses shall be marked with the manufacturer's mark or symbol and "Z87 - 2, or latest" In addition, fronts shall be marked with the "A" dimension (eye size) and "DBL" (distance between lenses). Temples shall be marked with their overall length. Side shields (if side shields are employed) lateral protection shall be assessed using a rotation point 10mm behind the corneal vertex. The side shield shall be impacted 10mm above and 10mm below the plane of the eyes of the head form at the 90' rotated angle.

8.1 Warning Label:

If the finished protector only meets the Basic Impact Standard, it is the responsibility of the laboratory to attach a warning label. This warning is designed to inform the wearer of the impact limitations of the lenses and must state that it is to be removed only by the wearer. These labels must be made available.

8.2 Flammability:

The apparatus and procedure as specified in ASTM test method D635 – 98 shall be used to determine the flammability of plastic components. Alternatively, certification of the material used by the source of supply is acceptable. The material shall not burn at a rate greater than 76mm (3 in.) per minute.

8.3 Corrosion:

Metal parts are boiled in a 10% aqueous solution of sodium chloride for 15 minutes then immersed in the same solution at room temperature, removed and allowed to dry for 24 hrs. The metal parts are then rinsed in lukewarm water and allowed to dry. The function of the spectacles shall not be impaired by the corrosion. Lenses and electrical parts are **excluded** from these requirements.

8.4 Clean Ability:

After cleaning, the function of the spectacles shall not be impaired. All markings shall stay permanently affixed and readable.

9.0 ANSI Z87.1-2010 LENS REQUIREMENTS:

Prescription Lenses (called non-Plano in the standard)
Basic Impact Non-Plano Lenses shall be capable of resisting impact from a 25.4mm (1 in.) steel ball dropped from a height of 127mm (50 in.). The lens shall not fracture. One hundred percent (100%) of the glass lenses shall be tested. Plastic lenses shall be statistically sample tested.

9.1 High Impact Non-Plano Lenses:

Shall be tested to the high velocity impact test. The lenses shall be mounted on a test holder and shall be capable of resisting impact from a 6.35mm (0.25 in.) diameter steel ball traveling at a velocity of 46.7m/s (150ft/s).

9.2 Three lenses shall be tested:

Failure consists of any posterior displacement of the lens completely through the test holder, any fracture of the lens, any detachment of a portion of the lens from its inner surface or full thickness penetration of a lens. If all test lenses pass, then any non-piano lens of the same or greater thickness at its thinnest point, which is made by the same manufacturer from the same material with the same coatings may bear the "+"mark.

9.3 Plano Lenses (also called non-prescription) Basic Impact Plano Lenses:

9.3.1 Drop Ball - Shall be capable of resisting impact from a 25.4mm (1 in.) steel ball dropped from a height of 127mm (50 in.). The lens shall not fracture.

9.3.2 Penetration- Plastic lenses shall be capable of resisting penetration from a weighted projectile weighing 1.56 oz. dropped from a height of 50 in. The lens shall not fracture or be pierced through.

9.4 Tested In The Non-Mounted State:

High Impact Plano Lens should be Tested with High Mass, High Velocity and Penetration tests. Also, items should be tested as a complete device.

9.5 Warning Label:

If the finished protector only meets the Basic Impact Standard, It is the responsibility of the laboratory to attach a warning label. This warning is designed to inform the wearer of the impact limitations of the lenses and must state that it is to be removed only by the wearer. These labels will be made available by the OLA (Optical Lab Association).

9.6 Impact:

Both Plano (non-prescription) and prescription lenses must meet the ANSI Z87 testing requirements before they can be monogrammed with the manufacturer's logo. The logo must be on the lenses to show they meet the ANSI standards. This logo enables identification of the manufacturer, which, in the case of prescription lenses, is the laboratory. If the lenses meet the High Impact testing requirements, a "+" will be monogrammed after the manufacturer's logo; e.g. AO+

9.7 Safety Lens Test:

Safety lenses must meet two levels of performance for non-piano (prescription) lenses: Basic Impact and High Impact requirements in both the manufacture and testing in order to meet the ANSI Z87 requirements for safety. High Impact lenses shall be tested to the High Velocity Impact test. They are mounted on a test holder and shall be capable of resisting impact from a 6.35mm (0.25 in.) diameter steel ball traveling at a velocity of 45.7m/s (150ft/s).

9.0 ANSI Z87.1-2010 LENS REQUIREMENTS CONTINUED:

9.8 Basic Impact Lenses:

Basic Impact lenses, which are usually plastic or glass, are not subjected to the High Impact or High Velocity testing requirements and could fail. A warning label must be attached to any safety prescriptions delivered with Basic Impact lenses. This warning is designed to inform the wearer of the impact limitations of the lenses and must state that it is to be removed only by the wearer.

9.9 Lens Retention:

Safety spectacles available with removable and non-removable lenses must meet High Mass Impact and High Velocity Impact tests.

9.10 Test Lens Thickness:

The test lens shall be 2.00mm +0.2mm, -0.0mm thick.

10.0 POST AWARD MEETING:

Once the award has been approved by City Council, Public Works &Engineering reserves the right to schedule a post-award meeting with the successful supplier and Public Works & Engineering end users. The meeting will include representatives from Procurement, Public Works & Engineering Contact Management, Accounts Payable, and others as deemed appropriate.

11.0 AWARD COMPLIANCE:

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

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

11.1.1 Site visits

11.1.2 Testing and sampling of goods and services

11.1.3 Review of deliveries received for accuracy and timeliness

11.1.4 Review of permits, certifications and/or licenses

11.1.5 Review of supplier's invoices for accuracy

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

12.0 PRICE ADJUSTMENT (LINE ITEMS):

12.1 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.

12.0 PRICE ADJUSTMENT (LINE ITEMS) CONTINUED:

12.2 Price Decreases:

12.2.1 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.

12.2.2 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.

12.3 Price Increases:

12.3.1 Suppliers may request a price increase after 12 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 12 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 **3%** above the previous bid price. The amount of the subsequent price increase shall also not exceed this percentage.

12.3.2 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 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

12.3.3 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.

12.3.4 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.

13.0 PRICE ADJUSTMENT FOR PRICE LIST(S):

13.1 The price percentage adjustment bid shall remain firm during the full term of the award. Price adjustments will be determined from the plus or minus percentage applied to the manufacturer's published price list lowest unit price column as originally bid.

13.0 PRICE ADJUSTMENT FOR PRICE LIST(S) CONTINUED:

13.2 The price list(s) submitted with this bid will be in effect from the date bids are received and opened by the City Secretary. A price list substitution may be made any time after award by City Council. This substitution will be the updated version of the price list submitted with the bid. A letter from the manufacturer stating the new price list submitted is the replacement for the one being replaced must accompany the request. This letter must also state when (date) the new price list was distributed to its distributors/suppliers. **The new price list will not be accepted as a price list substitute if it was distributed and/or in the possession of the Bidder(s) before the bid due date.** A request to substitute the price list(s) with revised price list(s) will be allowed subject to the City Purchasing Agent's approval. Substitute price list(s) may only be later revisions to the original price list(s) bid. Acceptance of any revised price list(s) will be considered after the Supplier submits the following to the City of Houston City Purchasing Agent; Strategic Procurement Division; P.O. Box 1562; Houston, Texas 77251:

13.2.1 A letter clearly stating **PRICE ADJUSTMENT REQUEST AND NAME AND NUMBER OF THE INVITATION TO BID** in the contents and on the outside of the envelope;

13.2.2 Itemized revised price list indicating effective date; and

13.2.3 Multiple copies of the revised manufacturer's price list(s) for distribution to participating City departments.

13.3 **Price list substitution(s) shall become effective only upon the Supplier's receipt of express written consent from the City of Houston City Purchasing Agent or his designee. Price list substitution(s) shall not be effective until such written consent is received.** If the Supplier submits a request for price list(s) substitution in accordance with the above revisions and the City Purchasing Agent fails to approve such request, the Supplier may terminate its performance upon 60-day advance notification in writing. This will be the Supplier's only remedy in the event a price adjustment is not approved. The effective date of the price list(s) change shall be no earlier than 30-days following receipt of written request by the City unless otherwise stated in the approval letter from the City Purchasing Agent or his designee. **No retroactive price changes will be honored for delinquent requests**. The price in effect on the date of issue of the purchase order establishes the price to be paid.

13.4 The City of Houston's City Purchasing Agent reserves the right to obtain a different source(s) to meet the requirements for any item(s) which has increased in price if said item(s) may be obtained a at lower price and if it is deemed in the best interest of the City to do so.

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 prescription safety glasses 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 prescription safety glasses.**

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
PRESCRIPTION SAFETY GLASSES
FOR THE
DEPARTMENT OF
PUBLIC WORKS AND ENGINEERING

1.0 TERM OF AWARD:

1.1 The term of the award shall be for a **thirty-six (36)** 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 this award shall govern. The supplier will not perform against the award 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 department. 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 two 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 PROMPT PAYMENT OF SUBCONTRACTORS:

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

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 PRICE LISTS:

5.1 Internet-Based Catalog/Price List

5.1.1 It is the City's desire that all price lists be provided electronically; therefore, if the Supplier is submitting a bid on any price list item as an ***INTERNET-BASED CATALOG***, it is mandatory that pricing is in a secure format, available to the City of Houston in an ***INTRANET*** fashion. No custom software should be required to access the electronic catalog. The Supplier shall provide the ability for unlimited amount of users to order via on-line communication with the supplier's computer system by the City of Houston's PC terminals, printers, fax, or telephone. The supplier shall also provide the capability to conduct orders using the City of Houston Charge Card.

5.1.2 Supplier shall provide initial and on-going training and the set-up of PCs for City of Houston end-users.

5.1.3 Supplier's electronic catalog should include the following features:

5.1.3.1 Support open technology and standards such as Open-Buying on the Internet (OBI)
5.1.3.2 Flexible and robust product search methods
5.1.3.3 Account and user profile control including dollar limit processing
5.1.3.4 On-line ordering using a shopping cart utility
5.1.3.5 On-line order/usage history reporting
5.1.3.6 Notification of price changes in accordance with City of Houston terms and conditions
5.1.3.7 Help functions
5.1.3.8 Order processing using the City's Procurement Card

5.2 The Supplier shall furnish Price Lists to the Pricing Section of the Strategic Procurement Division for distribution to all ordering departments, divisions and sections of the City of Houston requiring these items. Within ten (10) working days from written notification by the City Purchasing Agent, the Supplier shall furnish to the Pricing Section of the Strategic Procurement Division, the number of required copies of its price list(s) bid for use by City Departments. Failure to timely furnish such price lists may result in rescinding the award. Each time a Supplier submits a revised price list it shall furnish the number of revised price list(s) required to the Pricing Section within ten working (10) days of such revision. Failure to do so may result in rescinding the award. **THESE PRICE LIST(S) SHALL BE FURNISHED AT NO COST TO THE CITY OF HOUSTON.**

5.3 Original, unaltered, manufacturers' price lists and revisions are requested. If all originals cannot be obtained, at least one (1) original plus photocopies of the original price list may be furnished provided each photocopy is certified as a true and accurate unaltered reproduction of the original. Each reproduced price list must have a notarized signature of authority that is certifying on the face thereof the copy is a true and accurate unaltered reproduction of the original. Although copies may be accepted, **IT IS A MANDATORY REQUIREMENT TO SUBMIT AT LEAST ONE (1) ORIGINAL PRICE LIST OR ACCESS TO THE MANUFACTURER'S INTERNET BASED CATALOG IN ORDER FOR YOUR BID TO BE CONSIDERED FOR AWARD RECOMMENDATION.**

5.4 A MINIMUM OF SEVEN (7) PRICE LISTS WILL BE REQUIRED FOR EACH ITEM AWARDED FROM THE SUCCESSFUL SUPPLIER(S) PRIOR TO AWARD. **THIS IS ONLY A MINIMUM REQUIREMENT OF THE NUMBER OF PRICE LISTS AND IS SUBJECT TO INCREASE ACCORDING TO THE REQUIREMENTS OF THE DEPARTMENT(S)**. THE SAME OR LIKE QUANTITIES WILL BE REQUIRED FOR SUBMITTAL OF REVISED PRICE LISTS.

5.5 Price lists furnished for these items shall include but shall not be limited to OEM descriptive catalogs and/or supplemental publications that clearly define each part number cost. Electronic media versions are preferred.

5.6 **THE CITY OF HOUSTON RESERVES THE RIGHT TO DUPLICATE THE PRICE LISTS AWARDED FOR DISSEMINATING TO THE DEPARTMENTS.**

6.0 ADDENDA TO PRICE LIST(S):

If addenda containing new parts not listed in the price list(s) submitted with the original bid are received by the Supplier from the manufacturer, the Supplier may submit the addendums having new items identified by part number reference and highlighted in addenda price lists for easy identification to the City Purchasing Agent for consideration. The City Purchasing Agent will allow addenda only upon written acceptance and only new items may be added. No item(s) presently listed in the Price List(s) will be considered from these addenda. All such addenda shall be subject to the requirements of Section 252.048 of the Texas Local Government Code.

7.0 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 nine adjacent counties, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, Waller, Austin, and San Jacinto). The facility(s) shall have adequate stock levels to support the demand requirements set forth in the award.

8.0 INVOICING:

8.1 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.

8.2 All delivery tickets must have a description of the commodity delivered.

8.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.

8.4 Delivery tickets and packing slips shall contain the same information as the invoice.

8.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

8.6 Supplier shall submit invoices for payment in triplicate (one original and two copies) that are on Supplier's company stationary with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the awarded periods.
Mail invoices to the following:

City of Houston
Department of Public Works & Engineering
Accounts Payable – Supply Contracts
Attn: Craig Foster
P.O. Box 61489
Houston, Texas 77208-1449.

9.0 PAYMENT:

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

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

9.2 A vendor may elect not to offer a discount for early payment and the City will make payment net 30 days. Discounts will not be considered in the award evaluation.

9.0 PAYMENT CONTINUED:

9.3 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

10.0 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.

11.0 INSPECTIONS AND AUDITS:

11.1 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.

11.2 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.

11.3 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.

12.0 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.

13.0 SPECIFIED EQUIPMENT OR EQUIVALENT:

13.1 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.

13.2 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.**

14.0 DELIVERIES:

14.1 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. Also, the supplier must be able to deliver prescription safety glasses within five (5) working days

14.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.

14.3 Full tare must be allowed and no charges made for packages.

14.4 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.

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 the 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.

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. Additional Reports:

23.1 The Supplier shall provide additional purchase history reports upon request for the department's purchase orders issued and procurement card transactions (P-Card). Such reports may be requested quarterly or every six (6) months. The reports will consist of the following information:

23.1.1 Department name, Name of city employee, transaction type, purchase order number (if applicable), p-card holder (if applicable), product/part number, product description, quantity, unit price, extended price.

23.2 The reports shall be due ten (10) business days after receiving the request. The reports shall be in **Microsoft Excel spreadsheet format and sent via email or fax. CD ROM is also acceptable**. The Supplier shall submit the reports via email to the SPD Buyer at john.dearmon@houstontx.gov.or via post office mail to John Dearmon City of Houston, 901 Bagby, Room B 200, Houston, TX 77002.

24.0 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.

25.0 INDEMNIFICATION:

25.1 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.

25.2 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.

25.0 INDEMNIFICATION CONTINUED:

25.3 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.

26.0 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.

27.0 INSURANCE:

27.1 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.

27.0 INSURANCE CONTINUED:

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

27.3 All insurance policies required by this award shall require 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.

27.4 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.

28.0 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 City Purchasing Agent to terminate this award according to its terms.

29.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

29.1 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 **0%** 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.

29.2 MWBE subcontracts must contain the terms set out in "Section A, Table 2".

30.0 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.

31.0 AWARD:

31.1 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.

31.2 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.

32.0 REJECTIONS:

32.1 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.

32.2 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.

33.0 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.

34.0 CHANGE ORDER:

34.1 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.

34.2 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]

34.3 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:

34.3.1 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.

34.3.2 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.

34.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.

34.0 CHANGE ORDER CONTINUED:

34.4 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.

34.5 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.

35.0 TERMINATION OF AWARD:

35.1 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 s are chargeable to this award. As soon as practicable after the receipt of notice of termination, the Supplier shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this award to date of termination. The City agrees to compensate the Supplier for that portion of the prescribed charges for which the services were actually performed or items delivered under this award and not previously paid.

35.2 By the City for Default by Supplier:

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

(a) Terminate the award for default and the City shall have no further obligation under the award.

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

35.2.2 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.

35.3 By the Supplier for Default by City:

35.3.1 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.

35.3.2 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.

35.0 TERMINATION OF AWARD CONTINUED:

35.3 By the Supplier for Default by City continued:

35.3.3 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.

36.0 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.

37.0 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 City 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.

38.0 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.

39.0 MARKETPLACE:

39.1 The City of Houston has implemented an online tool to facilitate purchases from approved contracts/awards. This tool, City of Houston (COH) MarketPlace, can be accessed electronically by end users. End users can place multiple orders through a single login using the P-card or purchase order. Supplier products can be made available in COH MarkePlace at no cost.

39.2 Suppliers whose contracts/awards are added to COH MarketPlace will be required to cooperate in the electronic setup, implementation, and maintenance.