CITY OF HOUSTON
INVITATION TO BID

Issued: April 15, 2016

Bid Opening
Sealed bids, in duplicate, will be received by the City Purchasing Agent of the City of Houston, City Hall, Basement Level, 901 Bagby, Suite B200, Houston, Texas 77002 until April 29, 2016 for the purchase of:

RESPIRATORY PANEL TESTS AND CONSUMABLES
FOR THE
HOUSTON HEALTH DEPARTMENT
BID INVITATION NO. S21-S25479
NIGP CODE: 193-40

Buyer
Laura A. Guthrie is the Buyer for this solicitation and she may be reached at 832-393-8735. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at lauraa.guthrie@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.

Any revisions to be incorporated into this bidding document arising from discussions before, during and subsequent to the award 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.

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INSTRUCTIONS for BIDDING and TERMS & CONDITIONS

1. All bids must show the full name of the firm bidding and must be on forms furnished by the Purchasing Section of the Strategic Procurement Division, Finance Department, and must be written in ink or typed. Pencil quotations will not be considered. Bids should be filed in duplicate and at least one copy of the Bid Form must be manually signed in ink by an authorized officer of the company and title must be shown. Obligations assumed by the signature must be fulfilled. The bid number, title of the bid, and the bid due date must be shown on the front of the envelope(s) containing the Bid Form.

2. **TIME AND DATE:** Bids **Should** be submitted to the Strategic Procurement Division, City Hall, Basement, Suite B200, 901 Bagby, Houston, Texas 77002 at or before April 29, 2016 on the day bids are due. Be sure you have allowed ample time for postal delivery. CAUTION: Bids mailed on the day before bids are due may not be received in time to be considered.

3. **WITHDRAWAL OF BID:** A bidder may withdraw its offer before the expiration of the time during which the offer may be submitted, without prejudice, by submitting a written request for its withdrawal to the City Purchasing Agent.

4. The Official Bid Form should indicate the Unit Price for the specified item/service and the Total Price after multiplying the Estimated Quantity times the Unit Price. In case of conflict between Unit Price and the Total Price once computed using the Estimated Quantity, the Unit Price shall control. The Unit Price shall be inclusive of all costs, including insurance and transportation costs. **Cash discounts will not be considered in the award of bids.**

5. No change in price will be considered after bids have been opened.

6. **Provisions of the City's Official Bid Form, Specifications, and General Terms & Conditions must not be altered. Any erasure or alteration of figures or terms may invalidate the bid on the item on which the erasure or alteration is made. Submission or attachment of company "Quotation Forms" containing alternative terms and/or conditions is not acceptable and may result in your bid being determined as non-responsive.**

7. Bids will not be considered in cases in which bidder quotes an item price and also an alternate price on a proposed substitute item, except in cases in which alternate bids are called for. If bidder wishes to submit more than one bid on the same item, separate Bid Forms for each bid, complete with its own original signature page, must be submitted.

8. All bids are for delivery no later than the time stated in the specifications, F.O.B. the point of delivery stated in the Specifications and/or Bid Form.

9. If your firm chooses not to submit a bid, please complete the No Bid Sheet at the back of this bid document and forward it to the Buyer listed on the bottom of the form.

10. **Cost of Bid/Proposal Preparation:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

11. Contact with anyone other than the City of Houston Strategic Procurement Division Representative concerning this bid may result in immediate disqualification of your firm.

SECTION A.
OFFICIAL BID FORM

RESPIRATORY PANEL TESTS AND CONSUMABLES
FOR THE
HOUSTON HEALTH DEPARTMENT
BID INVITATION NO. S21-S25479

Honorable Mayor and City Council Members:

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

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

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

BIDDING AND AWARD:

It is the intent of the City to award, on the basis of overall low net bid meeting specifications for the entire award; however, the right is reserved to accept or reject in whole or in part any or all bids received and to make an award on the basis of individual item, combination of items or overall best bid, as it is deemed in the best interest of the City.

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.

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.

THIS IS A THIRTY-SIX (36) MONTH AWARD WITH TWO (2) 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.

PROTESTS

- Filing a Protest
  - An interested party may file a protest on the basis that the City has failed to comply with applicable federal or state law or with City ordinances. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objectivity and integrity of the procurement process. A protest must be filed in accordance with the timing requirements set forth herein and must include:
    - The name, address, telephone number, and email address of the protestor.
    - The number of the solicitation.
    - Information confirming that the protestor is an interested party.
    - A written statement of the grounds for the protest and the law or ordinance alleged to have been violated. The statement shall be accompanied by relevant supporting documentation and the relief requested.
    - The signature of the protestor.
  - Protests shall be submitted to: Chief Procurement Officer, City of Houston, 901 Bagby B300, Houston, TX 77002.
- The City recognizes three types of protests:
  - Protests regarding solicitation (Pre-Submission Protest)
    - Any Pre-Submission Protest regarding a solicitation published by the City shall be filed no later than five days before the opening of bids (if a competitive bid) or due date for submittals or proposals (if an RFP/RFQ), as applicable.
  - Protests regarding the evaluation or rejection of bids, qualifications, or proposals (Pre-Award Protest)
    - Any Pre-Award Protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed no later than five business days prior to the City Council meeting at which the award appears on the agenda.
  - Protests made after City Council's decision to award a contract (Post-Award Protest)
    - Any protest regarding the award of a contract must be submitted no later than five calendar days after the date of the award.
  - Any protest received after the applicable deadline will not be considered.

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.

SECTION A. OFFICIAL BID FORM FOR RESPIRATORY PANEL TESTS AND CONSUMABLES, 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
Fair_Campaign_Ordinance
Statement_of_Residency
Conflict_of_Interest_Questionnaire
Bidders_Attachments_Supply
Location_of_Bidders_Inventory
Early_Payment_Discount

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
Certificate_of_Insurance
Formal_Instructions_for_Bid_Terms
EEOC
Criminal_Justice_Information_Services_Addendum_(CJIS)
Equal Level Supplier Survey

THIS BIDDER IS AND REPRESENTS THAT IT IS AN EQUAL OPPORTUNITY EMPLOYER

The Respondent warrants that no person or selling agency has been employed or retained to solicit or secure this award act upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the City shall have the right to annul this award without liability or, at its discretion, to deduct from the award prices or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

The undersigned hereby offers to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with the Invitation to Bid, Clarification Letters, and General Terms and Conditions Specifications, all of which are made a part of this offer.

All pages of the City of Houston's bid document, including but not limited to the General Terms and Conditions and Page Three (3) of this bid invitation are incorporated by reference into this bid for all purposes.

The undersigned, as Bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Bidder has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this award.

NOTE: BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PROVIDE THE GOODS AND/OR SERVICES IF AWARDED. PRINT OR TYPE FULL NAME OF COMPANY AND OR FIRM AS DESIGNATED ON THE INTERNAL REVENUE FORM W-9.

Respectfully Submitted:

Bidder: _____
(Print or type name of Bidder's-Full Company Name)

Vendor Number: _____

Federal Identification Number: _____

By: _____
(Signature of Authorized Officer or Agent)

Name: _____

Title: _____

Date: _____

_____
Address (Street or P. O. Box)

_____
City-State-Zip Code

Telephone Number: (_____) _____

FAX Number: (_____) _____

E-Mail Address: _____

SECTION B.

CITY OF HOUSTON
TECHNICAL SPECIFICATIONS
FOR
RESPIRATORY PANEL TESTS AND CONSUMABLES
FOR THE
HOUSTON HEALTH DEPARTMENT

1.0 BUYER'S CAVEAT:

1.1 All kits, reagents and supplies outlined at the e-bid document must meet the quality control criteria and in use specifications of the Houston Health Department's Laboratory Services.

1.2 The Houston Health Department and Laboratory Management will have final approval and acceptance.

2.0 GROUP I, LINE ITEM NOS. 1 & 2:

Bidder must be able to provide the listed assays and bid exactly as specified.

3.0 PRICE ADJUSTMENT:

3.1 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.

3.2 Price Decreases:

3.2.1 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.

3.2.2 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.

3.3 Price Increases:

3.3.1 Suppliers may request a price increase after 12 months from the bid opening date of the bid received by the City Purchasing Agent 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 10% above the previous bid price. The amount of the subsequent price increase shall also not exceed this percentage.

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

3.0 PRICE ADJUSTMENT (CONTINUED):

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

3.3.3 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.

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

BIDDER'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime supplier, for delivering respiratory panel tests and consumables 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 respiratory panel tests and consumables**.

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
RESPIRATORY PANEL TESTS AND CONSUMABLES
FOR THE
HOUSTON HEALTH DEPARTMENT

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 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 bid award 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 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 INVOICING:

4.1 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.

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

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

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

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

5.0 PAYMENT:

5.1 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

5.2 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.

6.0 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.

7.0 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.

8.0 INSPECTIONS AND AUDITS:

8.1 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.

8.2 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.

8.3 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.

9.0 SILENCE OF SPECIFICATIONS:

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

10.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

10.1 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.

10.2 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.**

11.0 DELIVERIES:

11.1 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.

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

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

11.4 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.

11.5 The Bidder must demonstrate its ability to secure and deliver any item within five (5) working days. Forty-eight (48) hour delivery services may be required in some instances; therefore, the Bidder must be able to provide such service.

12.0 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.

13.0 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.

14.0 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.**

15.0 ADDITIONS & DELETIONS:

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

16.0 FORCE MAJEURE

16.1 Timely performance by both parties is essential during the term of the award. However neither party is liable for delays or other failures to perform its obligations to the extent that 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.

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

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

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

16.3 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.

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

17.0 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.

18.0 SAMPLES:

18.1 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.

18.2 **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.**

18.3 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.

19.0 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.

20.0 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.

21.0 INDEMNIFICATION:

21.1 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.

21.2 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.

21.3 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.

21.0 INDEMNIFICATION (CONTINUED):

(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.

22.0 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.

23.0 INSURANCE:

23.1 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.

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

23.3 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.

23.4 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.

23.5 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.

24.0 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.

25.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

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.

26.0 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.

27.0 AWARD:

27.1 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.

27.2 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.

28.0 REJECTIONS:

28.1 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.

28.2 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.

29.0 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.

30.0 CHANGE ORDER

30.1 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.

30.2 The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

30.0 CHANGE ORDER (CONTINUED)

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]

30.3 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:

30.3.1 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.

30.3.2 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.

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

30.4 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.

30.5 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.

31.0 TERMINATION OF AWARD

31.1 By the City for Convenience:

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

31.0 TERMINATION OF AWARD (CONTINUED)

31.2 By the City for Default by Supplier:

31.2.1 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 as of such date and have no further obligation under the award.

31.2.2 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.

31.3 By the Supplier for Default by City:

313.1 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.

31.3.2 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.

31.3.3 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.

32.0 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.

33.0 SUPPLIER DEBT

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

34.0 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.