



CITY OF HOUSTON, TEXAS

**NOTICE OF BEST VALUE BID (BVB)
SOLICITATION NO.: S12-S25736**

**STRATEGIC
PROCUREMENT
DIVISION
“PARTNERING TO BETTER
SERVE HOUSTON”**

NIGP CODE: 885-78

SOLICITATION DUE DATE/TIME: THURSDAY May 5, 2016 at 10:30 A.M., CST

SUBMITTAL LOCATION: City Secretary’s Office
City Hall Annex, Public Level
900 Bagby Street
Houston, Texas 77002

DESCRIPTION: CHEMICAL, INORGANIC METAL SALT COAGULANT
(FERRIC SULFATE)
FOR THE
DEPARTMENT OF PUBLIC WORKS & ENGINEERING

PRE-BID CONFERENCE:

<i>Date</i>	<i>Time</i>	<i>Location</i>
April 14, 2016	10:30 A.M,	<u>PWE, Materials Management Branch, 2805 McKinney St., Houston, TX 77003</u>

In accordance with T.L.G.C. § Chapter 252, competitive sealed Bids for the services specified will be received by the City Secretary’s Office of the City of Houston at the above specified location, until the time and date cited. Offers must be in the actual possession of the City Secretary’s Office on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror’s name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this Solicitation.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

Martin L. King

Name

Martin.King@houstontx.gov

E-Mail Address

Calvin D. Wells

City Purchasing Agent

03-26-16

Date

SPECIAL INSTRUCTIONS TO OFFEROR(S)
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1.0 SUBMITTAL PROCEDURE:

1.1 Sealed bids, two (2) hard copies of the Bid package, including one (1) printed original must be signed in ink on the Official Signature Page by an authorized officer of the Offering Company. Additionally, the Bid package must include the hard copy of the Electronic Bid Form and five (5) additional electronic CD copies of the Bid Forms as referenced in Section 2.3 below are required to be submitted in a sealed envelope/box bearing the assigned Solicitation Number, located on the first page of the Best Value Bid (BVB) document to:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby St.
Houston, Texas 77002

1.2 The deadline for the submittal of the Bid to the City Secretary's Office is no later than the date and time as indicated on the first page of the BVB document. All bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby St. at 11:00 AM on the solicitation due date. Failure to submit the required number of copies as stated above may be subject for disqualification from the BVB process.

1.3 Respondents may elect to either mail or personally deliver their Bids to the City Secretary's Office.

1.4 The City of Houston shall bear no responsibility for submitting responses on behalf of any Offeror. Offeror(s) may submit their Bid to the City Secretary's Office any time prior to the stated deadline.

2.0 BEST VALUE BID FORMAT:

2.1 The Bid should be electronically generated, printed and signed in original ink. The bid should not be submitted in elaborate or expensive binders. Legibility, clarity, and completeness are important and essential.

2.2 The Bid must be signed by an individual(s) legally authorized to bind the Offeror(s), and the City may accept this bid offer by issuance of a Contract to the said Offeror(s) at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

2.3 The complete Bid packet shall consist of the following items:

TABLE 1 – REQUIRED BID FORMS
Signed Official Signature Page
Hard Copy of Electronic Bid Form (Pricing Sheet)
*Affidavit of Ownership.doc
*Fair Campaign Ordinance.doc
*Statement of Residency.doc
*Conflict of Interest Questionnaire.doc
List of Subcontractor(s)
M/WBE Attachment A & B Forms
Five (5) Electronic CD Copies of the Bid

* Documents/forms can be downloaded from the City's Website: <http://purchasing.houstontx.gov/index.shtml>

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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 - DOCUMENTS & FORMS
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
Sample Insurance Over \$50,000.pdf
Insurance Endorsements

3.0 PRE-BID CONFERENCE:

3.1 A Pre-Bid Conference will be held at the date, time, and location as indicated on the first page of the BVB document. Interested Offeror(s) should plan to attend. It will be assumed that potential Offeror(s) attending this meeting have reviewed the BVB in detail, and are prepared to bring up any substantive questions not already addressed by the City.

4.0 ADDITIONAL INFORMATION AND SPECIFICATION CHANGES:

4.1 Requests for additional information and questions should be addressed to the Administration and Regulatory Affairs Department, Strategic Purchasing Division Buyer, Martin L. King, telephone: (832) 393-8705, fax: (832) 393-8759, or e-mail (preferred method to): martin.king@houston.tx.gov, no later than Monday, May 2, 2016 at 1:30 P.M. CST. The City of Houston shall provide written response to all questions received in writing before the submittal deadline. Questions received from all Offeror(s) shall be answered and sent to all Offeror(s) who are listed as having obtained the BVB. Offeror(s) shall be notified in writing of any changes in the specifications contained in this BVB.

5.0 LETTER(S) OF CLARIFICATION:

5.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or outlined in this BVB should be used in preparing bid responses.

5.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to Offeror(s).

6.0 EXAMINATION OF DOCUMENTS AND REQUIREMENTS:

6.1 Each Offeror shall carefully examine all BVB documents and thoroughly familiarize themselves with all requirements prior to submitting a Bid to ensure that the Bid meets the intent of this BVB.

6.2 Before submitting a Bid, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this BVB. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the BVB.

7.0 EXCEPTIONS TO TERMS AND CONDITIONS:

7.1 Best Value Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.

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8.0 ACCEPTANCE AND REJECTION OF BIDS:

- 8.1 The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed most advantageous or in the best interest to the City.
- 8.2 The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

9.0 HIRE HOUSTON FIRST:

9.1 Designation as a City Business or Local Business

- 9.1.1 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 Mayor's Office of Business Opportunities 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.

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

www.houstontx.gov/obo/moreforms/hirehoustonfirstaffidavit.pdf

- 9.1.3 Submit the completed application forms to: Mayor's Office of Business Opportunity, One Stop Business Center, 900 Bagby St., Public Level, Houston, TX 77002 or Applications may be submitted via e-mail to HHF-MOBO@houstontx.gov or faxed to 832.393.0952.

9.2 Award of Procurement Pursuant to a Request for Proposal, Best Value Solicitation or Alternative--- Pursuant to Chapter --- of the Local Government Code

- 9.2.1 IN EVALUATION OF A PROPOSAL SUBMITTED UNDER ANY OF THE ABOVE PROCUREMENT METHODS, THE CITY SHALL AWARD EXTRA POINTS EQUAL TO

9.1 **THREE PERCENT** OF THE TOTAL EVALUATION POINTS AVAILABLE TO A "LOCAL BUSINESS," AS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES, AND

9.2 **FIVE PERCENT** OF THE TOTAL EVALUATION POINTS AVAILABLE TO A "CITY BUSINESS," AS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

9.3 UNLESS THE USER DEPARTMENT DETERMINES THAT AN AWARD TO THE LOCAL OR CITY BUSINESS WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

10.0 PROTEST:

- 10.1 A protest shall comply with and be resolved, according to the City of Houston Municipal Code, Chapter 15, Article 1 and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Secretary and the City Purchasing Agent. A pre-award protest of the BVB shall be received by the City Secretary and the City Purchasing Agent prior to the Contract award date. A post-award protest of an awarded Contract shall be filed within ten (10) days after the protester knows, or should have known, the basis or outcome of the Contract award.

- 10.2 A protest shall include the following:

- 10.2.1 The name, address, e-mail, and telephone number of the protester;

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- 10.2.2 The signature of the protester or its representative who has the delegated authority to legally bind its company;
- 10.2.3 Identification of the BVB description and the BVB or Contract number;
- 10.2.4 A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- 10.2.5 The desired form of relief or outcome, which the protester is seeking.

11.0 LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED:

- 11.1 Neither Offeror(s) nor any person acting on Offeror(s)'s behalf shall attempt to influence the outcome of the contract award by the offer, presentation or promise of gratuities, favors, or anything of value to any member of the Proposal evaluation committee, 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 Buyer identified on the first page of the BVB. Upon issuance of the BVB through the pre-award phase and up to the award of a contract, aside from Offeror's formal response to the BVB, communications publically made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Buyer and communications during an oral interview, scheduled at the request of and for the benefit of the Proposal evaluation committee, if any, neither Offeror(s) nor persons acting on their behalf shall communicate with any member of the Proposal evaluation committee, 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 contract award or to obtain or deliver information intended to or which could reasonably result in an advantage to any Offeror. However, nothing in this paragraph shall prevent Offeror from making public statements to the City Council body convened for a regularly scheduled session after the Proposal evaluation committee has made its official selection and presented same to Council for action.

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- 1.0 This BVB does not commit the City of Houston to award an Agreement, issue a Purchase Order, or to pay any costs incurred in the preparation of a Bid in response to this request.
- 2.0 The Bid will become part of the City's official files without any obligation on the City's part. All Responses shall be held confidential from all parties other than the City until after the Bids are opened and publicly read. Afterward, the Bids shall be available to the public.
- 3.0 The City of Houston shall not be held accountable if material from responses is obtained without the written consent of the Offeror by parties other than the City, at any time during the Bid evaluation process.
- 4.0 In the event an Offeror submits trade secret information to the City, the information must be clearly labeled as a **"Trade Secret."** The City will maintain the confidentiality of such trade secrets to the extent provided by law.
- 5.0 Offeror(s) shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston (including any and all members of the Bid evaluation committees).
- 6.0 Offeror(s) shall not collude in any manner, or engage in any practices, with any other Offeror(s), which may restrict or eliminate competition, or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a) responding to this BVB; or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein.
- 7.0 Offeror(s), their authorized representatives and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the Conditions, requirements, and Specifications of the BVB at the time a Bid is submitted to the City.
- 8.0 **The Award(s) shall become effective on or about June 1, 2016 for a term of TWO (2) years with three (1) year options. The City of Houston reserves the option of extending the Award(s) on a month to month or annual basis or portions thereof.**
- 9.0 If necessary for the completion of tasks required under the project, the City will provide reasonable working space to the Prime Contractor.
- 10.0 Clerical support and reproduction of documentation costs shall be the responsibility of the Prime Contractor. If required, such support and costs shall be factored into the Bid amount.
- 11.0 Prime Contractor personnel essential to the continuity, and the successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the City Project Director.
- 12.0 The Prime Contractor will be expected to adhere to all standard contractual requirements of the City which shall include, but are not limited to, provisions for: Time Extensions; Appropriation of Available Funds; Approvals; Term and Termination; Independent Contractor; Business Structure and Assignments; Subcontractors; Parties in Interest; Non-Waiver; Applicable Laws; Notices; Use of Work Products; Equal Employment Opportunity; Force Majeure; and Inspections and Audits.
- 13.0 The City may terminate its performance under the Award in the event of a default by the Prime Contractor and a failure to cure such default after receiving notice of default from the City. Default may result from the Prime Contractor's failure to perform under the Terms of the Award or from the Prime Contractor becoming insolvent, having a substantial portion of its assets assessed for the benefit of creditors, or having a receiver or trustee appointed.
- 14.0 Prime Contractor must promptly report to the City Project Director any conditions, transactions, situation, or circumstances encountered by the Prime Contractor which would impede or impair the proper and timely performance of the Award.
- 15.0 The City of Houston has sole discretion and reserves the right to cancel this BVB, or to reject any or all Bids received prior to Award.

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- 16.0 The City reserves the right to waive any minor informality concerning this BVB, or to reject any or all Bids or any part thereof.
- 17.0 The City reserves the right to request clarity of any Bid after they have been received.
- 18.0 After bid award and issuance of a City of Houston purchase order, the successful Offeror shall be the Prime Contractor and responsible party for contracting and communicating the work to be performed to subcontractors, and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the BVB. Any subcontracting not specified in the BVB will need prior written approval from the City Purchasing Agent.
- 19.0 Prime Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime Contractor or is subcontracted to another organization.
- 20.0 If subcontractor involvement is required in the use of license, patent, or proprietary process, the Prime Contractor is responsible for obtaining written authorization from the subcontractor to use the process, or provide another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.

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1.0 OVERVIEW:

The purpose of this bid is to determine the best value respondent for INORGANIC METAL SALT COAGULANT FERRIC SULFATE used in the treatment of the City's drinking water. INORGANIC METAL SALT COAGULANT quality and supply is of utmost importance to the health and safety of the citizens of Houston.

1.1 The award will be based on "Best Value Bid". The quantities listed/referenced herein and on the electronic bid form is estimated annual usage.

2.0 CHEMICAL COMPOSITION AND PHYSICAL PROPERTIES FOR FERRIC SULFATE:

In all instances delivered Ferric Sulfate shall meet the following criteria as a minimum. Materials having characteristics greater than the specified maximum or less than the specified minimum shall be rejected by the City for failing to meet contract specifications, and shipments returned shall be at the supplier's expense.

<u>PARAMETER</u>	<u>SPECIFICATION</u>	
	<u>Maximum</u>	<u>Minimum</u>
Ferric Ion	11.0% by weight	9.0% by weight
Ferrous Ion	0.3% by weight	
Water Insoluble Matter	0.1% by weight *No visible suspended contaminants	
Free Acid	<1.0% by weight The sulfuric acid used to produce this product must conform to NSF standards for direct chemical additives. Only sulfuric acid from virgin sources can be used in this process. Sulfuric acid from process waste streams will not be accepted.	
pH	<2.0	
Chlorides	<100 ppm by weight for 10% Ferric Ion	
Total Manganese	100 mg/kg	
Specific Gravity	To correspond to maximum and minimum concentration of Soluble Ferric Ion (Fe+3)	
Color	Dark amber to dark brown, cloudiness is not acceptable	
Concentration of Organic Compounds	*See Impurities - The product must not contain quantities of organic material sufficient to raise organic background levels at a reasonable product dosage	
Concentration of Heavy Metals	*See Impurities and attached list for maximum allowable levels	
Odor	Product should not have any uncharacteristic odors indicative of potential contamination	

*Impurities Ferric sulfate conforming to this standard shall contain no substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been properly treated with ferric sulfate.

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3.0 The product shall contain no contaminant in an amount sufficient to increase the concentration of ANY HEAVY METALS significantly above current levels, or causing them to exceed any Maximum Contaminant Level, as established by EPA under the authority of the Safe Drinking Water Act. Specifically the concentration of the following contaminants shall not exceed the RECOMMENDED MAXIMUM IMPURITY CONCENTRATION levels:

<u>IMPURITY</u>	<u>MAXIMUM CONCENTRATION</u>
Arsenic	30 mg/kg
Cadmium	7 mg/kg
Chromium	30 mg/kg
Chloride	100 mg/kg
Lead	30 mg/kg
Mercury	1 mg/kg
Selenium	7 mg/kg
Silver	30 mg/kg
Water Insoluble Matter	0.1% by weight

4.0 BID SAMPLE:

- 4.0 Within ten (10) working days of request by the City, the Bidder is required to submit duplicate, one liter, bid samples of inorganic metal salt coagulant, ferric sulfate solution in tightly capped glass containers. These samples must be representative of the material to be supplied and must be accompanied by the applicable Certified Analysis Sheet, using the attached forms. The Bid Samples and Certified Analysis Sheets are to be delivered to the City of Houston, Water Quality Control Laboratory, 2300 Federal Road, Houston, Texas 77015, between the hours of 8:00 a.m. and 3:00 p.m., Monday thru Friday. Failure to supply the requested documentation will be just cause to reject bid.
- 4.1 Each sample shall be labeled with the Bidder's name, Bid Invitation Number, and Bid Form Item Number. Should bidder(s) have any problems with submission of these samples, please contact the Water Quality Lab at (832) 395-6039, Attn: Fabian Heaney.
- 4.2 Before the successful Bidder is awarded, the City shall verify, by means satisfactory to itself, that the Bid sample submitted conform to specifications. Failure of the samples to meet any one of the requirements specified shall be sufficient grounds for rejection of the bid.
- 4.3 The "CERTIFIED ANALYSIS" shall be obtained from an independent third party analytical laboratory certified by the Laboratory Analysts Section of the Texas Water Utilities Association for the testing of contaminants in water and waste water, or by the Texas Commission on Environmental Quality (TCEQ) or other State Primacy Agency if other than Texas) for National Pollutant Discharge Elimination System compliance testing. If the laboratory is located outside the extra-territorial jurisdiction of the City of Houston, proof of laboratory certification may be required. Analyses to be performed are listed on the attached sheet, "CITY OF HOUSTON, CERTIFIED ANALYSIS FOR inorganic metal salt coagulant, ferric sulfate solution AWARD, FOR PUBLIC UTILITIES DIVISION, PUBLIC WORKS AND ENGINEERING DEPARTMENT".

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5.0 SOURCE OF SUPPLY:

Bidder will specify whether the raw materials used in the manufacture of inorganic metal salt coagulants supplied are to be "virgin" materials, or purchased as a by-product of another manufacturing process. If purchased as a by-product, would material be a listed hazardous waste under 40 CFR 261, if not sold for reuse? If material would be a listed hazardous waste, what specific characteristic or constituents cause it to be a listed material?

5.1 ***If the Bidder proposes use of "virgin" materials as the raw material for the process producing inorganic metal salt coagulants, he must supply the following, with the bid:***

- 5.1.1 Material Safety Data Sheets for each "virgin" material consumed in the process
- 5.1.2 A brief description of the manufacturing process producing inorganic metal salt coagulants.

5.2 DEFINITIONS:

- (1). "Virgin" - Naturally occurring in nature or produced as a primary product from materials naturally occurring in nature.
- (2). "By-Product" - Not a primary product. Product produced as an off stream of production of another product.

5.3 If the bidder proposes to supply inorganic metal salt coagulants purchased as a by-product of another manufacturing process, or proposes use of "by-product" raw materials as the raw material(s) for the process producing any of the coagulant products, he should supply, with his bid, to the User Department and Purchasing Agent the following:

- (1) Safety Data Sheets for all raw materials consumed in the process producing the "by-product raw material".
- (2) A description of the process generating the by-products to be used as raw materials in the manufacture of inorganic metal salt coagulants.
- (3) If the by-product purchased for delivery as product inorganic metal salt coagulants or for use as a raw material in the manufacture of inorganic metal salt coagulants would be a listed hazardous waste under Rocky Flats Cleanup Agreement (RFCA) regulations as stated in 40 Code of Federal Regulations No. 261, if not resold for re-use, the bidder will supply the User Department and Purchasing Agent:
 - a. The exact nature of the hazardous characteristics and/or constituents.
 - b. If all or some of the by-product material has been disposed, in the past, as a hazardous waste, a copy of the TWC waste registration for the material, including Texas Water Code (TWC) waste code number, description, and an analysis of the hazardous constituents.
 - c. Purchase price of by-product material to determine if "fair market value" requirements for recycling of a hazardous waste are being met.
 - d. The City of Houston reserves the right to reject any bid of such by-product material due to nature of chemical contamination possible through characteristics of process generating such by-product and/or nature of constituent contaminants.

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5.4 If bidder is not the original manufacturer of material to be supplied, he should supply the Purchasing Agent and the User Department with:

- (1) Name, address, phone number and contact person of the original manufacturer.
- (2) Actual site(s) of material manufacture.
- (3) Shipping point(s) of origin for each source to be supplied.
- (4) Whether original manufacturer produces material to be supplied as a primary product or as a by-product.
- (5) If material to be supplied is a by-product, or manufactured from raw materials obtained as a by-product or another manufacturing process, bidder should submit, as part of bid package, a description of each manufacturing process used for the production of by-product inorganic metal salt coagulants, or production of by-product raw materials to be used in the manufacture of inorganic metal salt coagulants. Bidder should also submit an estimate of the potential of chemical contamination from other materials used or stored at each site of manufacture of virgin or by-product inorganic metal salt coagulants or raw materials used in the production of inorganic metal salt coagulants. If such potential exists, what specific chemical substances are likely to be present. This section is not to be interpreted as a requirement for detailed proprietary information, but must include a description of original source materials.
- (6) During the contract period, notification of any change of ownership of original manufacturer(s) is to be reported to the Purchasing Agent and the User Department at least 60 days in advance of transfer of ownership.
- (7) During the contract period prior notification and written approval must be obtained from the Purchasing Agent and User Department for any significant changes in the original manufacturing process(es), or source materials used, as described in the bid package if manufactured as a primary product; if material is a by-product, notification of any significant changes of the manufacturing process(es) and/or source materials used by the process generating by-product. Failure to make such notifications and obtain necessary approvals shall be grounds for termination of this contract.
- (8) Safety Data Sheets (SDS) which conform to the format in ANSI Z400.1 (Latest Revision) for the product manufactured by the process generating inorganic metal salt coagulants as a by-product, as well as source materials used in the primary process.

5.5 In the event that Bidder is an original manufacturer of material to be supplied, but will not supply all (or any) of the Contract material from this manufacturing process, bidder must supply the Purchasing Agent and User Department with:

- (1). All information listed in subparagraphs 5.4 (1) thru 5.4 (8) above.
- (2). What proportion of Contract material is to be supplied from Bidder's manufacturing process, and the proportions to be supplied from each manufacturer listed in subparagraphs 5.4 (1) and 5.4 (2) above.

5.6 In the event that Bidder is not the original manufacturer of the material to be supplied and will supply all Contract material from his own manufacturing process, he must supply the Purchasing Agent and User Department with:

All information listed in subparagraphs 5.4 (1) thru 5.4 (8) above.

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6.0 MATERIALS:

The items furnished shall be new, unused, and represent the latest product in production to commercial trade, and shall be of the highest quality of materials used and workmanship. Manufacturer furnishing inorganic metal salt coagulants shall be experienced in production of Contract material and shall furnish evidence of having supplied such material(s) which were used successfully for similar purposes. The Bidder shall be an established supplier of the item bid.

7.0 CONTAMINATED MATERIALS:

All vendors 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 under this Contract, 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 contract the removal of any contaminated material and charge back the Supplier any and all costs involved.

8.0 QUALITY:

8.1 The chemicals supplied under these specifications shall contain no inorganic or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water treated with it, nor shall it contain any substances that react with source waters to produce a substance that could be deleterious or injurious to the health of the consumer. For this purpose an injurious or deleterious effect is defined as causing the concentration of one (1) of the chemical substances regulated in drinking water by the USEPA and/or Texas Commission on Environmental Quality (TCEQ) to exceed the Maximum Contaminant Level, established and in effect at the time of delivery, for the substance or cause a significant increase in the concentration of that substance over levels currently observed. For the purposes of this contract any "Action Levels" specified by EPA and/or the TCEQ shall be considered as a Maximum Contaminant Level.

8.2 In any regard, chemicals supplied by Supplier shall, in all respects, meet the minimum current standard specification of the American Water Works Association or the current Water Chemical Codex (as published by the National Academy Press of the National Academy of Sciences), whichever is the more restrictive for materials used in the purification of municipal water supplies.

8.3 Supplier will furnish proof that all materials to be supplied have been certified as in accord with National Sanitation Foundation standards for use in potable water production. Such certification must accompany the bid sample submitted as per heading entitled BID SAMPLE.

9.0 AFFIDAVIT OF COMPLIANCE FOR FERRIC SULFATE:

Bidder should submit with bid package an Affidavit of Compliance as per the American Water Works Association Standard B406-97, Section 6.3 for Ferric Sulfate.

10.0 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.

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11.0 SPECIFIED MATERIAL, OR EQUIVALENT:

- 11.1 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.
- 11.2 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.**

12.0 CONFIDENTIALITY STATEMENT:

- 12.1 The City recognizes that item(s) and/or chemical agents tested for the City of Houston's Ferric sulfate award are the patented property of the participating manufacturer/vendor/distributor and as such the chemical makeup and processes of the item(s) tested will not be disclosed by the City as they are the private and sole proprietorship of the participating vendor.
- 12.2 In the event a participating manufacturer/vendor/distributor submits trade secret information to the City, the information must be clearly labeled as a "Trade Secret". The City will maintain the confidentiality of such trade secrets to the extent permitted by law.
- 12.3 If confidential or proprietary information is requested under the Texas Public Information Act, the City shall notify bidder of such request in order to allow the bidder to exercise its rights under Section 552.305 of the Texas Government Code.

13.0 WARRANTY:

- 13.1 The bidder shall warrant that all chemicals delivered on under this award is of at least as good a quality as that of the sample submitted at the request of the City of Houston, within accepted analytical tolerance for error in determination. **Any change in product will have to be approved by the City.**

RESPONSIVENESS & RESPONSIBLENESS EVALUATION ASSESSMENT

SOLICITATION NO.: S12-S25736

To simplify the review process and to obtain the maximum degree of comparability, the Offeror(s) must provide the responses to the items set forth below and include this information as requested in their bid packet; to allow for the evaluation committee to conduct a thorough assessment of the Offeror(s) experience and capabilities. Moreover, Offeror(s) are encouraged to include additional relevant and supporting information to demonstrate their qualifications.

1.0 EXPERTISE/EXPERIENCE/QUALIFICATION STATEMENT:

Bidders, at a minimum, must provide the following:

- 1.1 Provide with the bid package its "Certified Analysis for Ferric Sulfate" (Exhibit A).
- 1.2 Provide documentation of satisfactory record of past performance and contract compliance (Exhibit B).
- 1.3 Provide with the bid package completed/signed M/WBE Letter of Intent (Exhibit C).
- 1.4 Provide with the bid package an Affidavit of Compliance as per the American Water Works Association Standard B406-97, Section 6.3 for Ferric Sulfate.
- 1.5 Provide with the bid package proof that all materials to be supplied have been certified as in accord with National Sanitation Foundation standards for use in potable water production. Such certification must also accompany the bid sample submitted as per heading entitled BID SAMPLE.
- 1.6 Provide with the bid package information/documentation specifying whether the raw materials used in the manufacture of inorganic metal salt coagulants to be supplied are to be "virgin" materials, or purchased as a by-product of another manufacturing process in compliance with Section 5.0, Source of Supply.
- 1.7 Submit evidentiary proof that that your company/firm is an established INORGANIC METAL SALT COAGULANT distributor and currently has INORGANIC METAL SALT COAGULANT manufacturing facilities and/or supplier(s) in operation that can produce and delivery sufficient stocks to meet City of Houston's daily requirements as herein stated and in the electronic bid form.

2.0 FINANCIAL STATEMENTS:

- 2.1 Submit with bid your company's proof of financial stability by submitting your company/firm's Dunn & Bradstreet report (Exhibit D) and/or audited annual financial statements, prepared by a certified public accountant for the past two years or copies of your Federal Tax forms filed to the Internal Revenue Service (IRS) for the past two years.

3.0 SITE INSPECTION:

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

EVALUATION AND SELECTION PROCESS
SOLICITATION NO.: S12-S25736

1.0 EVALUATION SUMMARY:

1.1 An evaluation committee will develop a short list of Offeror(s) for product testing based upon the initial review of each Bid received meeting the minimum criteria as stated in Section 1.0, Responsiveness & Responsibility Evaluation Assessment. The short listed Offeror(s) may be scheduled for site visit.

2.0 SELECTION PROCESS:

2.1 The award of this bid will be made to the respondent(s) offering the response which best meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Offeror(s) to create, modify and implement the required application modules. The Offeror(s) shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any offer if the evidence submitted by or the investigation of the Offeror(s) fails to satisfy the City or the Offeror(s) is deemed unqualified to provide the product/services contemplated. Each Offeror will be evaluated on the basis of the following evaluation criteria that are listed in order of importance below:

2.1.1	Cost	50%
2.1.2	Product Performance	20%
2.1.3	Conformance to BVB Requirements	10%
2.1.4	Expertise / Experience / Qualifications	10%
2.1.5	Financial Strength of Offeror	5%
2.1.6	M/WBE Participation	5%

* Hire Houston First Preference Points (City Business = five (5) extra percentage points or Local Business = three (3) extra percentage points and Non-City and Non-Local Business will receive zero (0) extra percentage points).

EXHIBIT "A"
SOLICITATION NO.: S12-S25736

CITY OF HOUSTON
 CERTIFIED ANALYSIS
 FOR FERRIC SULFATE
 FOR PUBLIC WORKS AND ENGINEERING DEPARTMENT
 This sheet should be submitted in duplicate upon request.

<u>PARAMETER</u>	<u>CONCENTRATION</u>
Available Ferric Ion Fe+3	_____ % by Weight
Total Ferrous Ionas Fe+2	_____ ppm
Chlorides as Cl-	_____ ppm
Free Acid	_____ % by Weight
Total Heavy Metals as Lead	_____ ppm
Total Manganese as Mn	_____ mg/kg
Water Insoluble Matter	_____ ppm
Total Chloride Concentration	_____ % by Weight

TRACE METALS

Arsenic as As _____ ppm	Lithium as Li _____ ppm
Barium as Ba _____ ppm	Mercury as Hg _____ ppm
Bromine as Br _____ ppm	Nickel as Ni _____ ppm
Cadmium as Cd _____ ppm	Silver as Ag _____ ppm
Chromium as Cr _____ ppm	Selenium as Se _____ ppm
Copper as Cu _____ ppm	Strontium as Sr _____ ppm
Lead as Pb _____ ppm	Zinc as Zn _____ ppm

Additional analyses may be required prior to bid award as deemed necessary by the City of Houston.

Source of Supply: _____	Laboratory: _____
Supplier: _____	Analysis By: _____ / _____ PRINTED NAME SIGNATURE
	Date of Analysis: _____
Supplier Representatives: _____	Certified By: _____
	Title: _____
	Address: _____
	Phone No. _____

All bidders agree by their participation in the bidding process to supply the user department within ten (10) working days from date of request, duplicate Certified Analysis performed by a third party independent analytical laboratory and signed by said laboratory's management and analyst. Such analysis is to be used, if deemed necessary by user department, for comparative purposes when making comparisons to bidder analyses and the City of Houston's analyses. Failure to provide this within ten (10) working days may remove bid from consideration.

EXHIBIT "B"
SOLICITATION NO.: S12-S25736

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 contractor, for the required Services that is similar in size and scope to this BVB requirements. Bidder must have references documenting that it has performed the required BVB services. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. **Bidder's capability and experience shall be evaluated and a factor in determining the Contractor's responsibility.**

LIST OF PREVIOUS/CURRENT CUSTOMERS

1. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

2. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

3. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

EXHIBIT "C"
SOLICITATION NO.: S12-S25736

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT.

TO: **City of Houston**
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: _____

Bid Title: _____

Bid Amount: _____

M/WBE Participation Amount: \$ _____ **M/WBE GOAL** _____%

1. _____ agrees to perform work/supply goods and/or **(Name of Minority/Women Business Enterprise)** Services in connection with the above-named contract and _____ as: **Name of Prime Contractor**
 - (a) _____ An Individual
 - (b) _____ A Partnership
 - (c) _____ A Corporation
 - (d) _____ A Joint Venture

2. _____ status is confirmed by M/WBE Directory made **(Name of Minority/Women Business Enterprise)** available through the City of Houston Office of Business Opportunity. Certificate No.: _____.

3. _____ and _____ **(Name of Prime Contractor)** **(Minority/Women Business Enterprise)** intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.

The Terms & Conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

(Signed -- Prime Contractor)

(Signed -- Minority/Women Business Enterprise)

(Title)

(Title)

(Date)

(Date)

EXHIBIT "D"
SOLICITATION NO.: S12-S25736

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 CHEMICAL, INORGANIC METAL SALT COAGULANT 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 CHEMICAL, INORGANIC METAL SALT COAGULANT.**

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: _____

In addition to providing references for similar work and size, the following must be addressed within 10 working days of request by the City of Houston:

The City of Houston has chosen Dun & Bradstreet (D&B) to assist with the evaluation process of the contract award in two specific areas, past supplier performance and financial and operational stability. This is accomplished through your provision of requested information to D&B and our review of two (2) D&B reports:

1. Past Performance Evaluation

This report will provide an overall rating and reliability, cost, order accuracy, delivery/timeliness, quality, order accuracy, business relations, personnel, customer support and responsiveness. To assist in the development of this report, all bidders must complete the attached forms in Section Four (4). This includes the submittal of twenty (20) business references. Completed forms are to be submitted to D&B's fulfillment partner, Open Ratings.

2. Supplier Evaluation Report

This report will provide an independent, third-party overview of your financial and operational stability. You are not required to provide D&B with any information for this report.

It is mandatory that you order and pay for these reports, as well as, submit proof of having ordered them with your bid document to be considered for this contract. The cost of the two reports is \$225.00

Because the Past Performance Evaluation report will take approximately 10-15 days after receipt of order form to complete, bidders are encouraged to submit their request to D&B in a timely fashion.

EXHIBIT "D"
SOLICITATION NO.: S12-S25736

Past Performance Evaluation (PPE) Order Form

To order, complete the attached forms and fax or e-mail them to:

Open Ratings, Inc.

eFAX: 866-743-4239

E-MAIL: reports@openratings.com

ATTN: Mary Kelly, Past Performance Evaluation Fulfillment

SECTION ONE: ABOUT YOUR COMPANY

Enter name and contact information for the company on which the past performance evaluation/supplier evaluation report is to be prepared:

(COMPANY NAME)

(DUNS NUMBER)

(STREET ADDRESS)

(CITY, STATE, ZIP)

(YOUR NAME)

(TITLE)

(E-MAIL ADDRESS)

(COMPANY PHONE NUMBER)

(COMPANY FAX NUMBER)

If you don't know your company's DUNS number, call (800) 333-0505 or look it up online at:
<http://www.dnb.com/dunsno/dunsno.htm>.

EXHIBIT "D"
SOLICITATION NO.: S12-S25736

SECTION TWO: REPORT RECIPIENTS

One copy of the past performance evaluation and supplier evaluation report will be sent to the individual listed in Section 1. One additional copy will be sent to the agency specified below (additional copies of the PPE can be sent to additional recipients for a fee of \$25 per additional recipient – attach additional sheets as necessary):

_____	_____
(AGENCY NAME)	(COMPANY NAME)
_____	_____
(AGENCY STREET ADDRESS)	(COMPANY STREET ADDRESS)
_____	_____
(CITY, STATE, ZIP)	(CITY, STATE, ZIP)
_____	_____
(AGENCY PHONE NUMBER)	(COMPANY PHONE NUMBER)
_____	_____
(AGENCY FAX NUMBER)	(COMPANY FAX NUMBER)
_____	_____
(CONTACT NAME/ATTENTION)	(CONTACT NAME/ATTENTION)
_____	_____
(E-MAIL ADDRESS)	(E-MAIL ADDRESS)
RFP #: _____	RFP #: _____

SECTION THREE: PAYMENT INFORMATION

ENCLOSED PLEASE FIND MY COMPANY CHECK

BILL TO MY CREDIT CARD:

AMERICAN EXPRESS VISA MASTERCARD

CARD NUMBER: _____ EXP. DATE: _____

SIGNATURE: _____

I AGREE TO PAY \$225 FOR THE PREPARATION/DISTRIBUTION OF MY PAST PERFORMANCE EVALUATION AND SUPPLIER EVALUATION REPORT, COPIES OF WHICH WILL BE PROVIDED BOTH TO MY COMPANY AND ONE RECIPIENT IDENTIFIED IN SECTION TWO ABOVE.

I ALSO AGREE TO PAY \$25 FOR EACH ADDITIONAL PPE COPY THAT I HAVE REQUESTED BE DISTRIBUTED TO ADDITIONAL RECIPIENTS IDENTIFIED IN SECTION TWO.

EXHIBIT "D"
SOLICITATION NO.: S12-S25736

QUESTIONS? CONTACT OPEN RATINGS AT (617) 232-9660

SECTION FOUR: CUSTOMER REFERENCES

**PLEASE PROVIDE INFORMATION ON RECENT CUSTOMERS TO BE SURVEYED (COMPANIES WITH WHICH YOU
HAVE DONE BUSINESS WITHIN THE PAST 1 YEAR)**

1. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

2. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

3. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

4. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

5. CUSTOMER NAME: _____
DUNS NUMBER: _____
CITY/STATE: _____
NAME OF CONTACT: _____
PHONE: _____ FAX: _____
E-MAIL: _____

GENERAL TERMS & CONDITIONS

SOLICITATION NO.: S12-S25736

1.0 TERM OF AWARD:

- 1.1 The term of the award shall be for a Twenty-Four (24) months period with (3) one year options period beginning on the date specified in the Notice of Award letter. During this period, purchase orders will be issued for items as needed. Any conflict between the terms and conditions as specified herein and said purchase orders; the term and conditions of the solicitation shall govern. The Supplier will not provide any goods/services without first having received an official City of Houston purchase order. While it is the intent to procure goods/services by issuing an Official City of Houston Purchase Order, there will be instances when a Purchasing Card (P-Card) or Petty Cash may be used. **The City requires that the prices awarded be honored on all purchases.**
- 1.2 It is emphasized that the City of Houston does not guarantee to purchase any specific quantity of any item listed; rather, the quantities may vary depending upon the actual needs of the user departments. Supplier shall remain obligated to the City under all clauses of this award that expressly or by their nature extend beyond and survive the expiration or termination of the award, including but not limited to warranties and indemnity provisions hereof.

2.0 OPTIONAL EXTENSION:

Subject to the availability of funding, this Award may be extended on a month-to-month basis upon acceptance of the Supplier beyond the initial awarded term. A price increase, subject to the provisions of the Award, may be requested by the supplier for approval by the City Purchasing Agent at this time. If the price increase is approved by the City Purchasing Agent or if no price increase is requested, a letter of extension will be issued by the City Purchasing Agent for the Supplier's acceptance under the same terms and conditions as the existing award.

3.0 SUPPLIER'S DUTY TO PAY:

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

4.0 INTER-LOCAL AGREEMENTS:

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

5.0 LOCAL PRESENCE/SOURCE:

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

6.0 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.

GENERAL TERMS & CONDITIONS

SOLICITATION NO.: S12-S25736

7.0 ESTIMATED QUANTITIES NOT GUARANTEED:

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of ferric sulfate will be purchased during the term of this award. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein and on the electronic bid document are good faith estimates of usage during the term of the award. Therefore, the City shall not be liable for any contractual agreements/obligations the Supplier enters into based on the City purchasing/requiring all the quantities specified herein and in the electronic bid document.

8.0 INVOICING:

8.1 In order to expedite payment all invoices must be submitted and 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

COH Department of Public Works and Engineering
Fin. Business Office, Accounts Payable
P.O. Box 3685
Houston, Texas 77251-3685

Electronic copies of invoices only (no supporting documents attached), should also be sent to the following electronic mailbox: finaccountspayable@houstontx.gov.

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 Invoices must be emailed or faxed for the prior month by the 15th calendar day of the following month. If no loads were delivered for the prior month, a notice (emailed or faxed) must be submitted by the 15th calendar day of the following month indicating that no loads were delivered during the prior month.

8.7 If the City disputes any items in an invoice the awarded supplier submits for any reason, including lack of supporting documentation, the Department, Division or Section shall temporarily delete the disputed item and pay the remainder of the invoice. Then the Department, Division or Section shall promptly notify the Supplier of the dispute and request remedial action. After the dispute is settled, Supplier shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

9.0 PAYMENT:

9.1 Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the goods, whichever occurs later. Invoices not in compliance with the conditions set forth herein will be returned for correction and may result in payment being delayed.

9.2 Early Payment Discount

9.2.1 The City of Houston's standard payment term is to pay 30 days after approval of invoice or receipt of goods and 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**

GENERAL TERMS & CONDITIONS
SOLICITATION NO.: S12-S25736

- 9.2.2 A Contractor may elect not to offer 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.
- 9.2.3 If the City fails to make a payment according to the early payment schedule above, but does make 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 the City business is not expected to be conducted, payment may be made on the following business day.

10.0 SAFETY DATA SHEETS (SDS):

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

GENERAL TERMS & CONDITIONS

SOLICITATION NO.: S12-S25736

11.0 CONTAMINATED MATERIALS:

- 11.1 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.
- 11.2 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and feed systems at the affected user site, if the source of such contamination is found, subsequent to initial acceptance, to originate with any individual, or series of chemical deliveries. All clean up and disposal activities will be conducted in a manner consistent with the best available technology and conform to all local, state, and federal regulations. The Supplier shall assume the responsibility as the generator of such contaminated material, along with all inherent obligations to ensure proper disposal of contaminated material.

12.0 INSPECTIONS AND AUDITS:

- 12.1 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.
- 12.2 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.
- 12.3 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.

13.0 SITE VISIT:

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

14.0 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.

15.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

- 15.1 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.
- 15.2 The burden of proof shall rest with the Bidder, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. **DETERMINATION AS TO WHETHER THE ITEM(S) BID IS /ARE EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CITY PURCHASING AGENT AND THE RECEIVING DEPARTMENT.**

GENERAL TERMS & CONDITIONS
SOLICITATION NO.: S12-S25736

16.0 DELIVERIES:

The Supplier agrees to make deliveries only "**after**" receipt of duly signed and approved Purchase Orders issued by an authorized City of Houston representative, "**and only after ordered by an authorized representative of the user department.**" Typical plant delivery ARO lead time is two to five days.

16.1 Deliveries will be made to the following facilities or other City sites or locations which may become necessary:

	East Water Purification Plants I, II, & III 2300 Federal Rd	Southeast Water Purification Plant 3100 Genoa Red Bluff
LIQUID FERRIC SULFATE	21,000 wet tons	2,500 wet tons

16.2 Deliveries shall be made at such intervals as required, against Purchase Orders issued by the User Department. It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine purification plant operations.

16.2.1 The Supplier will ensure that carrier vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading, including a 2" discharge hose and a fifty foot 1" air hose with crows feet on each end.

16.2.2 The City of Houston's chemical offloading equipment is to be used for backup or emergency use only. The City will not be responsible for demurrage charges resulting from use of City offloading equipment in lieu of adequate carrier offloading equipment. The Supplier assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks.

16.2.3 Unloading hoses shall be maintained with caps covering at all times other than when offloading to prevent debris from entering loading system.

16.3 Deliveries are to be made to the appropriate City facility between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, with standard provisions to be made for deliveries on holidays and weekends, during these same hours, and during periods of high product demand. **There shall be no extra charges to the City for Pre-Loaded trailers or Weekend and Holiday deliveries if deliveries are requested for these times.** The successful Bidder must make adequate provisions for product supply and transportation, and must maintain close contact with user department at all times. If there is a delay in the delivery schedule, the supplier must notify the ordering/ship to City facility immediately; at 832-395-2831. Additionally, the successful Bidder must make provisions for emergency delivery outside of the above listed normal delivery hours, at all times, to maintain adequate supply. Additional supplies may occasionally be required on an emergency basis.

16.4 It shall be the responsibility of the Supplier to make arrangements, and assume all financial obligations, including analytical costs, for the prompt clean-up and disposal of all contaminated product and associated chemical, unloading, storage, and feed systems at the affected user site, if the source of such contamination is found, subsequent to initial acceptance, to originate with any individual, or series of chemical deliveries.

16.5 All clean up and disposal activities will be conducted in a manner consistent with the best available technology and conform to all local, state, and federal regulations. The Supplier shall assume the responsibility as the generator of such contaminated material, along with all inherent obligations to ensure proper disposal of contaminated material, and any responsibilities arising from future lawsuits or clean-up costs associated with disposal of such contaminated materials.

16.6 The Supplier's carrier is responsible for containment and clean up of any product material released during offloading. The offloading area is to be free of any product material after offloading has been completed. The City reserves the right to delay final weighing of the carrier vehicle, at no cost to the City for demurrage or other costs, until any spilled product has been cleaned to the City's satisfaction or an acceptable agreement for cure has been reached between the Supplier and the City.

16.7 The Supplier's carrier must comply with site-specific safety training and regulations while in the plant. It will be the responsibility of the supplier's carrier to equip each vehicle entering the facility with appropriate personal protective equipment (PPE) for the safe offloading and spill cleanup associated with normal offloading procedures. The City

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reserves the right to request the Supplier to replace any delivery personnel who refuses to comply with City regulations

16.8 All access points on the tank trucks will be secured with a locking device and a numbered tamperproof seal prior to leaving the manufacturer's facility. The Supplier will provide the tamper proof seal number to the facility contact prior to delivery. The only seal that will be required for removal will be on the discharge line only. Loads that are unsecured, or have a broken, mislabeled, or missing seals will be rejected and returned to the Supplier at its expense. In the event that a load is returned for failure to meet security provisions, Supplier must provide a replacement load of product freshly loaded and sealed at the point of origin within 24 hours. The replacement load must be accompanied by proof that rejected load has not been resealed and returned, or commingled with original batch at the point of origin. Misrepresentation of replacement product or failure to follow these procedures may be grounds for termination of the awarded bid proposal.

17.0 DELIVERY POINTS:

17.1 Deliveries will be made to the following facilities or other facilities, which may be become necessary during the life of the contract. East Water Purification Plants I, II, and III - 2300 Federal Road, and the Southeast Water Purification Plant - 3100 Genoa Red Bluff. Before deliveries it is mandatory to fax over the name of Carrier, Driver's Name, Truck#, Trailer#, Seal Numbers, and BOL# to the following: (832) 395-5661 for South East Water Purification Plant, (832) 395-6022 for East Water Purification Plant.

17.2 Deliveries shall be made to the Houston Water Purification Facilities at Federal Road and Genoa Red Bluff, within the Houston City Limits, at such intervals as required against purchase orders issued by the authorized City of Houston Purchasing Agent. It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine Purification Plant operations. Supplier will ensure that carrier vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading. The City of Houston's chemical offloading equipment is to be used as backup or emergency use only. The City will not be responsible for demurrage charges resulting from use of City offloading equipment in lieu of adequate carrier offloading equipment. Supplier assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks.

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18.0 TESTING OF DELIVERIES:

18.1 A sample of each truckload will be collected in the presence of City personnel upon arrival. Acceptance of product will be based on analysis of sample by the on-site Water Quality Control Laboratory. Successful vendor will supply the Water Quality Laboratory with necessary instrumentation, equipment apparatus, and appropriate methodology to carry out verification tests. Shipments that fail to meet the acceptable specified range as it appears in the "Technical Specifications" portion of this document will be returned to Vendor, at no cost to the City. The Water Quality Laboratory results will be the sole determinant as to the acceptability of any given load. No shipment may be offloaded without prior confirmed authorization to unload from the Water Quality Staff. **NO CONNECTIONS** will be allowed between the vehicle trailer and offloading station until driver receives such authorization from the Water Quality Laboratory. Driver must remain outside the vehicle to monitor the entire offloading process, and must remain within 50 feet of the offloading station and in unobstructed view of the offloading station.

18.2 The City will select samples on a random basis, for analysis of inorganic and organic constituents by an independent third party laboratory certified by the Laboratory Analysts Section of The Texas Water Utilities Association, or the Texas Commission on Environmental Quality (TCEQ) for National Pollutant Discharge Elimination System (NPDES) testing, by the analytical method stated under CHEMICAL COMPOSITION AND PHYSICAL PROPERTIES. Cost of analysis will be borne by the City if all properties tested are within specifications as required by this document. Cost of analysis will be borne by supplier if product fails to meet contract specifications as indicated by the third party analysis. Failure to comply with contract specifications, as confirmed by independent third party analysis, may be grounds for termination of this contract.

18.3 Any costs incurred to supplier for handling and/or transportation, demurrage, etc. of any shipment rejected by the site laboratory, for failure to meet contract specifications shall be the responsibility of the supplier. The City shall in no way be held vulnerable to any charges associated with such rejected shipments.

19.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on a purchase order. The Supplier shall retain title and control of all goods until they are delivered and award of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Supplier. The Supplier shall file all claims for visible or concealed damage. The City will notify the Supplier promptly of any damaged goods and shall assist the Supplier in arranging for inspection.

20.0 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.

21.0 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.**

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22.0 FORCE MAJEURE:

- 22.1 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.
- 22.2 This relief is not applicable unless the affected party does the following:
- 22.2.1 Uses due diligence to remove the Force Majeure as quickly as possible; and
 - 22.2.2 Provides the other party with prompt written notice of the cause and its anticipated effect.
- 22.3 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.
- 22.4 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.**

23.0 SAMPLES:

- 23.1 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.
- 23.2 **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.**
- 23.3 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.

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.

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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', AGREEMENTORS', 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 AWARD 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.

25.3 INDEMNIFICATION PROCEDURES:

(1) Notice of Claims. If the City or Prime SUPPLIER receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

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

(2) Defense of Claims

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

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25.0 INSURANCE:

25.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Award. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and 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 Best's Key Rating Guide. Contractor shall maintain the following insurance coverage's in the following amounts:

25.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate

25.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

25.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

25.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

25.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

25.2.1 Immediately suspend Contractor from any further performance under this Award and begin procedures to terminate for default, or

25.2.2 Purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Award.

25.2.3 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.shtml>. The Director will consider all other forms on a case-by-case basis.

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26.0 DEMURRAGE:

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

26.1 It is the responsibility of the Supplier to ensure that the carrier has all necessary equipment such as applicable tools, fitting, hoses, coupling, and off-loading equipment to effect a safe and timely unloading so as not to disrupt routine plant operations. The Supplier will ensure that the carrier's vehicles are equipped with a suitable vehicle mounted pump to allow for product offloading. The City will not be responsible for demurrage charges resulting from use of City offloading equipment in lieu of adequate carrier offloading equipment. The Supplier assumes responsibility and liability for damage to any City property, including but not limited to chemical offloading equipment, gates, vehicles, concrete, and storage tanks.

26.2 The Supplier may charge an order cancellation fee if the City fails to provide cancellation notice by phone or other means at least two hours prior to the scheduled delivery. The City of Houston will strive to place orders 48 hours (2 days) prior to requested delivery time.

27.0 COVER FOR NON-DELIVERY:

The Supplier agrees that if, for any reason, at any time, it shall be unable to deliver in quantities and/or quality ordered by the City of Houston via a City of Houston purchase order under these specifications, and having been notified to make a shipment, shall have failed to deliver such a shipment after notification, then the City of Houston shall be authorized to purchase such material wherever available, and the Supplier agrees to pay the City of Houston the amount paid by it, over and above the bid price.

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 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 contracts in at least 2% 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 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in "Section A, Table 2".

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.

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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 SUPPLY OF SAFETY TRAINING:

- 32.1 The successful Bidder shall be capable of supplying and agrees to supply as a result of its participation in the bidding process formal safety training sessions to the user department. Such safety training sessions are to consist of the following and must be taught by a knowledgeable representative of the company:
- 32.2 The successful bidder will provide operator training via live trainer presentations using videotapes, handouts, and slide presentations on the general safe handling of the material.
- 32.3 Coverage in such presentation of the main safety hazards and general information as covered in the safety data sheet.
- 32.4 Such training sessions are to be conducted on site at the user department. At least two (2) such presentations of sixty (60) minutes each shall be supplied to the user department during the first two (2) months of the Award period, and during the first (1st) month of each twelve (12) month period thereafter. Should an award period be longer than twelve (12) months, but not be for a period that is an even multiple of twelve (12) months, the training shall be supplied within the first two (2) months of the last increment as well. The User Department and Supplier shall agree on a training schedule within fifteen (15) days of bid award.

33.0 REJECTIONS:

- 33.1 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.
- 33.2 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.

34.0 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.

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35.0 CHANGE ORDER

- 35.1 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.
- 35.2 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]

- 35.3 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:
- 35.3.1 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.
- 35.3.2 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.
- 35.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.
- 35.4 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.
- 35.5 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.

36.0 TERMINATION OF AWARD

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

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36.2 By the City for Default by Supplier:

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

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

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

36.2.2 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.

36.3 By the Supplier for Default by City:

36.3.1 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.

36.3.2 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.

36.3.3 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.

37.0 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.

38.0 SUPPLIER DEBT:

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

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39.0 POST AWARD MEETING:

Once the bid award has been approved by City Council, the Public Works & Engineering Department (PWE) will schedule a Post Award Meeting with the successful supplier and the PW&E End Users. This meeting will cover procurement, PW&E contacts, supplier invoicing, supplier payment, and all other matters related to the contract administration.

40.0 CONTRACT COMPLIANCE:

1. The Department of Public Works & Engineering reserves the right to monitor this award for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.
2. Monitoring may take the forms of, but will not necessarily be limited to:
 - 2.1 Site visits
 - 2.2 Review of deliveries received for accuracy and timeliness
 - 2.3 Review of Supplier's invoices for accuracy
3. 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.

41.0 PRICE ADJUSTMENTS:

41.1. 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.

41.2. Price Decreases:

41.2.1 If the Supplier's Direct Cost decreases at any time during the term of this Contract, for a sustained three (3) month period, Supplier shall immediately pass the decrease on to the City and lower its prices by the amount of the decrease in Direct Cost as determined by the Pentasul Sulfuric Acid Index.

41.2.2 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.

41.3. Price Increases:

41.3.1 Suppliers may request a price increase after three (3) months from the bid opening date of the bid received by the City Secretary of the City of Houston. Price increase requests must be supported by three (3) months of sustained price increases documented in the trade (as determined by Sulfuric Acid prices reported in Pentasul Index). Subsequent price increase requests may be submitted three (3) months from the date of the previous approved price increase. The amount of the first increase shall not exceed actual documented increase as determined by sulfuric acid prices reported in the Pentasul Index.

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- 41.3.2 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 Contract 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**

- 41.3.3 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 under the agreement 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.
- 41.3.4 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 law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

42.0 CONFLICT IN TERMS:

Should there be any conflict between the General Specifications and the Technical Specifications, the Technical Specifications shall prevail.