CITY OF HOUSTON
STRATEGIC PURCHASING DIVISION

Issue Date: February 16, 2018

FORMAL INVITATION TO BID

HUMAN PORTABLE RADIATION DETECTORS
FOR THE MAYOR’S OFFICE OF HOMELAND SECURITY

BID INVITATION No. S78 – S26515
NIGP CODE – 898-50 / 898-55 / 926-75

Buyer:
Questions regarding this solicitation should be addressed to Katie Moore, Procurement Specialist, at Katie.Moore@houstontx.gov or 832-393-8710

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 until no later than Thursday, March 29, 2018 at 10:30 A.M., and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 A.M. on that date for the purchase of Personal Radiation Detectors.

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

Prebid Conference:
A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Procurement Division, 611 Walker Street, Bob Lanier Public Works Building, 11th floor, Conference Room #1148, at 10:00 a.m. on Wednesday February 28, 2018.

All Prospective Bidders are urged to be present. It is the bidder’s responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it. City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

Inquiries concerning this BVB/ITB should be submitted via email to Katie.Moore@houstontx.gov at Strategic Purchasing, Service Contract Section, Room B 200, City Hall, 901 Bagby, Houston, Texas 77002, Attn: Katie Moore (832)393-8710/Katie.moore@houstontx.gov no later than 5:00 P.M., Friday, March 9, 2018.

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SECTION C: GENERAL TERMS & CONDITIONS
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*NOTE 1: Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.
*NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.
Honorable Mayor and City Council Members:

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

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

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

BIDDING AND AWARD:

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

THIS IS A (36) MONTH AWARD WITH TWO TWELVE (12) MONTH RENEWAL OPTIONS

SPECIAL BIDDERS NOTE:

These bid documents are to be bid exactly as published or amended by any letter(s) of clarification that may be issued pertaining thereto.

LINE ITEM BIDS:

Only one item may be bid for each referenced line item. To bid the referenced line item and an alternate, bidder must submit a separate bid form for each alternate item(s) with its own original signature page. Multiple bids for the same line item on one bid form will be just caused to reject a bid from further consideration.
PROTESTS

- Filing a Protest
  - An interested party may file a protest on the basis that the City has failed to comply with applicable federal or state law or with City ordinances. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objectivity and integrity of the procurement process. A protest must be filed in accordance with the timing requirements set forth herein and must include:
    - The name, address, telephone number, and email address of the protestor.
    - The number of the solicitation.
    - Information confirming that the protestor is an interested party.
    - A written statement of the grounds for the protest and the law or ordinance alleged to have been violated. The statement shall be accompanied by relevant supporting documentation and the relief requested.
    - The signature of the protestor.
  - Protests shall be submitted to: Chief Procurement Officer, City of Houston, 901 Bagby B300, Houston, TX 77002.

- The City recognizes three types of protests:
  - Protests regarding solicitation (Pre-Submission Protest)
    - Any Pre-Submission Protest regarding a solicitation published by the City shall be filed no later than five days before the opening of bids (if a competitive bid) or due date for submittals or proposals (if an RFP/RFQ), as applicable.
  - Protests regarding the evaluation or rejection of bids, qualifications, or proposals (Pre-Award Protest)
    - Any Pre-Award Protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed no later than five business days prior to the City Council meeting at which the award appears on the agenda.
  - Protests made after City Council’s decision to award a contract (Post-Award Protest)
    - Any protest regarding the award of a contract must be submitted no later than five calendar days after the date of the award.
    - Any protest received after the applicable deadline will not be considered.

NO CONTACT PERIOD:

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

Additional Required Forms to be Included with this Bid:

In addition to the electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affidavit of Ownership</td>
</tr>
<tr>
<td>Fair Campaign Ordinance</td>
</tr>
<tr>
<td>Statement of Residency</td>
</tr>
<tr>
<td>Conflict of Interest Questionnaire</td>
</tr>
<tr>
<td>Contractor Questionnaire</td>
</tr>
<tr>
<td>Early Payment Discount</td>
</tr>
<tr>
<td>Supplier / Manufacture Warranty</td>
</tr>
</tbody>
</table>

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>
<thead>
<tr>
<th>Table 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>MWBE</td>
</tr>
<tr>
<td>Sample Insurance Over $50000</td>
</tr>
<tr>
<td>Formal Instructions for Bid Terms</td>
</tr>
<tr>
<td>EEOC</td>
</tr>
</tbody>
</table>
1.0 **SCOPE:**

1.1 The intent of this specification is to provide human portable radiation detectors, including as requested/scheduled calibration, repairs and maintenance services. The portable radiation human detectors (backpack based radiation detection system) shall be supplied with associated carrying cases/pouches and port/cable connections. The furnishing and delivery of the radiation human portable detectors specified herein shall be the sole responsibility of the awarded supplier.

1.2 Bidder "must" provide documentation listing its representative manufacturer's name, product name, product serial/model numbers and detailed product specifications, including applicable warranty information.

2.0 **MINIMUM SPECIFICATIONS:**

<table>
<thead>
<tr>
<th>2.1 Human Portable Radiation Detector (backpack based radiation detection system) must be compliant with ANSI N42.53, 2013. Any exceptions must be listed individually with reason for exception of failure to pass this test.</th>
<th>Specifications of offered product must meet or exceed those listed below.</th>
</tr>
</thead>
</table>
| 2.1.1 Detector Requirement | • Perform gamma detection using sodium iodide (NaI) or other scintillator of equal or better performance  
• Provide a gamma energy range of at least 20 keV to 3000 keV  
• Have neutron detection  
• Provide left versus right gamma directionality information to indicate the location of the source, with both visual and audible announcements available  
• Weigh 22 lbs or less, including battery  
• Required operating temperature range of at least -4 Fahrenheit to +122 Fahrenheit (-20 Celsius to +50 Celsius)  
• Battery life at least 8 hours  
• Supply user manual that clearly describes the operation of the system in English |
| 2.1.2 System’s Software | • Include both continuous and manual modes of operation  
• Output data in ANSI N42. 42-2012 and N42.42-2016 compliant formats  
• Provide alarm data that is tagged with date, time, and location  
• Support data transfer from the system by Bluetooth 4.0 (or later) and at least one other of the following methods: USB cable, SD card, and/or native WIFI or cellular connectivity |
<p>| | |</p>
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</table>
| **2.1.3 User Interface** | • Be easy to read, suitable for use by a law enforcement officer or other designated first responder, and designed for low operator visibility during night-time operations  
  • Provide gamma and neutron count rates in real time  
  • Display dose rate in the following unit: microR/h. Units should auto range  
  • Provide audible and visual alarm indicators  
  • System should provide distinct audible and visual over range indications  
  • Include system health indicators, to indicate if the system is fully functional or experiencing any electronic errors |
| **2.1.4 Training** | • Training for HPDs basic use and configuration, PC Software use and program administration shall be developed per STC provided curriculum. This is to be completed and available via smart phone application (for IOS and Android, per STC specifications) within 3 months of receipt of order  
  • Vendor may be required to provide mechanism to record and report training completed via email, online or as a smart phone, per STC regional specifications. The vendor must provide use of these training tools for the life of the HPDs, with no additional cost to the region |
| **2.1.5 Other** | • Vendor must provide electronic inventory record file to the STC region, using .csv template provided by STC, at the time of delivery.  
  • Vendor must integrate create real time data feed from system into the STC Information Sharing Environment, using smart phone application or embedded cellular transmission device. Details to be provided at the time of award |
| **2.1.6 Other** | • Includes Pelican™ (or equivalent) case that will store detector and accessories. |
| **2.1.7 Other** | • Potential bidders may be required to provide one evaluation unit for up to a one (1) month period for field evaluation prior to final vendor selection. |
| **2.1.8 Other** | • Vendor may provide additional capabilities and options for overall contract consideration (e.g., real time monitoring, isotope ID etc.). |

### 3.0 WARRANTY:
The supplier shall provide a full five-year (5) warranty on the entire unit (based on the date of accepted delivery), which includes parts and labor. If the unit is down during the warranty period, the supplier shall supply at no cost to the City a "loaner" unit equivalent to the unit being repaired. All shipping charges for warranty work that is required outside of the Houston area will be borne by the supplier.

Vendor must provide quarterly reports to purchaser showing repair and maintenance costs of radiation human portable detector using STC provided Excel spreadsheet template for the lifetime of the human portable radiation detectors at no cost.

Comprehensive warranty covering all aspects including required calibration and annual software/hardware updates of the device for five (5) years from the date of accepted delivery by the end of user.

### 4.0 DELIVERY:
Radiation Human Portable Detectors as specified above, must be delivered with STC-Houston specified inventory control sticker(s) adhered to the radiation human portable detectors and with a USB thumb drive containing region specified data fields for use in an inventory tracking system in a .csv format. Delivery ticket and other documents and manuals, if requested shall be delivered to the location(s) as stated on each individual purchase order as expeditiously as possible, but no later than thirty (30) calendar days after receipt of City of Houston purchase order.

**Note:**
The successful contractor and purchaser shall establish a quarterly delivery rate as the radiation human portable detectors will be ordered/purchased for immediate deployment. Warranty policy (ies) and/or certifications as require per purchase order upon delivery.

5.0 **TRAINING:**
The vendor must provide use of the training tools for the life of the human portable radiation detectors with no additional cost to the City.

5.0.1 Vendor may be required to provide mechanism to record and report training completed online or by smart phone, per STC-Houston regional specifications.

5.0.2 Training for radiation human portable detectors developed per STC-Houston specifications provided curriculum to be completed and available online within three months of receipt of order.

6.0 **PARTS AND SERVICES:**
The supplier shall be required to provide associated radiation human portable detectors parts and accessories (i.e. carry pouches and connection ports) and equipment calibration, preventative and requested maintenance and repair services as per 10 CFR part 835.401(b) regulation. Services to include minor repair and troubleshooting to ensure the instrument is operating in accordance to manufacture specifications. Upon the successful completion of the repair, supplier shall provide an American National Standards Institute (ANSI) compliant calibration certificate.
SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS FOR
HUMAN PORTABLE RADIATION DETECTORS
FOR THE MAYOR’S OFFICE OF HOMELAND SECURITY

1.0 TERM OF AGREEMENT:
1.1 The term of the agreement shall be for a thirty-six (36) month period beginning on the date specified in the Notice of Award Letter, with two optional one-year option periods, for a total of sixty (60) months. During this period, purchase orders will be issued for items as needed. Any conflict between the terms and conditions as specified herein and said purchase orders; the term and conditions of this contract agreement shall govern. The Supplier will not perform against the Contract without first having received an official City of Houston purchase order. While it is the intent to procure goods/services from the Contract 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 Contract prices 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 during the period of this contract agreement; rather, the quantities may vary depending upon the actual needs of the user departments. Contractor/Supplier shall remain obligated to the City under all clauses of this Contract Agreement that expressly or by their nature extend beyond and survive the expiration or termination of the Contract Agreement, including but not limited to warranties and indemnity provisions hereof.

THIS IS A THRITY SIX (36) MONTH CONTRACT
WITH TWO (2) TWELVE (12) MONTH PERIODS TO RENEW

2.0 POST AWARD MEETING:
Once the contract has been approved by City Council, the Homeland Security Office (HSO) will schedule a Post Award Meeting with the successful vendor and HSO end users. This meeting will include procurement, HSO contacts, vendor invoicing, vendor payment and all other matters related to contract administration.

3.0 OPTIONAL EXTENSION:
This Contract Agreement may be extended for up to two additional 12 month periods upon acceptance of the Contractor/Supplier and 30-days written notice prior to the expiration of the initial term, or first option period, as applicable from the Chief Procurement Officer. A price increase, subject to the provisions of this Contract Agreement, may be requested by the Contractor/Supplier for approval by the Chief Procurement Officer at this time. If the price increase is approved by the Chief Procurement Officer or if no price increase is requested, a letter of extension will be issued by the Chief Procurement Officer to the Supplier under the same terms and conditions as the existing contract.
4.0 INVOICING:

4.1 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. Invoicing package must also include independent laboratory’s analysis and weight tickets where applicable.

4.2 All delivery tickets must have a description of the commodity delivered. Delivery tickets and packing slips shall contain the same information as the invoice, and must be signed by the receiving employee, and must show his/her City employee number.

4.3 Submit invoices to:

COH Mayor’s Office
Fin. Business Office, Accounts Payable
P.O. Box 1562,
Houston, Texas 77251-1562.
Electronic copies of invoices only (no supporting documents attached), should also be sent to the following electronic mailbox: myraccounting@houstontx.gov.

5.0 LIQUIDATED DAMAGES:

All prospective bidders are hereby notified that the Department's specified product deliver time is important to deployment operations and scheduling. Late deliveries will cause damage to the City. As such, late deliveries shall be subject to liquidated damages of one percent per day of the total dollar amount of the subject quantity in the specific purchase order, or quantity of materials requested for delivery specified on one order. Liquidated damages shall apply for all days past the specified days for delivery after receipt of the quantity specified in the purchase order, or date of requested delivery under a blanket purchase order.

6.0 PAYMENT:

6.1 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 shall be returned for correction and may result in payment being delayed.

6.2 If the City disputes any item in an invoice the Supplier submits for any reason, including lack of supporting documentation, the Department, Division or Section shall temporarily delete the disputed item and recommend the remainder of the invoice for payment. The Department, Division or Section shall promptly notify the Supplier of the dispute and request remedial action. If the dispute is settled in favor of the Supplier, the Supplier shall include the disputed or settled amount on a subsequent regularly scheduled invoice or a special invoice for the disputed or settled item only.

6.3 Early Payment Discount

6.3.1 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

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

6.5 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.
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 will be purchased during the term of this agreement. 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 this agreement. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein and in the electronic bid document.

8.0 INSPECTIONS AND AUDITS:
8.1 The City reserves all rights to review all payments made to Suppliers by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Supplier.
8.2 Representatives of the City have the right to examine the books of all suppliers supplying goods and/or services under the issued purchase order insofar as those books and records relate to performance under the issued purchase order.
8.3 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with the issued purchase order. Supplier shall keep its books and records available for this purpose for at least three years after this Award terminates. This provision does not affect the applicable statute of limitations.

9.0 CONTRACT COMPLIANCE:
9.1 HSO reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable levels of service are provided.

9.2 Monitoring may take the form of, but not necessarily limited to:
   9.2.1 Review of deliveries received for accuracy and timeliness
   9.2.2 Review of contractor's invoices for accuracy

10.0 SHIPPING TERMS:
10.1 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 off-loading is 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.

11.0 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.

12.0 ADDITIONS & DELETIONS:
The City, by written notice from the Chief Procurement Officer 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 awarded 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 under the Award, 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.
13.0 **FORCE MAJEURE:**

13.1 Timely performance by both parties is essential to this award. However, neither party is liable for delays or other failures to perform its obligations under this Award 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. In case of emergencies, the Supplier will provide the City 24/7 contact information.

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

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

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

13.3 The City may perform the awarded Bidder's functions itself or bid them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Award by the City.

13.4 If the Force Majeure continues for more than 30 days, the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may terminate this Award by giving 30 days' written notice to Supplier. This termination is not a default or breach of this Award. **SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AWARD AT THE TIME OF THE TERMINATION.**

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.

15.0 **SPECIFIED MATERIAL, 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 THAT SPECIFIED SHALL REST SOLELY WITH THE CHIEF PROCUREMENT OFFICER AND THE RECEIVING DEPARTMENT.**

16.0 **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 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.
17.0 RELEASE AND INDEMNIFICATION:

17.1 RELEASE:

SUPPLIER RELEASES THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AWARD, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE.

17.2 INDEMNIFICATION:

SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE “CITY”) FOR ALL THIRD-PARTY CLAIMS, LIABILITIES, FINES, AND EXPENSES (INCLUDING ALL DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AWARD INCLUDING THOSE CAUSED BY:

17.2.1 SUPPLIER’S ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

17.2.2 THE CITY’S AND SUPPLIER’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND

THE CITY’S AND SUPPLIER’S STRICT OR STATUTORY LIABILITY, WHETHER SUPPLIER IS IMMUNE FROM LIABILITY OR NOT. SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY DURING THE TERM OF THIS AWARD AND FOR FOUR (4) YEARS AFTER THE AWARD TERMINATES. SUPPLIER’S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE. SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

17.3 INDEMNIFICATION PROCEDURES:

17.3.1 Notice of Claims. If the City or 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.

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

17.3.2 Defense of Claims:

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

On any City Award with a labor component or any Award where Supplier delivery people make deliveries for City sites, Worker’s Compensation Insurance as shown in the Insurance Section is required.

18.0 INSURANCE:

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

18.2 $1,000,000.00 per occurrence; $2,000,000.00 aggregate, per 12-month policy period. Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.

18.3 All insurance policies required by this Award shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation against the City, and that it shall give thirty (30) days written notice to the City before they may be cancelled. Within such thirty (30) day period Supplier, covenants that it will provide other suitable policies in lieu of those about to be cancelled so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Award at once.

18.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.

19.0 SUCCESSORS AND ASSIGNMENTS:

Supplier may not assign this Award or dispose of substantially all of its assets without the written consent of the Chief Procurement Officer. 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.

20.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

20.1 These provisions apply to goal-oriented Awards. A goal-oriented Award means any City solicitation awarded for the supply of goods or non-professional services of approximately $100,000.00 for which competitive bids are required by law and which the Chief Procurement Officer has determined to have City of Houston Certified MWBE subcontracting potential.

20.2 The City of Houston, through Ordinance No. 84-1309 and Council Motion 86-2204, encourages the participation of Minority and Women Business Enterprises in the performance of City Awards. Pursuant to the aforesaid Ordinance and Council Motion, the City has classified the Award that will result from this bid as a Goal-Oriented Award and the recommended Supplier shall be required to make good faith efforts to subcontract at least 11% of the total dollar amount of this award ("City of Houston Certified MWBE goal") to either Minority Business Enterprises, Women Business Enterprises, or both, unless otherwise stated in the Bid Form or Specifications. The Chief Procurement Officer with the concurrence of the Affirmative Action Director reserves the right to adjust upwards or downwards the designated percentage goal.

21.0 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 Chief Procurement Officer, if satisfied as to the facts, will approve or issue the necessary certificates.
22.0 **AWARD:**

22.1 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.

22.2 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.

23.0 **REJECTIONS:**

23.1 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 Chief Procurement Officer or designated representative.

23.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and of 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 Chief Procurement Officer who shall have the right to reject the whole or any part of the same.

24.0 **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.

25.0 **CHANGE ORDER:**

25.1 At any time during the Awarded Bid Term, the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer 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.

25.2 The Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer 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] countersigned by the City Controller on [Date of countersignature of the Award]

Subject to all terms and conditions of the Awarded Bid, 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 Chief Procurement Officer or Director upon written notice to the Chief Procurement Officer]

25.3 The Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may issue more than one Change Order, subject to the following limitations:

25.4 Council expressly authorizes the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer, to approve a Change Order of up to $50,000. A Change Order of more than $50,000 over the approved Award amount must be approved by the City Council.

25.4.1 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.
25.4.2 The Total of all Change Orders issued under this section may not increase the Original Award amount by more than 25%.

26.0 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 under this Award, Supplier may request a time extension for the completion of the work. The Chief Procurement Officer’s or Director’s decision regarding a time extension is final.

27.0 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.

28.0 TERMINATION OF AWARD:

28.1 By the City for Convenience:

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

28.2 By the City for Default by Supplier:

28.2.1 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:

28.2.2 Terminate the Award for default and the City shall have no further obligation under the Award.

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

28.3 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.

28.4 By the Supplier for Default by City:

28.4.1 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.

28.4.2 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.

28.5 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 under this Award as of such date.
29.0 **PATENTS:**
The Supplier agrees to indemnify and save harmless the City, the Chief Procurement Officer 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 Chief Procurement Officer, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used.

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

31.0 **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 Suppliers 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, to be deemed a material breach leading to termination of this Award).

32.0 **ADDITIONS AND DELETIONS:**
The City, by written notice from the City Chief Procurement Officer to the Contractor, at any time during the term of this contract, 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 contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor’s normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

33.0 **INTERLOCAL AGREEMENT:**
Under the same terms and conditions hereunder, the Contract 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/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.