



Amendment No. 3
to
Contract No. GA150000003
for
Liquid Ferric Sulfate
between
Pencco Inc.
and the
City of Austin

- 1.0 The City hereby holds over the above referenced contract for a period of 30 days in accordance with the holdover language in the "Term of Contract" provision in Section 0400, Supplemental Purchase Provisions, which reads as follows:
- 2.0 Effective May 12, 2019 the term for the holdover will be May 12, 2019 to June 12, 2019.
- 3.0 The City hereby accepts a price increase for Liquid Ferric Sulfate effective March 18, 2019. The price per gallon is changed from \$0.516 to \$0.65 per pound.
- 4.0 The total Contract amount will not change. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/14/14 – 11/13/17	\$1,383,912.00	\$1,383,912.00
Amendment No. 1: Option 1 11/14/17 – 11/13/18	\$461,304.00	\$1,845,216.00
Amendment No. 2: Holdover 180 days 11/14/2018 – 5/12/19	\$0.00	\$1,845,216.00
Amendment No. 3: Holdover 30 days 5/12/19 – 6/12/2019	\$0.00	\$1,845,216.00

- 5.0 MBE/WBE goals were not established for this contract.
- 6.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: *Sean Dwyer*
Printed Name:
Authorized Representative

Pencco Inc.
PO Box 600
San Felipe, TX 77473-0600

Signature: *Georgia Billea* 3/18/19
Georgia Billea, Procurement Specialist III
City of Austin
Purchasing Office

Signature: *Leadw 3-18-19*

City of Austin
Purchasing Office



Amendment No. 2
to
Contract No. GA150000003
for
Liquid Ferric Sulfate
between
Pencco Inc.
and the
City of Austin

- 1.0 The City hereby holds over the above referenced contract for a period of 180 days in accordance with the holdover language in the "Term of Contract" provision in Section 0400, Supplemental Purchase Provisions, which reads as follows:
- 2.0 "Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing)."
- 3.0 Effective October 4, 2018 the term for the holdover will be November 14, 2018 to May 12, 2019.
- 4.0 The total Contract amount will not change. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/14/14 – 11/13/17	\$1,383,912.00	\$1,383,912.00
Amendment No. 1: Option 1 11/14/17 – 11/13/18	\$461,304.00	\$1,845,216.00
Amendment No. 2: Holdover 180 days 11/14/2018 – 5/12/19	\$0.00	\$1,845,216.00

- 5.0 MBE/WBE goals were not established for this contract.
- 6.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Sarah Duffy

Printed Name: Sarah Duffy, Bid Sec.
Authorized Representative

Pencco Inc.
PO Box 600
San Felipe, TX 77473-0600

Signature: Georgia Billela

Georgia Billela, Procurement Specialist III
City of Austin
Purchasing Office

10/5/18

Signature: Jonathan Dalchau

JONATHAN DALCHAU, PROCUREMENT SPECIALIST IV
City of Austin
Purchasing Office

10/5/2018



Amendment No. 1
to
Contract No. GA150000003
for
Liquid Ferric Sulfate
between
Pencco Inc.
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective November 14, 2017, to November 13, 2018. Two options remain.
- 2.0 The total Contract amount is increased by \$461,304.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/14/14 – 11/13/17	\$1,383,912.00	\$1,383,912.00
Amendment No. 1: Option 1 11/14/17 – 11/13/18	\$461,304.00	\$1,845,216.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Sarah Duffy

Printed Name: Sarah Duffy, Bid Sec.
Authorized Representative

Signature:

Linell Goodin-Brown

Linell Goodin-Brown, Contract Management Supervisor II
City of Austin
Purchasing Office

11-3-17

Pencco Inc.
PO Box 600
San Felipe, TX 77473-0600



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

October 3, 2014

Pencco, Inc.
Attn: Monica Avila
P.O. Box 600
San Felipe, TX 77573

Ms. Avila

Attached is a fully executed copy of the contract awarded to your firm to provide for the supply of Liquid Ferric Sulfate to the Austin Water Utility as a result of your firms response to IFB No. STA1132.

Responsible Department:	Austin Water Utility
Department Contact Person:	Lydia Torres
Department Contact Email Address:	lydia.torres@austintexas.gov
Department Contact Telephone:	512/972-0329
Project Name:	Liquid Ferric Sulfate
Contract Number:	GA150000003
Contract Period:	11/14/14 through 11/13/17
Contract Amount:	\$1,383,912
Extension Options:	Three 12-Month Extension Options
Extension Amount Per Option:	\$461,304
Requisition Number:	RQM 2200 14062400412
Solicitation Number:	STA1132
Council Date:	10/2/13
Agenda Item No.:	25

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at 512/972-4040.

Sincerely,

Stephen T. Aden, Sr.
Corporate Purchasing Manager
Purchasing Office
Finance and Administrative Service Department

cc: Lydia Torres, AWU

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
PENCCO, INC. (“Contractor”)
for
LIQUID FERRIC SULFATE
CONTRACT NO. GA150000003**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Pencco Inc. having offices at San Felipe, TX 77473 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number STA1132.

1.1 This Contract is composed of the following documents:

1.1.1 This Contract

1.1.2 The City's Solicitation, Invitation for Bid (IFB), STA1132 including all documents incorporated by reference

1.1.3 Pencco, Inc. Offer, dated 7/17/14, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$1,383,912 for the initial Contract term and \$461,304 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 Clarifications and Additional Agreements. The following are incorporated into the Contract.

1.6.1 N/A

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

CITY OF AUSTIN

Stephen T. Aden, Sr.

Printed Name of Authorized Person



Signature

Purchasing Manager Corporate

Title:

10/3/14

Date:

**CITY OF AUSTIN, TEXAS****Purchasing Office
INVITATION FOR BID (IFB)
OFFER SHEET****SOLICITATION NO:** STA1132**COMMODITY/SERVICE DESCRIPTION:** Liquid Ferric Sulfate**DATE ISSUED:** July 7, 2014**PRE-BID CONFERENCE TIME AND DATE:** N/A**REQUISITION NO.:** 2200 14062400412**LOCATION:** N/A**COMMODITY CODE:** 8856040**BID DUE PRIOR TO:** 2:00 PM; July 22, 2014**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:****BID OPENING TIME AND DATE:** 2:15 PM; July 22, 2014

STEPHEN T. ADEN, SR.

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701Corporate Purchasing Manager**Phone:** (512) 972-4040**E-Mail:** steve.aden@austintexas.gov**LIVE BID OPENING ONLINE:**

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed	Purchasing Office-Response Enclosed
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

To ensure prompt delivery, all packages SHALL BE CLEARLY MARKED ON THE OUTSIDE "Purchasing Office-Response Enclosed" along with the offeror's name & address, solicitation number and due date and time. See Section 0200 Solicitation Instructions for more details.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

SUBMIT 1 ORIGINAL and 2 COPIES OF YOUR RESPONSE

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	6
0500	SPECIFICATION (AWU-059)	6
ATT1	NOTICE OF CHEMICAL DELIVERY	1
0600	BID SHEET – Must be completed and returned with Offer	1
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	1
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

I agree to abide by the City's MBE/WBE Procurement Program Ordinance and Rules. In cases where the City has established that there are no M/WBE subcontracting goals for a solicitation, I agree that by submitting this offer my firm is completing all the work for the project and not subcontracting any portion. If any service is needed to perform the contract that my firm does not perform with its own workforce or supplies, I agree to contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service and am including the completed No Goals Utilization Plan with my submittal. This form can be found Under the Standard Bid Document Tab on the Vendor Connection Website:

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If I am awarded the contract I agree to continue complying with the City's MBE/WBE Procurement Program Ordinance and Rules including contacting SMBR if any subcontracting is later identified.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Pencco, Inc.
Address: P.O. Box 600, San Felipe, TX 77473
Federal Tax ID No.: [REDACTED]
Printed Name of Officer or Authorized Representative: Monica Avila
Title: Bid Sec.
Signature of Officer or Authorized Representative: Monica Avila
Date: July 17, 2014
Email Address: monica@pencco.com
Phone Number: 979 885 0005

*** Completed Bid Sheet, section 0600 must be submitted with this Offer sheet to be considered for award**



INVITATION FOR BID ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN

LIQUID FERRIC SULFATE

IFB NO. STA1132

Addendum No. 1

Date: July 15, 2014

The purpose of this addendum is to change the Economic Price Adjustment provisions in the solicitation from "Other miscellaneous chemical product mfg." to "Iron ore mining" since the pricing is based upon Iron cost.

- 1.0 Reference Section 0400, Paragraph 11 (D)(iii), "Economic Price Adjustment" change the index table to read as follows:

Weight % or \$ of Base Price:	
Database Name: Producer Price Index Industry Data	
Series ID: PCU21221-21221-	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: Iron ore mining	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: 100%	

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- 2.0 All other provisions of the solicitation shall remain unchanged and in full force and effect.

BY THE SIGNATURES affixed below Addendum No. 1 is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

A handwritten signature in black ink, appearing to read "Stephen T. Aden Sr.".

Approved By: _____

Stephen T. Aden Sr.
Corporate Purchasing Manager

Acknowledged By:

Pencco, Inc.

Bidder's Name

A handwritten signature in black ink, appearing to read "Monica Avila".

Authorized Signature
Monica Avila, Bid Sec.

Return one (1) copy to the Purchasing Office, City of Austin, prior to closing or with sealed bid. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS:** The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM:** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE:**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY – PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled Deliverables shall be clearly identified as such.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
 - A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
 - B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

- 33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, email, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means –
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means–
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a – 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by Noon, Tuesday, July 15, 2014 either by E-Mail: steve.aden@austintexas.gov or by FAX: 512/972-0111.

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

Alternate Offers will **NOT** be considered.

3. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
4. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for an initial term of 36-months and may be extended thereafter for up to three (3) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
 - B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
 - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
 - D. Prices are firm and fixed for the first 12-months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
5. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
6. **DELIVERY REQUIREMENTS:** (Reference Section 0500, paragraph 5.6 of Specification AWU-059 for Delivery locations.)

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

7. INVOICES and PAYMENT: (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed in accordance with Section 0500 paragraph 7.0 "Invoicing", of Specification AWU-059.

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

8. HAZARDOUS MATERIALS:

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

9. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

10. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

11. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12-months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price:	
Database Name: Producer Price Index Industry Data	
Series ID: PCU325998325998A	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: Other miscellaneous chemical product mfg.	

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB No. STA1132**

This Index shall apply to the following items of the Bid Sheet / Cost Proposal: 100%
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- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, as its sole discretion, may consider approving an adjustment on fully documented market increases.
12. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
13. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Lydia Torres, Contract Compliance Specialist, Sr., Austin Water Utility

E-Mail: Lydia.torres@austintexas.gov

PHONE: 512/972-0329

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

CITY OF AUSTIN, TEXAS
AUSTIN WATER UTILITY
PURCHASE SPECIFICATION
FOR

LIQUID FERRIC SULFATE

1.0 SCOPE AND CLASSIFICATION

1.1 Scope

These specifications are for the purchase of liquid ferric sulfate for use in the treatment of a municipal water supply. Specifications include Scope and Classification, Safety Requirements, Performance and Delivery Requirements, Material Requirements, Samples, Inspection and Test Requirements, Invoicing and Security.

1.2 Classification

The liquid ferric sulfate will be used by the City of Austin's, Austin Water Utility (AWU) water treatment plants as a coagulant to aid in the process of sedimentation by causing the finely divided materials suspended in the water to cluster together.

<u>Date</u>	<u>Issuance/ Prepared by</u>	<u>Revision</u>	<u>Departmental Approval</u>	<u>Purchasing Approval</u>
11/30/05	Judy Musgrove, PE, AWU	Revision	Andres Ramirez	Steve Aden
03/09/07	Judy Musgrove, PE, AWU	Revision	Lydia Torres	Steve Aden
04/09/09	Judy Musgrove, PE, AWU	Revision	Lydia Torres	Steve Aden
03/22/11	Judy Musgrove, PE, AWU	Revision	Andres Ramirez	Sydney Ceder
06/13/14	Judy Musgrove, PE, AWU	Revision	Lydia Torres	Steve Aden

This specification, until revised or rescinded, shall apply to each future purchase and contract for the commodity described herein. Retain for future reference.

2.0 SAFETY REQUIREMENTS

- 2.1 The liquid ferric sulfate shall comply with the American Water Works Association (AWWA) Standards for Ferric Sulfate as contained in the latest revision of the AWWA B406 Standard Publications, except for the modifications contained in these specifications. Where there is a conflict between requirements in the AWWA Standards and these specifications, these specifications shall govern.
- 2.2 The liquid ferric sulfate shall also conform to the ANSI/NSF Standard 60 for direct additives.
- 2.3 Each Contractor shall provide an MSDS/SDS *with their bid submittal*. An electronic copy of the MSDS or SDS sheet shall be transmitted by the Contractor within 3 business days after notification of award of this contract to the following City email address: awumsds@austintexas.gov.

3.0 MATERIAL REQUIREMENTS

- 3.1 In all instances delivered liquid ferric sulfate shall meet the following criteria as a minimum. Liquid ferric sulfate that has characteristics greater than the specified maximum or less than the specified minimum shall be rejected for failing to meet contract specifications. Any shipments returned shall be at the Contractor's expense.
- 3.2 Composition - The liquid ferric sulfate shall contain no less than 10.0% (percent) nor more than 12.0% (percent) total soluble iron and not more than 3.5% (percent) of free acid, expressed as H_2SO_4 . The insoluble matter shall be less than 0.10% (percent) with no visible or settled particles.
- 3.3 The liquid ferric sulfate shall contain no less than 10.0% (percent) water-soluble ferric iron and not more than 0.75% (percent) water-soluble ferrous iron, on a basis of 10.0% (percent) ferric iron; unless otherwise agreed upon, in writing, by the Contractor and the Contract Manager.
- 3.4 Specific Gravity and Color – The specific gravity shall correspond to maximum and minimum concentration of soluble ferric iron (Fe^{+3}), color shall be dark amber to dark brown, cloudiness *is not* acceptable.
- 3.5 Impurities - The liquid ferric sulfate shall be suitable for treating municipal water supplies and shall not contain any harmful impurities, nor shall it contain any impurities that would impart a taste and/or odor to the drinking water. It shall not contain any soluble mineral or organic substance in quantities capable of harming the health of those consuming water, which has been treated with liquid ferric sulfate. The liquid ferric sulfate shall contain no additives and/or detergents.
- 3.6 The liquid ferric sulfate shall not contain specific impurities in excess of the

following limits (by weight), for an expected maximum dosage not exceeding 100 mg/L based content.

Arsenic, 50 mg/kg
 Cadmium, 10 mg/kg
 Total Chromium, 50 mg/kg
 Lead, 50 mg/kg
 Mercury, 2 mg/kg
 Selenium, 10 mg/kg
 Silver, 50 mg/kg

- 3.7 Material Performance - The AWU reserves the right to perform jar tests on the liquid ferric sulfate provided by the Contractor prior to entering into a contract, to determine performance suitability. If it is determined that the liquid ferric sulfate is not suitable for use by the AWU, the AWU reserves the right to re-bid.

- 3.8 ***If a liquid ferric sulfate delivery is found to not meet specifications after it has been off-loaded into the storage tanks, the AWU can reject the product as specified in AWWA Standard B406. The Contractor shall then be required to remove the product and any product that has been mixed with it from the storage tanks, clean the storage tanks that held the rejected product and replace it with product meeting specifications. If temporary feed tanks are needed, the Contractor will provide those. This is all at the Contractor's expense.***

4.0 SAMPLES, INSPECTION, AND TEST REQUIREMENTS

- 4.1 ***Each bid submittal shall include a sample of not less than one pint of the liquid ferric sulfate. The bid sample shall be accompanied with the MSDS/SDS and a certificate of analysis.*** The analysis shall include heavy metals (as stated in this specification), %Fe++, %Fe+++, %Free Acid (H₂SO₄), %insoluble matter, and specific gravity. Sampling and testing of liquid ferric sulfate shall be done in accordance with the latest version of AWWA Standard B406 for liquid ferric sulfate. If the sample does not meet the above specifications, the bid will not be considered for award of contract.
- 4.2 A sample of the liquid ferric sulfate shall be taken at each delivery. This sample shall be pulled by the truck driver from the top of the tanker and be done on the Plant site in the presence of AWU staff. The AWU Water Quality Laboratory will analyze it. The percentage of active and available iron (Fe) shall be determined by the AWU Water Quality Laboratory and payment shall be based on pounds of iron delivered and based on this analysis. If the percent of iron is more than 12%, the AWU has the option of accepting or rejecting the load of liquid ferric sulfate. If the AWU chooses to accept the load, payment will be made for only 12% maximum iron content. If the load does not meet specifications, the Contractor has the option to request a portion of the sample for their own analysis. The Contractor will be

responsible for any shipping costs. The AWU lab will store the sample for three (3) months. Should any dispute arise regarding the accuracy of the AWU's analysis, the sample will be turned over to an independent laboratory, agreed upon by both parties, for analysis and payment will be made based on the results of this analysis. The cost of the analysis by an independent laboratory shall be the responsibility of the Contractor, if the product does not meet specifications.

- 4.3 The Contractor shall furnish the manufacturer's certified analysis of the liquid ferric sulfate with each load. The analysis shall include manufacturer's lot number, heavy metals (as stated in this specification), %Fe++, %Fe+++, %Free Acid (H₂SO₄), % insoluble matter, and specific gravity.

5.0 PERFORMANCE AND DELIVERY REQUIREMENTS

- 5.1 An individual certified scale receipt indicating the date, the tare and gross weight shall accompany each delivered load. An MSDS/SDS shall be provided to the AWU with each delivery.
- 5.2 Delivery shall be made in tank trucks with a capacity of approximately 5,000 gallons of liquid.
- 5.3 Delivery shall be made within 10 calendar days after an order is placed, either verbal or written. The Plant Supervisor will contact the Contractor to place an order and provide a delivery date and quantity. Should the Contractor make delivery on any day other than the scheduled delivery date, the AWU shall not be charged demurrage for any delays encountered in unloading the truck.
- 5.4 The City reserves the right to add and/or delete locations, as it deems necessary, at the same bid price.
- 5.5 Contractors shall be responsible for contacting the Plants and requesting a site visit to ensure delivery conditions are acceptable prior to submitting a bid. Otherwise, the City will assume that the delivery conditions are acceptable to the Contractor submitting a bid. After the award and before the first delivery, the Contractor's delivery personnel shall visit the plants to ensure they know the requirements for delivery to the respective plants. Contact personnel for the plants are shown below:
- 5.6 Delivery shall be to the following locations:
- Ullrich Water Treatment Plant, Chemical Building
Contact Person: Terry Delaney (512) 972-1801
1000 Forest View Drive
Austin, Texas 78746
terry.delaney@austintexas.gov
The delivery and departure route for Ulrich Water Treatment Plant is

restricted to Red Bud Trail.
Fax: (512) 972-1834

- Davis Water Treatment Plant
Contact Person: Mark Penton (512) 972-1723
3500 W. 35th Street
Austin, Texas 78703
mark.penton@austintexas.gov
Fax: (512) 972-7125
- Water Treatment Plant 4
Contact Person: Steve Carrico (512) 517-0085 (Steve's cell)
6800 Ranch Road 620 North
Austin Texas 78732-1917
steven.carrico@austintexas.gov

- 5.7 Delivery shall be made on weekdays (except City-observed holidays) between the hours of 7:30 a.m. and 2:00 p.m. CST. The Contractor shall be allowed only 2 hours between connect and disconnect.
- 5.8 If a truck arrives (for a delivery) on a Saturday, Sunday, or holiday, or after 2:00 p.m. on a regular work day without the prior approval from the Plant Supervisor, the AWU will charge the Contractor any and all overtime and call back expenses for unloading. Otherwise, the Contractor can decide that the truck will not be unloaded until normal business days and working hours.
- 5.9 The Contractor shall be responsible for cleanup of any spillage or leakage during transportation or on the Plant site due to defective pumping or unloading equipment or negligence of the driver.
- 5.10 The water plant inlet for the liquid ferric sulfate storage tanks is located at an elevation of up to 10 feet above grade. The delivery tank trucks shall be equipped with a pump or pneumatic delivery system capable of a minimum 50 psi of air. This system shall be capable of transferring the liquid ferric sulfate from the truck into the storage tanks. Note that some of the tanks may be located 65 feet above grade and may have several 90 degree bends. The inlet piping and fitting provided by the AWU consists of approximately 80 feet of 2" PVC pipe equipped with a 2" quick-connect. The Contractor's truck shall be equipped with a minimum 40 feet of hose and the proper fittings to attach to the AWU's inlet. If the Contractor desires, he may connect his own set of adapters to the AWU's inlet (for the contract period) that will be standard to all of his adapters.

6.0 OTHER REQUIREMENTS

- 6.1 Payment for each shipment shall be based on the percentage of active and available iron (Fe) in the shipment, as determined by the AWU's Water Laboratory. Invoices submitted to the AWU will be for the actual pounds of

iron in the load delivered.

- 6.2 Manufacturer Data – The Contractor shall indicate on the Bid Sheet the name of the manufacturer of the product which they propose to furnish. The Contractor shall include on the Bid Sheet the shipping point.

7.0 INVOICING

- 7.1 The Contractor shall submit invoices by the 5th of each month **including all corresponding copies of certified scale receipts** for each visit. Payment may be withheld on any invoice if signed certified scale receipts are not submitted with invoices.
- 7.2 Invoices shall be sent to the corresponding Water Treatment Plants where each delivery has been made.
- 7.3 Invoices shall include, but are not limited to the following:
- Contractor's name, on a professionally pre-printed, sequentially numbered form
 - Contractor's address and phone number
 - City's contract number and purchase order number (DO).
 - Date of each visit
 - Itemized description and pricing for each visit
 - Signed certified scale receipts for each visit

8.0 SECURITY

- 8.1 Due to developments in national security, the Austin Water Utility needs to know who is delivering bulk chemicals to our Plants and ensure orders are accurate. The Contractor shall FAX the "Chemical Delivery Notice" form (Attachment A) on company letterhead, to the anticipated delivery site upon receiving a purchase order and dispatching driver(s) for delivery to the Plant(s).
- 8.2 All person(s) and companies transporting HM (Hazardous Material) for the City of Austin / Austin Water Utility shall comply with the Federal Motor Carrier Safety Regulations, specifically 49CFR part 383 which governs commercial driver license standards requirements and penalties.
- 8.3 Hazardous Material is defined under 49 CFR part 383.5 as:
Any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

AUSTIN WATER UTILITY

*****NOTICE OF CHEMICAL DELIVERY*****

CHEMICAL VENDOR NAME: _____

TRUCKING COMPANY NAME: _____

COMPANY CONTACT PHONE: _____ DATE OF THIS NOTICE: _____

TYPE OF CHEMICAL TO BE DELIVERED: _____

DELIVERY INFORMATION:

DESTINATION: _____ TIME DELIVERY LEFT COMPANY: _____

ESTIMATED ARRIVAL TIME: _____

TRUCK DESCRIPTION:

MAKE: _____ MODEL: _____ COLOR: _____

TRUCK (front) LICENSE PLATE #: _____ TANK SECURITY SEAL #: _____

TRUCK / TANKER #: _____ / _____

DRIVER & COMMERCIAL DRIVER'S LICENSE (CDL) INFORMATION:

DRIVER NAME (not necessary at this time)
DRIVER CDL NUMBER & EXPIRATION DATE

DRIVER CONTACT PHONE CDL ENDORSEMENT ON LICENSE? YES NO
Circle One

CDL ENDORSEMENT CODE: H or X or N
Circle One

(This section for AWU use only)

Actual arrival time: _____ Is CDL endorsement code appropriate for this vehicle*? YES NO
Circle One

I have verified the information submitted on this form with actual conditions at delivery:

AWU Staff Signature: _____ Printed Name: _____

*Endorsement letters: N = Required for tanker vehicle

H = Required for transporting hazardous materials that require display of placards on truck/trailer

X = Combines N and H; Required for operating tanker vehicles carrying hazardous materials

This form should be retained and submitted with the related payment materials to AWU Accounts Payable.

NOTE: THIS FORM SHALL BE FAXED TO DELIVERY LOCATION SITE SUPERVISOR WHEN DRIVER HAS BEEN DISPATCHED FOR DELIVERY TO AUSTIN WATER UTILITY DELIVERY SITE. PLEASE CALL (512) 972-0310 WITH ANY QUESTIONS OR CONCERNS REGARDING THIS FORM.

{AWU REVISED 09/15/2013SS, Form 2013C}

**BID SHEET
CITY OF AUSTIN**

LIQUID FERRIC SULFATE

AWU-059

BID NO. STA1132

RQM: 2200 14062400412

BID OPENING DATE AND TIME: 7/22/14 @ 2:15 PM

BUYER: Stephen T. Aden

Copies of Bid: The Contractor must submit three copies of its signed bid - ONE ORIGINAL AND TWO COPIES

Special Instructions: Be advised that exceptions taken to any portion of the solicitations may jeopardize acceptance of the bid.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Liquid Ferric Sulfate: ULLRICH WATER TREATMENT PLANT	405,000	LBS	\$0.516	\$208,980.00
2	Liquid Ferric Sulfate: DAVIS WATER TREATMENT PLANT	258,000	LBS	\$0.516	\$133,128.00
3	Liquid Ferric Sulfate: WATER TREATMENT PLANT 4	231,000	LBS	\$0.516	\$119,196.00
			TOTAL PRICE BID	\$ 461,304.00	

DELIVERY SHALL BE MADE WITHIN 10 CALENDAR DAYS AFTER RECEIPT OF ORDER.

ALL SHIPPING AND HANDLING CHARGES MUST BE INCLUDED IN BID. DELIVERY TERMS: DELIVERY SHALL BE FOB DESTINATION, PREPAID AND ALLOWED
DELIVERY METHOD: Tank truck - bulk delivery 4500 gals approx.

COMPANY NAME: Pencco, Inc.

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

PRINTED NAME: Monica Avila, Bid Sec.

EMAIL ADDRESS: monica@pencco.com

PHONE NUMBER: 979 885 0005

ACCOUNTS RECIEVABLE POINT OF CONTACT: NAME Sarah Duffy PHONE NUMBER: 979 885 0005 x111

BIDDERS SHALL SUBMIT A "SAMPLE INVOICE" WITH BID.

**** Not Applicable ****

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	Pencco, Inc.					
Physical Address	831 Bartlett Road, Sealy, TX 77474					
Is Firm located in the Corporate City Limits? (circle one)	Yes			<input checked="" type="radio"/> No		
In business at this location for past 5 yrs?	<input checked="" type="radio"/> Yes			No		
Location Type:	Headquarters	<input checked="" type="radio"/> Yes	No	Branch	Yes	<input checked="" type="radio"/> No

SUBCONTRACTOR(S):

Name of Local Firm	N/A					
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs.?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

Section 0700: Reference Sheet

Please include the following information if required in solicitation:

Responding Company Name Pencco, Inc.

1. Company's Name City of Fort Worth
Name and Title of Contact Cristina Camarillo, Buyer
Present Address 1000 Throckmorton St
City, State, Zip Code Fort Worth, TX 76102
Telephone Number (817) 392 8355 Fax Number (817) 392 8440
Email Address cristina.camarillo@fortworthgov.org

2. Company's Name City of Houston
Name and Title of Contact Martin King, Sr. Staff Analyst
Present Address P.O. Box 1562
City, State, Zip Code Houston, TX 77251
Telephone Number (832) 393 8705 Fax Number (832) 393 8759
Email Address martin.king@houstontx.gov

3. Company's Name City of Denton
Name and Title of Contact Karen Smith, Senior Utility Buyer
Present Address 901-B Texas Street
City, State, Zip Code Denton, TX 76209
Telephone Number (940) 349 7100 Fax Number (940) 349 7302
Email Address karen.smith@cityofdenton.com

Section 0835: Non-Resident Bidder Provisions

Company Name Pencco, Inc.

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Texas Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

SAN FELIPE, TX 77473

FAX 979-885-3208

SAMPLE Invoice

1

Ship to:

[REDACTED] INDUSTRIAL SERVICES
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
UNITED STATES

Subtotal	2,322.00
Sales Tax	
Freight	
Total Invoice Amount	2,322.00
Payment Received	0.00
TOTAL	2,322.00

Check No:

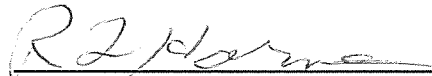
PENCCO, INC.
Pioneer Engineering Chemical Company

BOARD OF DIRECTORS MEETING

Prior notice was waived and a meeting of the directors was held on June 12, 2003. The following resolution was adopted in respects to official signing of bids.

BE IT RESOLVED by the Board of Directors of Pencco, Inc. in a meeting duly assembled that Monica Avila, Bid Secretary, of the Corporation to negotiate for and sign any bid proposals and/or contracts which this corporation might enter into for the furnishing of services for the Corporation under such terms, conditions and stipulation, and for such consideration as she might deem to the best interest of the Corporation.

No further business was necessary and the meeting was concluded.



R. L. Horne, President

PENCCO, INC.
Pioneer Engineering Chemical Company

AFFIDAVIT OF COMPLIANCE

This is to certify that the Liquid Ferric Sulfate supplied by our company meets AWWA Standard B406-06 or the latest revision, and is certified to NSF/ANSI Standard NSF-60.

R L Horne
Signature

R. L. Horne, President
Name and Title of Official

1/30/2014
Date



Customer Service 800-864-1742
FAX 888-273-6226

Material Safety Data Sheet (MSDS) Ferric Sulfate Solution

SECTION 1 – CHEMICAL PRODUCT AND COMPANY INFORMATION

Product Name: Ferric Sulfate Solution **Chemical Family:** Inorganic Iron Salts
Product Use: Water Treatment Chemical **CAS #:** 10028-22-5
Product Formula: $\text{Fe}_2(\text{SO}_4)_3$

Manufacturer's Name: Pencco, Inc.
Manufacturer's Address: P.O. Box 600, San Felipe, TX 77473
Emergency Phone Number: PENCCO (979) 885-005
CHEMTREC (800) 424-9300 – 24 hours a day

Revision Date: February 3 2014

SECTION 2 – COMPOSITION/INFORMATION ON INGREDIENTS

Ingredient	CAS #	Weight Percentage	ACGIH TLV	OSHA PEL	STEL
Ferric Sulfate	10028-22-5	35-50%	1 mg/m ³	1 mg/m ³	N/A
Sulfuric Acid	7664-93-9	< 1.0%	TWA: 0.2 mg/m ³	1 mg/m ³	N/A
Water	7732-18-5	39-65%	N/A	N/A	N/A

SECTION 3 – HAZARD IDENTIFICATION

Appearance and Odor: Reddish-brown liquid with a slightly acidic odor.

Emergency Overview: A corrosive chemical. Harmful or fatal if swallowed. Harmful if inhaled. Eye or skin contact may cause irritation. Contact with liquid or vapor form of this chemical may cause severe injury or death. Avoid overexposure.

Fire and Explosion Hazards: Substance itself does not burn, but may decompose upon heating to produce corrosive and/or toxic fumes. Not considered a fire or explosion hazard.

Carcinogenicity: None of the components of this material are listed as a carcinogen by IARC, NTP, OSHA, or ACGIH.

Summary of Acute Health Hazards

Ingestion – Toxic by ingestion. May cause irritation to the mouth and stomach. Higher doses may lead to abnormal liver function with nausea or vomiting, stomach pain, diarrhea, fast and weak pulse, lethargy, pallor, shock, hypertension, dilated pupils, fever, coma and even death. Individuals with pre-existing liver diseases may have increased susceptibility to the toxicity of exposure.

Inhalation – May cause irritation of the upper respiratory tract, mucous membranes, and lung tissues, resulting in difficulty breathing.

Skin Contact – Irritation and possibly burns.

Eye Contact – Irritation and possibly burns.



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SECTION 4 – FIRST AID MEASURES

Eye Contact First Aid: Immediately flush eyes for 15 minutes with large amounts of water while holding eyelids apart. Washing within one minute is essential to achieve maximum effectiveness. Obtain medical attention IMMEDIATELY after flushing.

Skin Contact First Aid: Flush skin with water. Remove contaminated clothing; wash before reuse. If irritation is still present, seek medical attention IMMEDIATELY.

Inhalation First Aid: Remove to fresh air. If not breathing, give artificial respiration. If breathing is difficult, give oxygen. Obtain medical attention IMMEDIATELY.

Ingestion First Aid: DO NOT INDUCE VOMITING. Give 1 or 2 glasses of water or milk. Never give anything by mouth to an unconscious individual. Obtain medical attention IMMEDIATELY.

SECTION 5 – FIRE FIGHTING MEASURES

Flash Point: Not applicable.

Upper/Lower Explosion Limits in Air: Not applicable.

Auto Ignition Temperature: Not applicable.

Extinguishing Media: Will not burn; use materials appropriate for surrounding fire.

Fire and Explosion Hazards: Substance itself does not burn, but may decompose upon heating to produce corrosive and/or toxic fumes, such as SO_x and iron fumes.

Fire Fighting Instructions: Firefighters should wear proper protective equipment and self-contained breathing apparatus with full face-piece operated in a positive pressure mode. Move exposed containers from fire area if it can be done without risk. Use water to keep fire-exposed containers and tanks cool.

Hazardous Product of Decomposition or Combustion: SO_x and iron fumes

	NFPA Rating	HMIS Rating	4 = Extreme / Severe
Health	2	2	3 = High / Serious
Reactivity	0	0	2 = Moderate
Flammability	0	0	1 = Slight

SECTION 6 – ACCIDENTAL RELEASE MEASURES

Review safety precautions before proceeding with cleanup. Use appropriate personal protection equipment. Do not touch spilled material. Neutralize spill with lime (calcium hydroxide), limestone (calcium carbonate), or soda ash (sodium carbonate). Restrict access to area until completion of clean up.

Caution: limestone and soda ash will evolve CO₂; ventilation should be provided in enclosed areas. Dike area around spill to prevent spreading, and use absorbent material to pick up spill.



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CERCLA Reportable Discharge (RQ): 1000 lbs. (454 kg), Based on anhydrous ferric sulfate. Divide by solution concentration to obtain solution weight.

Disposal: Under the Resource Conservation and Recovery Act (RCRA), it is the responsibility of the user to determine whether a substance should be classified as a hazardous waste at the time of disposal. This is due to the fact that product use, transformation, synthesis, mixtures, etc. may change the nature of the product. Dispose of waste in accordance with applicable federal, state, and local laws.

RCRA: Test waste material for corrosivity, DCO2, prior to disposal.

Steps To Be Taken In Case Material Is Released Or Spilled: Notify the appropriate environmental authorities. Note that spills may need to be reported to the National Response Center ((800) 424-8802)

SECTION 7 – HANDLING AND STORAGE

Handling: Store and handle in corrosion-proof materials (and area). Use FRP or PVC pipes. Be cautious of substance residue in empty containers. Act according to precautions and warnings set forth.

Storage: Store in a tightly closed container. Fiberglass, plastic, rubber-lined, or type 316 (or better grades of steel) tanks may be used for storage. Protect from damage and keep separated from incompatible substances in Section 10.

SECTION 8 – EXPOSURE CONTROLS AND PERSONAL PROTECTION

Respiratory Protection: Adequate general ventilation should be provided to keep vapor and mists below exposure limits. The exposure limits for product components are listed in Section 2. Wear a NIOSH/OSHA approved respirator with a dust/mist cartridge if there is potential of exposure to mists in excess of applicable limits, in any situation where product vapor or mists may be present, such as in confined spaces.

Eye Protection: Wear splash resistant goggles and/or safety glasses with side shields. Wear a full face shield if possibility of material splashing or spraying exists. Maintain eye wash fountain. Water should be supplied through insulated and heat-traced lines to prevent freeze-ups in cold weather.

Skin Protection: Where there is possibility of skin contact, use the following as appropriate, to avoid skin contact: gloves impervious to material, apron, boots, hood, pants, and jacket. Maintain a safety shower with quick opening valves. Water should be supplied through insulated and heat-traced lines to prevent freeze-ups in cold weather.



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FAX 888-273-6226

SECTION 9 – PHYSICAL AND CHEMICAL PROPERTIES

Boiling Point:	100-113°C (212-236°F)	pH:	< 2.0
Melting Point:	N/A	Solubility in Water:	Complete
Specific Gravity:	1.4 – 1.6	Vapor Pressure:	N/A
% Volatile:	39 – 65 (Water)	Evaporation Rate:	N/A
Vapor Density (Air = 1):	N/A	Molecular Weight:	399.88
Appearance:	Red/Brown Colored Liquid	Odor:	Slightly acrid

SECTION 10 – STABILITY AND REACTIVITY

Stability: Stable at normal conditions

Polymerization: Will not occur.

Decomposition: Decomposes upon heating to produce corrosive and/or toxic fumes, such as SO_x, iron, and acid fumes.

Incompatibility: Corrodes cast iron, bronze, and brass. Avoid contact with nylon, aluminum/aluminum alloys, carbon steel, stainless steel, galvanized steel, and copper / copper alloys.

SECTION 11 – TOXOLOGICAL INFORMATION

Chronic Effects: Repeated dosage may cause hemosiderosis, including possible damage to liver and pancreas. Chronic eye contact may cause local brown discoloration.

Toxicological Data: Anhydrous Ferric Sulfate Solid Oral LD₅₀ (rat) = 500 mg/kg

Sulfuric Acid Oral LD₅₀ (rat) = 2140 mg/kg

Sulfuric Acid Inhalation LD₅₀ (rat) = 510 mg/m³ in 2 hr.

Carcinogenicity: None of the components of this material are listed as a carcinogen by IARC, NTP, OSHA, or ACGIH.

Reproductive Effects: No reproductive effects are known.

Target Organs: No data available.

SECTION 12 – ECOLOGICAL INFORMATION

Ecotoxicological Information: No ecological effects of this product are known. Safely store product to avoid release to the environment.

SECTION 13 – DISPOSAL CONSIDERATIONS

Under the Resource Conservation and Recovery Act (RCRA), it is the responsibility of the user to determine whether a substance should be classified as a hazardous waste at the time of disposal. This is due to the fact that product use, transformation, synthesis, mixtures, etc. may change the nature of the product. Product containers should be thoroughly emptied before disposal. Dispose of waste in accordance with applicable federal, state, and local laws.



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SECTION 14 – TRANSPORTATION INFORMATION

DOT Shipping Name: Corrosive Liquid, Acidic, Inorganic, n.o.s (contains Ferric Sulfate)

Hazard Class: 8 – Corrosive Material

UN Number: UN 3264

Packing Group: III

Reportable Quantity: 1000 lbs (454 kg)

SECTION 15 – REGULATORY INFORMATION

OSHA: Hazardous Corrosive Liquid – 29 CFR 1920.1200

OSHA Process Safety (29 CFR 1910.119): No

CERCLA: Hazardous Substance – Reportable Quantity (RQ) = 1000 lbs (454 kg)

SARA Regulations: 313 and 40 CFR 372: No

SARA Hazard Categories, SARA Sections 311/312 (40 CFR 370.21):

Acute: Yes; **Chronic:** No; **Fire:** No; **Reactive:** No; **Sudden Release:** No

Clean Water Act: Designated as a hazardous substance under Section 311(b)(2)(A) of the Federal Water Pollution Control Act; ferric sulfate is also regulated by the Clean Water Act Amendments of 1977 and 1978. This chemical is subject to regulations regarding its discharge.

TSCA Inventory Status: Yes

California Proposition 65: No

Right-To-Know Lists: Massachusetts, California, Pennsylvania, New Jersey. This substance does not contain nor is manufactured with ozone-depleting substances.

Canadian Regulations: CPR: Corrosive, Class E; DSL: Listed

SECTION 16 – OTHER INFORMATION

Pencco provides the information contained in each material safety data sheet ("MSDS"), technical data sheet ("TDS"), product information brochure and/or information contained herein (including data and statements) in good faith and makes no representations as to its comprehensiveness or accuracy as of the date of publication. The MSDSs, TDSs, and product information brochures are referred to collectively as the "Data Sheets". It is the responsibility of the user to obtain and use the most recent version of the Data Sheets. Each Data Sheet relates only to the specific product designated therein and may not be valid where such product is used in combination with any other materials or in any process. Further, since the conditions and methods of use of the product and information are beyond the control of Pencco, Pencco expressly disclaims any and all liability as to any consequential damages or results obtained or arising from any use of the products or the information contained in the Data Sheets. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE AS CONCERNS THE DATA SHEETS OR THE RELATED PRODUCTS.

No statement made in the Data Sheets or by any employee or agent of Pencco shall be construed as a permission or recommendation for the use of any product in a manner that might infringe existing patents. No employee, agent, distributor, or sales representative is authorized to vary the terms of the above paragraph, to make any statements, representations, or warranties inconsistent with the above paragraph, or to provide any information that is at variance with the above paragraph. All materials related to the product are subject in all respects to the above paragraph and to the extent that they are inconsistent with the above paragraph, the terms of the above paragraph shall control.



The Public Health and Safety Organization

NSF Product and Service Listings

These NSF Official Listings are current as of **Monday, July 21, 2014** at 12:15 a.m. Eastern Time. Please [contact NSF International](#) to confirm the status of any Listing, report errors, or make suggestions.

Alert: NSF is concerned about fraudulent downloading and manipulation of website text. Always confirm this information by clicking on the below link for the most accurate information:

<http://info.nsf.org/Certified/PwsChemicals/Listings.asp?CompanyName=pencco&>

NSF/ANSI 60 Drinking Water Treatment Chemicals - Health Effects

PENCCO, Inc.

831 Bartlett Road

Sealy, TX 77474

United States

800-864-1742

979-885-0005

[Visit this company's website \(http://www.pencco.com\)](http://www.pencco.com)

Facility : Distribution Center - East Stockton, CA

Hydrofluosilicic Acid

<i>Trade Designation</i>	<i>Product Function</i>	<i>Max Use</i>
Fluorosilicic Acid	Fluoridation	6mg/L
Fluosilicic Acid	Fluoridation	6mg/L
Hydrofluorosilicic Acid	Fluoridation	6mg/L
Hydrofluosilicic Acid	Fluoridation	6mg/L

Facility : Vernon, CA

Ferric Chloride**Trade Designation****Product Function****Max Use**

Ferric Chloride

Coagulation & Flocculation

500mg/L

Ferrous Chloride**Trade Designation****Product Function****Max Use**

Ferrous Chloride

Coagulation & Flocculation

500mg/L

Facility : Distribution Center - Willow Springs, IL**Hydrofluosilicic Acid****Trade Designation****Product Function****Max Use**

Fluorosilicic Acid

Fluoridation

6mg/L

Fluosilicic Acid

Fluoridation

6mg/L

Hydrofluosilicic Acid

Fluoridation

6mg/L

Facility : Distribution Center - Westborough, MA**Hydrofluosilicic Acid****Trade Designation****Product Function****Max Use**

Fluorosilicic Acid

Fluoridation

6mg/L

Facility : Middlesex, NC**Ferric Sulfate****Trade Designation****Product Function****Max Use**

50% Ferric Sulfate

Coagulation & Flocculation

650mg/L

60% Ferric Sulfate

Coagulation & Flocculation

650mg/L

Ferric Sulfate

Coagulation & Flocculation

650mg/L

Penn 3202

Coagulation & Flocculation

650mg/L

Poly Ferric Sulfate

Coagulation & Flocculation

650mg/L

Facility : Distribution Center - Bardwell, TX

Ferric Chloride**Trade Designation**

Ferric Chloride

Pencco 3012

Product Function

Coagulation & Flocculation

Coagulation & Flocculation

Max Use

600mg/L

600mg/L

Ferric Sulfate**Trade Designation**

Ferric Sulfate Solution

Product Function

Coagulation & Flocculation

Max Use

650mg/L

Ferrous Chloride**Trade Designation**

Ferrous Chloride

Pencco 0210

Product Function

Corrosion Control

Coagulation & Flocculation

Corrosion Control

Coagulation & Flocculation

Max Use

500mg/L

500mg/L

Hydrofluosilicic Acid**Trade Designation**

Hydrofluorosilicic Acid

Product Function

Fluoridation

Max Use

6mg/L

Facility : Ennis, TX**Ammonium Sulfate****Trade Designation**

LIQUID AMMONIUM SULFATE

Product Function

Chloramination

Max Use

60mg/L

Ferric Chloride**Trade Designation**

Ferric Chloride

Pencco 3012

Product Function

Coagulation & Flocculation

Coagulation & Flocculation

Max Use

600mg/L

600mg/L

Ferric Sulfate**Trade Designation**

50% Ferric Sulfate

60% Ferric Sulfate

Ferric Sulfate

Poly Ferric Sulfate

Product Function

Coagulation & Flocculation

Coagulation & Flocculation

Coagulation & Flocculation

Coagulation & Flocculation

Max Use

150mg/L

150mg/L

150mg/L

150mg/L

Ferrous Chloride**Trade Designation****Product Function****Max Use**

Ferrous Chloride	Corrosion Control	500mg/L
	Coagulation & Flocculation	
Pencco 0210	Corrosion Control	500mg/L
	Coagulation & Flocculation	
Hydrofluosilicic Acid		
Trade Designation	Product Function	Max Use
Hydrofluorosilicic Acid	Fluoridation	6mg/L

Facility : Sealy, TX

Ferric Sulfate

Trade Designation	Product Function	Max Use
50% Ferric Sulfate	Coagulation & Flocculation	650mg/L
60% Ferric Sulfate	Coagulation & Flocculation	650mg/L
Ferric Sulfate	Coagulation & Flocculation	650mg/L
Ferric Sulfate Solution	Coagulation & Flocculation	650mg/L
Penn 3202	Coagulation & Flocculation	650mg/L
Poly Ferric Sulfate	Coagulation & Flocculation	650mg/L

Hydrofluosilicic Acid

Trade Designation	Product Function	Max Use
Fluorosilicic Acid	Fluoridation	6mg/L
Fluosilicic Acid	Fluoridation	6mg/L
Hydrofluosilicic Acid	Fluoridation	6mg/L

NOTE: AI - Testing is covered under AI00243 at Test Only facility #C0054871.

Number of matching Manufacturers is 1

Number of matching Products is 40

Processing time was 0 seconds

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER:	STA1132
PROJECT NAME:	Liquid Ferric Sulfate

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No ☒ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes ☐ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Pencco, Inc.

Company Name

Monica Avila, Bid Sec.

Name and Title of Authorized Representative (Print or Type)

Signature

Monica Avila

07/17/14

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER:	STA1132
PROJECT NAME:	Liquid Ferric Sulfate

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Pencco, Inc.		
Address	P.O. Box 600		
City, State Zip	San Felipe, TX 77473		
Phone	979 885 0005	Fax Number	979 885 3208
Name of Contact Person	Monica Avila		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Monica Avila, Bid Sec.

Name and Title of Authorized Representative (Print or Type)

Monica Avila

07/17/14

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	N/A - NOT Applicable		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____