

## CONTRACT FOR SODIUM SILICOFLOURIDE

**THE PARTIES TO THIS Contract** are the City of Daytona Beach, a Florida municipal corporation ("City") and Florida Chemical Supply, Inc., a Florida profit corporation ("Contractor").

In consideration of the mutual covenants herein contained, the parties agree as follows:

**Section 1. Scope of Services.** Contractor will provide sodium silicofluoride aka sodium fluorosilicate to the City as further described in ITB 20561 attached hereto and incorporated herein by reference.

**Section 2. Compensation and Payments.** The City will pay the Contractor a unit price of \$.60 per pound as set forth in the price schedule included in the Contractor's bid. This unit price will be the Contractor's sole compensation for the services provided.

**Section 3. Incorporation of ITB and Offer Package.** The City's Invitation to Bid (ITB) 20561, and any Addenda are incorporated herein as Exhibit A. The Contractor's Responsive Offer is attached as Exhibit B. In case of conflicts between the Solicitation, Exhibit A, and the Offer, Exhibit B; Exhibit A (the ITB) will govern. In case of conflicts between Exhibit A and other provisions of this Contract, this Contract will govern.

**Section 4. Notice.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier Service, provided to a nationally recognized delivery Service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

**To the City:**

Attn: Shannon Ponitz  
Utilities Director  
The City of Daytona Beach  
125 Basin Street, Suite 204  
Daytona Beach, FL 32114  
Fax: 386.671.8055

**To Contractor:**

Attn: Julie Cotty  
Business Development Director  
Contractor: Florida Chemical Supply, Inc.  
Address: 6810 E Chelsea Street  
City/ST/Zip: Tampa, FL 33610  
Fax: 813-622-7167

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

**Section 5. Authority to Bind Contractor.** The undersigned representative of Contractor represents and warrants the he or she is fully authorized to bind Contractor to the terms and conditions of this Contract.

**Section 6. Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

**Section 7. Effective Date and Term.** The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 1 year, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 4 Terms of 1 year each, by providing CONTRACTOR written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONTRACTOR.

**Section 8. Price Escalation/DeEscalation (PPI)**

The City may allow a price escalation provision within this award. The original Contract prices shall be firm for the entirety of the initial Contract period. A price escalation/de-escalation will be considered at the time of Contract renewal and at 12-month intervals thereafter, provided the Supplier notifies the City, in writing, of the pending price escalation/de-escalation a minimum of sixty (60) days prior to the Contract renewal

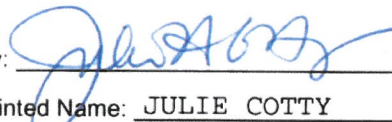
date. The base price will be the beginning of the latest period during which the adjustment is requested. For example, if annual adjustments are permitted under a five-year contract, but the Supplier doesn't request an adjustment until 60 days prior to year 3, the base period would be the beginning of year 2. A price escalation shall be based on the latest version of the Producer Price Index (PPI) – Final Demand Index for Goods/Total, as published by the U.S. Department of Labor, Bureau of Labor Statistics. This information is available at [www.bls.gov](http://www.bls.gov). The maximum escalation for any period will be 4%. Price adjustment shall be calculated by the monthly percent change since the beginning of the latest period.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

**THE CITY**

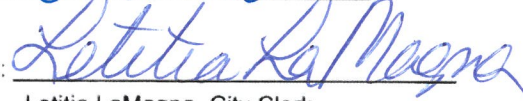
**FLORIDA CHEMICAL SUPPLY**

By:   
**James V. Chisholm, City Manager**

By:   
Printed Name: JULIE COTTY

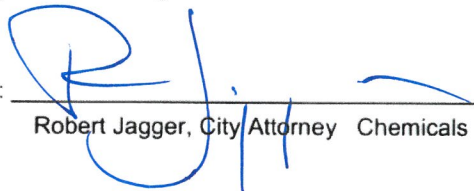
Date: 8-31-20

Title: BUSINESS DEV. DIR.

Attest:   
**Letitia LaMagna, City Clerk**

Date: 8/17/2020

Approved as to legal form:

By:   
**Robert Jagger, City Attorney Chemicals**

**THESE TERMS ARE STANDARD FOR ALL SOLICITATIONS ISSUED BY THE CITY OF DAYTONA BEACH. THE CITY MAY DELETE, SUPERSEDE, OR MODIFY ANY OF THESE FOR A PARTICULAR SOLICITATION BY USE OF SPECIAL PROVISIONS (COMMODITIES).**

**SECTION 1: DEFINITIONS.** Certain terms used herein will have the following meanings. Note some defined terms are not relevant to this Solicitation:

- D-1. Addenda means written or graphic instruments issued prior to the end of the Offer Phase which clarify, correct, or change the solicitation documents or Contract documents. Also means Addendum.
- D-2. Bidder – one who submits a response to a Solicitation.
- D-3. City means the City of Daytona Beach, unless the context indicates otherwise, includes the City's officers, employees, and agents.
- D-4. Commodities means the supplies, materials, Goods, merchandise, food, equipment, or other personal property, excluding real property, that the Bidder will be obligated to provide the City under any resulting Contract. References to Goods shall mean Commodities. The Commodities are generally set forth in the Price Sheet.
- D-5. Contract means the form Contract, if any, required by the City in order to integrate all terms and conditions therein, provided by the City for the Bidder's execution and includes 1) the Solicitation documents 2) the Offer Package, 3) the Resolution or Ordinance approving award of this Contract 4) all Purchase Orders issued pursuant to the Solicitation documents 5) all amendments that may after the date of award be executed by the Bidder and the City 6) any addenda 7) any other solicitation documents. Also means an agreement to purchase Goods or Services or both, regardless of whether the agreement is reduced to a single written document.
- D-6. Electronic Signature means the original signature transmitted and received via electronic transmission of a scanned document, (e.g., PDF or similar format) and are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The City shall determine legibility and acceptability for public record purposes.
- D-7. Florida Prompt Payment Act means F.S. §§ 255.0705—255.078, as amended from time to time.
- D-8. Goods means Commodities.
- D-9. Local Vendor means a person or business entity which has maintained a permanent place of business with full-time employees within the city limits for a minimum of six months prior to the date Offers were received for the purchase or Contract at issue, which generally provides from such permanent place of business the kinds of Goods or Services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.
- D-10. Notice of Intent to Award (NOI) means a written notice given by the City stating that staff is recommending award to the listed Bidder. It includes instructions for completing and submitting any Contract that accompanies the NOI.
- D-11. Offer means Solicitation Response, Submission, Submittal, Bid, or Proposal, submitted by a Bidder on the prescribed forms setting forth the prices for the work to be performed. Also means Offer Package.
- D-12. Offer Deadline means the specific date a time that a Solicitation is due. No Offers will be accepted after this time.

- D-13. Offer Phase means the period of time between the posting of the Solicitation and the deadline (date and time) for which Offer Packages must be submitted.
- D-14. Official Time 1) shall be reflected within the Platform as time remaining in the Offer Phase 2) the Negometrix clock used to determine when the Offer Deadline expires.
- D-15. Platform means Negometrix, the software currently used by the City. All communications regarding this solicitation will be posted at [www.codb.us/841/purchasing](http://www.codb.us/841/purchasing) through the Public Solicitations link. Bidders MUST submit Offers through the Platform. The Platform is utilized by the City and the Bidders to: 1) Allow Bidders to register and manage their company records, 2) Post and issue City solicitation packages for Bidders from inception to award of a solicitation, 3) Allow Bidders to submit an Offer Package online, electronically, through the Platform, 4) Allow Bidders to view all public record documents related to an Online Solicitation.
- D-16. Pricing Sheet: The area within the Platform where Bidders will provide their pricing response for the Solicitation. Also known as Price sheet.
- D-17. Purchase Order means a written document to a Supplier formalizing the terms and conditions of a proposed transaction.
- D-18. Responsible: Refers to a Bidder that has the necessary skills, ability, capacity, and capability to perform the work required under a Solicitation and is otherwise eligible for award.
- D-19. Responsive: means conforming in all respects to the Solicitation Package, except minor irregularities.
- D-20. RESERVED
- D-21 Solicitation means the group or collection of information that constitutes detailing the requirements and requesting responses, Offers, or submittals from eligible Bidders. The information may be in the form of electronic documents, files, and information contained in data fields in the Platform.
- D-22. Supplier: Bidder, Contractor, Company, Respondent, or Proposer to whom the Contract is awarded.
- D-23. Tabulation Sheet means the opening results of a Solicitation. The Bidder's name, City, and Offer Price will be recorded for Invitations to Bid.
- D-24. Term Contract means a Contract in which a source of supply is established for a specified period of time for specified Commodities at specified prices.

**END OF SECTION**

## SECTION 2: INSTRUCTIONS TO BIDDERS

**IB-1. SOLICITATION DOCUMENTS.** The Solicitation Documents consist of the Information Page; these Instructions; General Provisions; Special Provisions, if any; Technical Specifications, if any; Insurance Requirements; the Offer Package, and all additional forms provided by the City as part of this Solicitation that are required to be completed and submitted by the Bidder as part of the Offer, regardless of whether these forms are described herein as exhibits or attachments to the Solicitation. Together, the Offer Forms and the additional forms required to be submitted by the Bidder as part of the Offer, constitute the "Offer Package."

**Electronic Posting of Solicitation Documents.** The City's **ONLY** official outlet for publication and posting of City of Daytona Beach Solicitations is on the Negometrix Platform. The Platform is the only place the City will post Solicitation information, addendums, questions & answers and Contract related information. The City will not honor or verify information redistributed or reposted by other entities on other Internet sites. Bidders relying on such 'second hand' information will do so at their own risk and of no consequence to the City.

In making copies of the Solicitation Documents available, the City does so only for the purpose of obtaining Offers and does not confer a license or grant to use the Solicitation Package for any other purpose.

**IB-2. COMPLETING THE OFFER PACKAGE.** In submitting the Offer, the Bidder must complete and include all Offer Package documents. In order for the Solicitation to be considered complete:

- A. The Bidder must submit the information required, only on the forms provided by the City as part of the Solicitation Documents, except where the Solicitation Documents specifically permit or require otherwise.
- B. The City requests that the Bidder submit only the forms supplied in the solicitation. If the Bidder submits any additional documents other than the forms provided these extraneous documents will be discarded. The City will issue a Notice of Intent to Award (NOI) to the lowest Responsive and Responsible Bidder. All fields requiring a response must be completed by the Bidder, failure to do so may result in the Bidder's Offer Package being deemed non-responsive and not considered for award.
- C. Where the Price Sheet only calls for unit prices, the Bidder must quote all unit prices and extend unit prices set forth on the Price Sheet. The Bidder must include this with their Offer in order to be Responsive. If this Solicitation allows for lot-by-lot Offers, the Bidder must comply with the Special Instructions set forth in the Solicitation Documents.
- D. The Offer Price (including unit prices and extended prices if applicable), must be stated in numerals.
- E. The Bidder must not submit alternative Offers unless this Solicitation specifically authorizes alternate Offers. If this Solicitation specifically requires the submission of alternate line items, the Bidder must submit the base price and the alternative line item price(s) in the format provided on the Price Sheet in to be considered Responsive.
- F. The Offer may not contain qualifications or exceptions of any kind.
- G. All other Offer requirements stated herein must be met.

**IB-3. SIGNING THE OFFER PACKAGE.** The Offer must contain an original or Electronic Signature of an individual who is authorized to bind the Bidder. The signature must be located in the space(s) marked for the Bidder's signature. In addition:

- A. If the Bidder is a general partnership, its name and address must be stated as well as the name and address of each member of the firm or partnership.

B. If the Bidder is a joint venture, the Bidder must provide the full legal names of all persons/firms comprising the joint venture on separate signed attachment(s).

C. The person signing the Offer Forms on behalf of the Bidder must be the same person who signs all other Offer Package documents.

**IB-4. REQUESTS FOR INTERPRETATIONS.** If the Bidder is in doubt as to the meaning of any of the documents included in this Solicitation, the Bidder may submit a written request to the City for an interpretation (see questions and answers). Such requests must be received **7 days** prior to Offer opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation of the Solicitation Documents issued by the City in the form of a written addendum will be deemed to be a part of the Solicitation Documents. **NO ORAL CLARIFICATION OR INTERPRETATION BY ANY PERSON WILL MODIFY OR OTHERWISE EFFECT THE TERMS, CONDITIONS, OR SPECIFICATIONS STATED IN THESE SOLICITATION DOCUMENTS. ALL MODIFICATIONS WILL BE EFFECTED IN WRITING BY ADDENDUM**

**QUESTIONS AND ANSWERS.** All answers to material questions will be published on the Platform. Bidders are required to review all questions and answers within the Solicitation. Questions and answers are as authoritative as any information issued in a formalized addendum and incorporated into the Solicitation Documents or any Contract resulting from this Solicitation.

**IB-5. ADDENDA TO SOLICITATION DOCUMENTS.** Prior to the Offer opening, the City may, on the City's own initiative or in response to a request for clarification, furnish Addenda, or answer online questions via the Platform for additions or alterations to the Solicitation Documents previously supplied by the City. In addition, the City may by Addendum extend the date scheduled for the Offer opening. The Purchasing representative will post Addenda on the Platform and will make reasonable efforts through the Platform to notify all potential Bidders of the issuance of said Addendum. The City's Purchasing website address is [www.codb.us/841/Purchasing](http://www.codb.us/841/Purchasing); Addenda may be found under the "Public Solicitations" link. **However, the Bidder is solely responsible for ensuring that the Offer Package reflects all such Addenda.**

**IB-6. SUBMISSION OF ONLINE OFFERS.** The City will only accept Offers online through the Platform. **No paper Offers will be accepted.**

**All electronic files uploaded** must be in a common format accessible by software programs the City uses. Those common formats are generally described as Microsoft Word (.doc or .docx), Microsoft Excel (.xls or .xlsx), Microsoft Power Point (.ppt or pptx), or Adobe Portable Document Format (.pdf.). Bidders will not secure, password protect or lock uploaded files; the City must be able to open and view the contents of the file. Bidders will not disable or restrict the ability of the City to print the contents of an uploaded file. Scanned documents or images must be of sufficient quality, no less than 150 dpi, to allow for reading or interpreting the words, drawings, images or sketches. The City may disqualify any Offer that does not meet the criteria stated in this paragraph.

**IB-7. WITHDRAWAL OF OFFER.** The Bidder may withdraw their Offer and resubmit anytime until the Offer Deadline, i.e., the end of the Offer Phase. Once the Offer Phase has ended the City will be able to view the Offers and begin the evaluation of all Offers received. Once the Offer Phase has ended no changes or withdrawals can be made by the Bidder.

Mere negligence on the part of the Bidder in preparing the Offer does not constitute a right to withdraw the Offer subsequent to Offer opening.

**IB-8. DISQUALIFICATION OF OFFER.**

A. **Only One Offer Permitted:** The Bidder may submit only one Offer. If the Bidder submits more than one Offer for the work involved, all Offers from the Bidder will be rejected.

- B. **Collusion:** If the City determines that collusion exists among Bidders, the City will reject the Offers of all participants in the collusion.

**IB-9. OFFER PHASE, OPENING DATE.** The Offer opening will be scheduled at the date and time specified by the Solicitation (i.e., the end of the "Offer Phase"), or as changed by Addenda or response that the City may issue. At opening, the City will open and record the Offers so long as they are proper and have been timely submitted. In recording the Offers the City will record the name of the Bidder, location (City, State) and the Price. The Tabulation Sheet will be reviewed and verified by the Purchasing Agent after being opened by the Buyer, or their designees. The Bidder is solely responsible to ensure that the Offer is submitted online prior to the end of the Offer Phase. Late submissions will not be accepted by the Platform. There will be no public opening for this Solicitation.

**IB-10. OFFER OPENING RESULTS.** The Bidder may secure information pertaining to Offer opening results on the Purchasing Division webpage [www.codb.us/841/Purchasing](http://www.codb.us/841/Purchasing), or by emailing a request to [purchasing@codb.us](mailto:purchasing@codb.us). Copies of Tabulation Sheet will be furnished upon request and receipt of a valid email address.

If the results are modified in any way after staff conducts due diligence, a Revised Tabulation sheet will be signed by the Purchasing Agent or Buyer and a witness and posted on the Platform.

**IB-11. THE SOLICITATION IS AN OFFER.** In submitting the Offer, the Bidder certifies that the Bidder is making a firm Offer that will remain open for 60 days following Offer opening unless properly and timely withdrawn by the Bidder prior to Offer Opening in conformance with these Instructions unless the City, in the City's sole discretion, rejects the Offer after opening. Extensions of time beyond the 60 day-period will only be by agreement of the City and the Bidder.

**IB-12. PRICE INCLUSIVE OF COSTS.** The Offer price is inclusive of all of the Bidder's direct and indirect costs of performing the work including but not limited to delivery, freight, and fuel surcharges.

**IB-13. FEDERAL TAXES.** The Offer price will be exclusive of all federal taxes. If the Bidder believes that certain other taxes are properly payable by the City, the Bidder may list such taxes separately in each case directly below the respective item price. Tax exemption certificates will be furnished upon request.

**IB-14. PUBLIC RECORDS.** Sealed Offers received by the City pursuant to the Solicitation will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Per F.S. §119 results are not a public record for 30 days from the date of the opening or when a Notice of Intent to Award is posted, whichever is first. Thereafter, all Offers will be open for a personal inspection by any person pursuant to Public Records Law.

If the Bidder believes that the Offer or any portion thereof is permanently exempt from disclosure under the public records laws, the Bidder must state the grounds for this position in CAPITAL LETTERS in a certified letter addressed to the Purchasing Agent and received at least 3 days prior to the Offer opening. The Bidder will be contacted prior to the opening of the Solicitation and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Bidder may withdraw the sealed Offer.

**IB-15. BIDDER CAPABILITY/REFERENCES.** Prior to Contract award, the City may require Bidder to show that Bidder has the necessary facilities, equipment, ability, and financial resources to perform the work specified in a satisfactory manner and within the time specified.

In addition, the City may require Bidder to demonstrate the Bidder has experience in work of the same or similar nature as the work required herein, and to provide references satisfactory to the City.

**IB-16. REVIEW; BASIS OF AWARD.** Offers will be reviewed in accordance with the procedures set forth in these Instructions and the applicable provisions of the City Purchasing Code (Chapter 30 of the City

Code of Ordinances). Any Contract award pursuant to the Solicitation will be made on the basis of the criteria for award of Solicitations provided in the Purchasing Code.

**IB-17. LOCAL PREFERENCE.** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach provides for a preference to Local Vendors whenever the application of such a preference is reasonable in light of the dollar-value of Offers received in relation to such expenditures.

As used in City Code, the term, "Local Vendors" means a person or business entity which has maintained a permanent place of business with full-time employees within the City limits of the City of Daytona Beach for a minimum of six months prior to the date Solicitations were received for the purchase or Contract at issue, which generally provides from such permanent place of business the kinds of Goods solicited, and which at the time of the Solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

Pursuant to City Code, if the lowest Responsive Offer by a non-Local Vendor, and an Offer by a Local Vendor is within 10% of the lowest Offer, then these two Bidder's will each have the opportunity to submit a best and final Offer equal to or lower than the amount of the lowest Offer within five working days after Offer opening. The Contract will be awarded to the Bidder submitting the lowest Responsive Offer or final Offer. In case of a tie between a Local Vendor and a non-local Vendor the Contract will be awarded to the Local Vendor.

If the Bidder intends to qualify as a Local Vendor, the Bidder must complete and sign the Local Vendor affidavit and submit it as part of the Offer Package. A Bidder who fails to properly complete and sign this affidavit or submit it with the Offer Package, will not be further considered for local preference.

If the Bidder submits a properly completed Local Vendor affidavit as part of its Offer Package, the City reserves the right to verify that the Bidder meets the definition of Local Vendor, including by requiring the Bidder to supply additional documentation. In all instances, the City will be the final arbiter as to whether the Bidder qualifies for local preference.

With certain exceptions, application of local preference is discretionary. For more information on how the Local Preference may apply, see the Purchasing Code.

**IB-18. IDENTICAL TIE OFFERS.** If there are two or more low Responsive Offers from Responsible Bidders that are identical in price, the tie will be broken in the following in order of preference: a) the Bidder qualifying for local preference under Code 30-86; b) the Bidder in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most Responsible Bidder as defined under the City Code 30-82 (9)(c). Please see the Drug Free Workplace form incorporated into the Solicitation Documents.

**IB-19. RIGHT TO ACCEPT OR REJECT OFFERS.** The City will reject Offers which contain modifications, which are incomplete, unbalanced, conditional, obscure, which contain additions not requested, which contain irregularities of any kind, or which do not comply in every respect with these Instructions and the Contract Documents, unless the City determines in its sole discretion that the non-compliance is minor.

The City does not bind itself to accept the lowest Offer stated herein, but reserves the right to accept any Offer, which in the judgment of the City will best serve the needs and interests of the City.

**IB-20. PURCHASE ORDERS.** All Purchase Orders issued pursuant to the Contract will be deemed to incorporate all terms and conditions of the Contract regardless of whether the Contract or Contract Documents are expressly referenced therein. In case of conflicts between a Purchase Order and any other provisions of the Contract Documents, the other provisions of the Contract Documents will prevail.

**IB-21. PIGGYBACK AUTHORITY.** All Suppliers awarded Contracts pursuant to this Solicitation are required to permit government agencies, cities, counties, and political subdivisions to participate in the



Contract under the same prices, terms, and conditions except where allowance are made for differences in delivery costs.

**IB-22. PUBLIC ENTITY CRIMES.** Any party submitting an Offer in response to this Solicitation must execute the enclosed Form PUR 7068, "SWORN STATEMENT UNDER SECTION 287.133(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES," and enclose it with their Offer. The form is included in the Solicitation Documents.

**IB-23. COMPLIANCE WITH LAWS.** The Supplier will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work.

The awarded Supplier must always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees, including the Occupational Safety and Health Administration's (OSHA) Excavation-Safety Standard, 29 C.F.R. § 1926.650 Sub Part P, and Chapter 90-96 Florida Statutes.

**IB-24. MAINTENANCE OF LICENSES.** The Supplier will maintain all required licenses in full force and effect during the Contract term, including any renewal options.

**IB-25. SUPPLIER RESPONSIBILITY FOR PREPARATION COSTS.** Neither the City nor the City's officers or agents will be liable for the costs incurred by the Supplier in reviewing or responding to this Solicitation.

**END OF SECTION**

## TERMS & CONDITIONS

### TC-1. COMPENSATION AND PAYMENTS; LIMITATIONS

A. Unless the Price Sheet specifically provides for reimbursement of expenses, the compensation described herein will be Supplier's sole compensation for the Commodities to be provided. Supplier will be solely Responsible for all costs Supplier incurs in meeting its obligations herein.

B. For Unit Price Contract, City will pay Supplier an amount not to exceed the amount described in the Price Sheet of the Offer Package.

UNIT PRICING AND QUANTITIES. If this Solicitation requests submission of unit prices: (i) the Supplier will hold all unit prices firm for the duration of the Contract, including any extension thereof, unless price adjustments are specifically authorized by the Contract Documents; and (ii) quantities stated are an estimate only and no guarantee is given or implied as to quantities that will actually be required during the Contract period.

**TC-2. BILLING; MANNER OF PAYMENT.** In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms will be paid in accordance with the local government Prompt Payment Act (218.70 F.S.). Payment will be made 45 days after Supplier has provided an accurate and undisputed invoice, except where the City accepts a prompt payment discount from the Supplier and the Commodities are not defective. All invoices must have a unique invoice number, date, and pricing by line item and unit price that are consistent with this Contract and such Purchase Order. Improper invoices will be returned to the Supplier. Any additional terms and conditions set forth on an invoice not in compliance with this Contract or the Purchase Order are null and void. Nothing in this Contract will be deemed to create an obligation on the City's part to pay a subcontractor of Supplier's for Commodities provided under this Contract.

**TC-3. RELATIONSHIP BETWEEN PARTIES.** This Contract does not create an employee-employer relationship between the City and Supplier. Supplier is an independent Contractor of the City and will be in control of the means and the methods in which the requested work is performed. As an independent Contractor, Supplier will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract, and Supplier agrees to indemnify and hold harmless the City from any obligations relating to such taxes. The City will not make deductions from payments due for such taxes or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. Supplier will also be Responsible for the performance of Supplier's subcontractors.

**TC-4. DOCUMENTS.** All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by Supplier during the term of and in accordance with the provisions of this Contract will be the property of the City and delivered to the City upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required, or upon termination or expiration of this Contract.

### TC-5. PUBLIC RECORDS.

A. To the extent applicable, Bidder will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

- 1 Keeping and maintaining public records that the City requires for performance of the Service provided herein.
- 2 Upon the request of the City Clerk of the City, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

3 Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if Supplier fails to transfer such records to the City.

4 Upon completion of this Contract, keep and maintain public records required by the City to perform the Service. Supplier will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City upon request from the City Clerk, in a format that is compatible with the City's information technology systems.

IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, SUPPLIER MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

B Nothing herein will be deemed to waive Supplier's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

**TC-6. TERMINATION OF CONTRACT.**

A. The City may by written notice to Supplier terminate this Contract, in whole or in part, at any time, either for the City's convenience or because of the failure of the Supplier to fulfill its contractual obligations.

1. Before terminating for convenience, City must provide Supplier at least 30 days advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

2. Except as provided in Section TC-6 (A)(3), before terminating due to Supplier's material breach of its Contractual obligations, City must provide Supplier prior written notice, specifying the breach and demanding Supplier remedy the breach within 10 days of the notice, or as demonstrated by the Supplier's timely submitted Show Cause Notice, within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if Supplier fails to remedy the material breach within the period described in the City's Notice to Cure.

3. The City may terminate this Contract upon Supplier's breach without providing Supplier an opportunity to remedy the breach as referenced in TC-6 (A)(2), if Supplier or any of Supplier's personnel, in connection with the provision of Commodities, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing Supplier written notice.

B. If the termination is for convenience, Supplier will be paid compensation for Goods accepted to the date of termination. If termination is due to Supplier's material breach, the City reserves all rights and remedies it may have under law due to such breach. Among other things, the City may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the Supplier will be liable to the City for all reasonable additional costs occasioned to the City thereby.

C. If after notice of termination for the Supplier's failure to fulfill Contractual obligations it is judicially determined by a court of law that the Supplier had not so failed, the termination will be conclusively deemed to have been effected for the City's convenience. In such event, adjustment in payment to Supplier will be made as provided in TC-6(B) for termination for convenience.

D. The rights and remedies of City provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

E. Subject to Odebrecht Constructions, Inc., vs Prasad and Odebrecht Construction, Inc. v. Secretary, Florida Department of Transportation and their progeny, this paragraph applies to any Contract for Items of \$1 million or more. Supplier certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in §287.135, Fla. Stat., as may be amended or revised. City may terminate this Contract at the City's option if Supplier is found to have submitted a false certification as provided under subsection (5) of , or been placed on the Scrutinized Companies §287.135, Fla. Stat., as may be amended or revised or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in §287.135, Fla. Stat., as may be amended or revised.

**TC-7. SEVERABILITY.** If one or more of the provisions contained in this Contract are held to be invalid, illegal or unenforceable for any reason in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Contract, and this Contract will then be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

**TC-8. LIMITATION ON WAIVERS.** Neither the City's review, approval, or acceptance of, or payment for, any of the Commodities provided by Supplier, will be construed to operate as a waiver of the City's rights under this Contract. Supplier will be and always remain liable to the City in accordance with applicable law for any and all damages to the City.

Failure of the City to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the City at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the City's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

**TC-9. DISPUTE RESOLUTION.** If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

A. Negotiations. A party will request in writing that a meeting be held between representatives of each party within 14 calendar days of the request or such later date that the parties may agree to. Each party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

B. Non-Binding Mediation. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the parties mutually waive the subsection (a) procedure, the parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist

with resolution of the dispute. The parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a Contract interpretation expert. Each party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the parties fail to reach a resolution of the dispute through mediation, then the parties are released to pursue any judicial remedies available to them.

#### **TC-10. GENERAL TERMS AND CONDITIONS.**

**A. Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the change is reduced to writing and signed by both parties.

**B. Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the City's written approval.

**C. Compliance with Laws and Regulations.** In providing all Commodities pursuant to this Contract, Supplier will abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such Commodities, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the City to terminate this Contract immediately upon delivery of written notice of termination to the Supplier.

**D. Truth in Negotiations Certificate.** Supplier hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

**E. No Third Party Beneficiaries.** There are no third party beneficiaries of Supplier's Commodities under this Contract.

**F. Contingency Fee.** Supplier warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Supplier, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Supplier, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**G. Nondiscrimination.** Supplier will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. Supplier will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, Supplier agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, Supplier agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

**H. Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate.

**I. Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

**J. Litigation Costs.** Except where specifically provided herein, in case of litigation between the parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

**K. Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**L. Failure to Enforce.** Failure by the City at any time to enforce the provisions of this Contract will not be construed as a waiver of any such provisions. Such failure to enforce will not affect the validity of the Contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.

**M. Non-Exclusive Contract.** This is not an exclusive Contract. Award of this Contract will impose no obligation on the part of the City to use the successful Supplier for all work of this type that may be required during the Contract period. The City specifically reserves the right to concurrently Contract with other companies for similar work if the City deems such action to be in the City's best interests. In the case of multiple Term Contracts, this provision will apply separately to each Contract.

**N. Force Majeure.** A Force Majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the party charged with performing or that party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a party, the deadline will be extended by one day for each day that a Force Majeure event prevents the party from performing; provided, however, that the party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other party of the Event and will use its best efforts to minimize any resulting delay.

**O. Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions.** This Contract and the Commodities provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at:

<https://www.TCo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318>

**P. Sovereign Immunity.** The City expressly retains all rights, benefits, and immunities of sovereign immunity under Florida law, including Section 768.28, Florida Statutes. Nothing in this Contract, or any Purchase Order, or notice provided under this Contract will be deemed to be a waiver of sovereign immunity or of the limitations on liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida legislature, and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort, equity, or Contract will not exceed the dollar amount set by the legislature for tort. Nothing in this Contract, or any Purchase Order, or notice provided pursuant to this Contract will inure to the benefit of any third party for the purpose of allowing a claim against the City, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

**Q. Books and Records.** The Supplier will maintain books, records, and documents pertinent to performance under this Contract and any Purchase Order issued hereunder in accordance with generally accepted accounting principles. The City will have inspection and audit rights to such records during the term of this Contract and for three years following the termination of obligations hereunder. Records which

relate to any litigation, appeals or settlements of claims arising from such performance will be made available until a final disposition has been made of such litigation, appeals or claims.

**R. UCC.** In addition to any rights or remedies contained in this Contract, each party will have the rights, duties, and remedies available through the Uniform Commercial Code.

**S. Title/Risk of Loss.** Title and risk of loss will not be deemed to pass to the City unless and until the Commodities ordered have been delivered; and, where inspection is required prior to City acceptance, until the City has inspected and accepted such Commodities.

**T. Governmental Restrictions.** In the event any governmental restrictions are imposed which would necessitate alteration of the material, quality, workmanship or performance of the items awarded to the Supplier prior to delivery, it will be the responsibility of the Supplier to notify the City in writing at once, indicating the specific regulation which required an alteration. The City reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the Contract at no expense to the City.

**U. Patent Infringement, Etc.** By submission of this Offer, the Bidder certifies that the merchandise to be furnished will not infringe any valid patent, copyright, or trademark and the successful Bidder will, at his own expense, defend any and all sections or suites charging such infringement and hold The City harmless in case of any such infringements.

**V. Bonds.** There is no bonding required for this Solicitation.

**TC-11. WARRANTY.** Warranty. Except as provided in the Special Provisions, Supplier warrants that the Commodities supplied pursuant to this Contract are new, of good quality, and conform to any specifications and requirements of this Contract; that such Commodities are merchantable; and that they are fit for the ordinary purposes they are intended to serve.

**TC-12. MSD.** Supplier will supply Material Safety Data (MSD) with each initial delivery of any materials defined by the State of Florida or the Federal Government as being toxic, harmful, or hazardous.

**TC-13. DELIVERY.** Delivery of all materials or products under this Solicitation will be quoted FOB Destination or other point of use within the City as specified. No delivery charges will be added to invoices except when express delivery is substituted on order for a less expensive method specified in Contract; in such cases, difference between freight or mail and express charges may be added to the invoice.

**A. Packaging and Shipping.** All invoices, packing lists, and packages must bear the name of the Contract and the applicable City Purchase Order number as printed on the face of the Purchase Order.

**B. Amendments and Modifications.** The City may unilaterally change, at no additional cost, the quantity and receiving point within the City for items not yet shipped. The City will not be required to pay for defective items, back-orders, late deliveries, deliveries of quantities of items exceeding the quantities specified, or items shipped at a higher price than stated in this Contract or the Purchase Order. Except as otherwise provided herein, no change or modification of the Contract will be valid unless the same is in writing and signed by both parties.

**C. Delivery Failures.** Failure of the Supplier to deliver within the time specified in the Contract, or within a reasonable time as interpreted by the Purchasing Agent, or failure to make replacements of rejected articles as directed by the Purchasing Agent, will permit the Purchasing Agent to purchase on the open market articles of comparable grade to take the place of those rejected or not delivered. On all such purchases the Supplier will reimburse the City within a reasonable time specified by the Purchasing Agent, for any expenses incurred in excess of the defaulted prices.

**TC-14. DISCONTINUED.** Supplier will provide the City 30 days' advance written notice of any discontinued items, to allow the City to purchase additional quantities of such items. The City must give written approval

of any replacements provided for discontinued items if they exceed the unit price for the discontinued item or fail to strictly meet quality, fit, form, or function of the discontinued item.

**TC-15. NON-APPROPRIATIONS CLAUSE.** In the event sufficient funds are not budgeted for a new fiscal period, the City will notify the Supplier of such occurrence, and this Contract will terminate on the last day of the current fiscal year without penalty or expense to the City.

**TC-16. ELIGIBLE USERS.** All departments of the City are eligible to use this Term Contract. Such purchases are exempt from the competitive requirements otherwise applying to their purchases.

**END OF SECTION**



## 1.2 - INDEMNIFICATION & INSURANCE REQUIREMENTS

### IR-1. INDEMNIFICATION.

For value received, the Supplier will indemnify and hold harmless the City, including the City's officers, employees, and agents, from (i) all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Supplier, or of Supplier's officers, employees, and agents, including subcontractors and other persons employed or utilized by the Supplier in the performance of the Contract; and (ii) all liabilities, damages, injuries, losses, claims, suits, actions, judgments, charges, expenses, or costs of any nature and kind, including attorneys' fees and court costs, arising from or relating to actual or alleged violation of or infringement of any patent, trademark, copyright, service mark, trade secret or intellectual property right for or on account of the use of any product or Services sold to the City or used in performance of the work.

**IR-2. SUBMISSION OF INSURANCE.** The Successful Supplier must submit any required insurance on or before submission of the signed Contract or prior to issuance of a notice to proceed.

**IR-3. INSURANCE.** Supplier will provide and maintain at Supplier's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the City's own insurance. In the event any request for the performance of Services presents exposures to the City not covered by the requirements set forth below, the City reserves the right to add insurance requirements that will cover such an exposure.

#### A. Coverage and Amounts.

1. Workers Compensation Insurance as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of Supplier, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

2. Liability Insurance, including (i) Commercial General Liability coverage for operations, independent Suppliers, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring Supplier and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) Automobile Liability Insurance, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Supplier in the performance of this Contract.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE City AS AN ADDITIONAL INSURED. Supplier's Commercial General Liability insurance policy shall provide coverage to Supplier, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Suppliers, Property of City in Supplier's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When City is added as additional insured by endorsement,

ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status that is at least as broad as ISO form CG 20 10 11 85. .

3. **Pollution Liability** in the amount of \$1,000,000 Per Loss, \$2,000,000 Annual Aggregate. Such coverage will include bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arise from the operations ( including transportation of the product(s)) of the contractor. The City of Daytona Beach shall be named as additional insured.

Coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this agreement and with a three-year reporting option beyond the Annual expiration date of the policy.)

Unless specifically waived hereafter in writing by the Risk Manager, Supplier agrees that the Insurer will waive its rights of subrogation, if any, against the City on each of the types of required insurance coverage listed above.

B. **Proof of Insurance.** Supplier will furnish proof of insurance acceptable to the City prior to or at the time of execution of this Contract. Supplier will not commence work until all proof of such insurance has been filed with and approved by the City. Supplier will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the City, Supplier will furnish copies of the insurance Contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City.

C. **Cancellation; Replacement Required.** Supplier will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the City. If a required policy is canceled without Supplier's prior knowledge Supplier will immediately notify the City immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The City expressly reserves the right to replace the canceled policy at Supplier's expense if Supplier fails to do so.

D. **Termination of Insurance.** Supplier may not cancel the insurance required by this Contract until the work is completed, accepted by the City and Supplier has received written notification from the Risk Manager that Supplier may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the City will provide such written notification at the request of Supplier if the request is made no earlier than two weeks before the work is to be completed.

E. **Liabilities Unaffected.** Supplier's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, Supplier's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by Supplier's failure to obtain insurance coverage.

Supplier will not be relieved from responsibility to provide required insurance by any failure of the City to demand such coverage, or by City's approval of a policy submitted by Supplier that does not meet the requirements of this Contract.

F. **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

**END OF SECTION**

## 1.3 – SCOPE / SPECIAL PROVISIONS / DRAFT CONTRACT (SODIUM FLUOROSILICATE)

**Background:** The City of Daytona Beach requires delivery of Sodium Silicofluoride, a/k/a Sodium Fluorosilicate (hereinafter, the "Product") for use at the City's Ralph Brennan Water Plant historically the City has required delivery of approximately 800 50 lb bags of the Product annually. However, no minimum or maximum quantities are guaranteed by this Contract. If a Supplier is selected to provide the Product to the City the Supplier must be able to provide in the quantities ordered by the City.

The City may award contracts for supply of the Product to multiple Suppliers based on the bids submitted herein.

**Product Specifications:** The Product will meet the following general specifications:

1. The Product will be in conformance with the standards prescribed by the standard ANSI/AWWA B702-06.
2. The Product will have a minimum of 98% sodium silicofluoride, which corresponds to approximately 59.4% fluoride (F), insoluble matter not more than 0.5% moisture not more than 0.5%.
3. If the Product delivered doesn't meet the requirements of the governing standard, a notice of nonconformance will be provided by the City to the Supplier within 10 days of the receipt of shipment. The results of a City test shall prevail. If the Product does not meet the requirements of the governing standard, the Supplier shall remove the Product from City premises and replace it with a like amount of satisfactory Product at no additional expense to the City.
4. The Product packaging will have markings, tags, labels and/or serial numbers as required by the US DOT.
5. The Supplier will provide a material safety data sheet (MSDS) for the Product prior to beginning delivery.
6. The Product will be compatible to plant equipment delivery system for feeding.

**Ordering:** The City will order the Product in writing by issuance of a City Purchase Order or work authorization sent to the email address indicated on the Offer package form item 10.

**Delivery:** shall be made within 48 hours of placement of the order via issuance of a City Purchase Order. Delivery will be F.O.B. Ralph Brennan Water Plant, located at 3651 LPGA Boulevard, Daytona Beach, FL 32114. All deliveries will be made between 8:00 AM and 3:00 PM, Monday through Friday, unless approved otherwise by the City. **Suppliers will provide 24 hour notice prior to delivery and unload product at the delivery site** by Pallet Jack, and/or Lift Gate (There is no loading dock and delivery must be onto the ground.)

1. The Supplier will deliver the Product in 50 lb., plastic lined multi-paper bags, on double pallets. At delivery, the Supplier will also provide a chemical analysis to show that the Product conforms to these specifications.
2. The Supplier's delivery personnel must demonstrate safe work practices appropriate to the product they are delivering and are expected to provide their own PPE. They must have the ability to inspect the tank before and after delivery in order to detect any problems with the tank.
3. The Supplier will clean up any spills resulting from the failure of its or its subcontractor's delivery equipment or from failure of attendant delivery personnel in the proper performance of their duties. Proper

performance shall require delivery personnel's constant inspection and observation of unloading operations and knowledgeable response to problems or emergencies, which would most commonly be expected to occur. City reserves the right to refuse any and all deliveries made with equipment that is poorly maintained and/or leaking sodium silicofluoride. The Supplier shall observe the entire filling operation at each delivery site and shall immediately report any spills caused during the filling operations. The Supplier shall take immediate and appropriate actions to clean up any spilled sodium silicofluoride. If the spill is not cleaned up, City will hire a certified hazardous material handling company to clean up the spill, and the cost of such service will be charged to the Supplier and deducted from the amount due to the Supplier. If the City's unloading equipment such as pipe, valves or level indication and alarms should fail and the spillage is not the fault of the Supplier or its subcontractor, the Supplier shall be relieved of cleanup of the spill.

4. The Product shipments will conform to US Department of Transportation (DOT) regulations for marking and handling.

5. The Supplier's delivery personnel shall be trained about the specific properties and hazards of the product, and utilize appropriate personal protective equipment (PPE) while at City of Daytona Beach facilities

6. The Supplier will be required to give a minimum of two on-site training presentations per year. The presentation is to cover all material safety data information, safe-handling procedures, and proper usage of the particular chemical in the work environment as prescribed by the controlling regulatory agency for the industry.

**Submittal Requirements:** Suppliers will provide an affidavit of compliance with the requirements of ANSI/AWWA B702-06 standard with the bid form. Product specifications and/or certificate of analysis, and a Material Safety Data Sheet will be submitted upon request prior to awarding the Bid.

## SPECIAL PROVISIONS

**SP-1. EFFECTIVE DATE AND TERM.** The Effective Date of this Contract is the date on which the last Party signs it. The successful Supplier(s) shall be awarded a Contract for an initial 1 year, commencing on the effective date. The City will have the option to renew this Supplier up to 4 Terms of 1 year each, by providing Supplier written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by Supplier.

**SP-2. WORK DIVIDED INTO LOTS.** Award of this Offer will be on a lot-by-lot basis to the lowest Responsive and Responsible Supplier for each individual lot. Supplier will provide a price for each lot being Offered. If the Supplier elects not to Offer on a particular lot, Supplier must clearly mark "No Offer" on the lines provided for pricing for that lot.

### **SP-3. Minimum Qualifications SUPPLIER**

. In order to be considered qualified to provide the requested Commodities, the Supplier must have all required permits, must have an active, permanent, and successful operation for a minimum of three years prior to the date of submission of Offer, and must otherwise have sufficient organizational capacity, equipment, and facilities to provide the requested Commodities.

**SP-4. WORK AUTHORIZATIONS.** This Contract, in and of itself, does not require the Supplier to provide any Commodities, or require the City to pay for such Commodities. No Commodities will be deemed ordered, and no obligation will arise to pay for such Commodities, except when specifically authorized by a written Work Authorization issued in accordance with the City's Procurement policies. The Work Authorization will generally consist of the Supplier's written, dated quotation, listing the Commodities offered, including quantities, with reference to the units and prices set forth in the Price Sheet, consistent with the provisions of this Contract; and the City's Purchase Order accepting such Offer. No Work Authorization may alter the terms and conditions of this Contract; and any provision of a Work Authorization. In case of a conflict with a Work Authorization, this Contract will govern.

### **SP-5. PRICE ESCALATION/DE-ESCALATION (PPI)**

The City may allow a price escalation provision within this award. The original Contract prices shall be firm for the entirety of the initial Contract period. A price escalation/de-escalation will be considered at the time of Contract renewal and at 12-month intervals thereafter, provided the Supplier notifies the City, in writing, of the pending price escalation/de-escalation a minimum of sixty (60) days prior to the Contract renewal date. The base price will be the beginning of the latest period during which the adjustment is requested. For example, if annual adjustments are permitted under a five year contract, but the Supplier doesn't request an adjustment until 60 days prior to year 3, the base period would be the beginning of year 2. A price escalation shall be based on the latest version of the Producer Price Index (PPI) – **Final Demand Index for Goods/Total**, as published by the U.S. Department of Labor, Bureau of Labor Statistics. This information is available at [www.bls.gov](http://www.bls.gov). The maximum escalation for any period will be 4%.

Price adjustment shall be calculated by the monthly percent change since the beginning of the latest period.

**END OF SECTION**

# Published questions and answers



Solicitation <b>T1027 20561-WATER/WASTEWATER CHEMICALS</b>
Lot <b>Common</b>

#	Reference	Published date
2	1.2.1.	29 Jul 2020 (Wed), 10:25 AM

**Question**  
 Tanner Industries, Inc. would like to take exception to the below. 2. Liability Insurance, including (i) Commercial General Liability coverage for operations, independent Suppliers, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring Supplier and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) Automobile Liability Insurance, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Supplier in the performance of this Contract. Tanner Industries, Inc. requests to remove the word "occurrence" from the above section and replace with "claims made form with a retroactive date of 1986. Supplier agrees to a three-year reporting option beyond the annual expiration date of policy"

**Answer**  
 There will be no exceptions permitted. Bidders must accept terms and conditions as presented.

#	Reference	Published date
1	1.3.1.	02 Jul 2020 (Thu), 2:59 PM

**Question**  
 Please provide the bid tab and current suppliers/cost for the chemical bid?

**Answer**  
 Aqua Ammonia = Univar USA = .0832 / lb Liquid CO2 = Airgas USA = .10 / lb Sodium Silicoflouride = Chemrite = \$29.50 / 50# bag Liquid Hypochlorite = Odyssey Mfg. = .68 / gal

Published questions and answers



Solicitation <b>T1027 20561-WATER/WASTEWATER CHEMICALS</b>	
Lot <b>Lot 4 Lot 4: Sodium Silicofluoride</b>	

#	Reference	Published date
4	2.1.	28 Jul 2020 (Tue), 11:26 AM
<p>Question Is this product being used at this facility, or is this bid only being used to gather information? If this product is being used, what is the delivery address?</p>		
<p>Answer The delivery address is listed in 1.3-Specifications under Delivery: Delivery will be F.O.B. Ralph Brennan Water Plant, located at 3651 LPGA Boulevard, Daytona Beach, FL 32114. All deliveries will be made between 8:00 AM and 3:00 PM, Monday through Friday.</p>		

#	Reference	Published date
3	1.1.1.	22 Jul 2020 (Wed), 12:16 PM
<p>Question Can you provide the annual usage or estimated annual usage, and can you provide the quantity per delivery?</p>		
<p>Answer There is no recent data on this product as far as amount used or delivery.</p>		

#	Reference	Published date
2	2.1.	22 Jul 2020 (Wed), 10:27 AM
<p>Question Can you provide the previous bid tab (who, currently, supplies this product and at what price) for this product?</p>		
<p>Answer This question has been answered under the Common lot. Will place here as well. Aqua Sodium Silicoflouride = Chemrite = \$29.50 / 50# bag</p>		

#	Reference	Published date
1	1.1.1.	17 Jul 2020 (Fri), 3:00 PM
<p>Question Could you please provide the previous bid tabulations?</p>		
<p>Answer Click on "Common". Then click "Question and Answer". Click "Published" tab. Its already Question #1, 1.3.1.</p>		

# OFFER PACKAGE

TO THE MAYOR AND COMMISSIONERS  
THE CITY OF DAYTONA BEACH, A FLORIDA MUNICIPAL CORPORATION

Dear Mayor and Commissioners:

This Bid is submitted by FLORIDA CHEMICAL SUPPLY, INC.  
*(insert Company's full legal name; include D/B/A if applicable)*

Business Address: 6810 EAST CHELSEA STREET  
*(include P.O. Box/street address, city, state and zip code)*

Business Phone: 813-623-1274 Business Fax: 813-622-7167  
*(include area code)* *(include area code)*

Business Email: CONTRACTING@FLORIDA-CHEMICAL.COM  
*(leave blank if n/a)*

The undersigned, as Supplier or Supplier's authorized representative, hereby declares and affirms each of the following:

1. That Supplier has had the opportunity to examine the facilities where the Services are to be performed and is fully informed in regard to all conditions pertaining to the site(s).
2. That Supplier has thoroughly examined the Contract Documents and that Supplier is sufficiently knowledgeable of the Services to be performed.
3. That, pursuant to and in compliance with the Offer Package, including all Contract Documents, the Supplier hereby agrees to furnish all labor, materials, and equipment required to perform the Services/Commodities in strict accordance with the Contract Documents and for the Unit Prices and/or Lump Sum prices herein for the prices stated on the Price Sheet.
4. That Supplier agrees to indemnify and hold harmless the City any other interests as set forth in the Contract Documents



## OFFER PACKAGE, cont.

5. If the attached Price Sheet includes extended unit prices, the use of extended unit quantities will not be construed to be a guarantee that the City will purchase such quantities if a Contract is awarded; and that, subject to the terms and conditions of the Contract, the Supplier will be entitled to payment based upon the number of units purchased or Services performed and accepted, as specified in the Contract Documents,

6. That Supplier has received the following Addenda (*leave blank if inapplicable*):

Addendum #	Date	Addendum #	Date	Addendum #	Date

(list any additional Addenda by number and date): \_\_\_\_\_

7. That Supplier has completed the information required in this Offer Package truthfully.

8. That the Offer may be accepted by the City's issuance of a Contract to the Supplier. Supplier will be fully bound by all Contractual terms and conditions set forth herein; provided, however, that if the Solicitation Documents call for alternative Offers any alternative Offer not specifically accepted the City in the notice of award will not be a part of the Contract.

9. That Supplier is (*mark the appropriate box and include the additional information, as applicable*):

- An individual person/sole proprietor
- A Florida corporation/ limited liability company
- A foreign corporation/limited liability company authorized to do business in Florida\*  
\_\_\_\_\_ (specify state of incorporation/formation)
- A Florida limited partnership
- A foreign limited partnership authorized to do business in Florida\*  
\_\_\_\_\_ (specify state of incorporation/formation)
- A general partnership (provide partner names on separate, signed sheet of paper)
- A joint venture\*\*
- Other \_\_\_\_\_ (specify, including type of entity)

## OFFER PACKAGE, cont.

\* (If Supplier is a foreign corporation or foreign limited liability company, attach proof of registry from State of Florida)

\*\* (provide on separate signed sheet(s) of paper the full legal names of all persons/firms comprising the joint venture.

10. That the name, title, mail address, cell phone and email address of the person who will serve as the Designated Representative of Supplier if the Contract is awarded to Supplier, is as follows:

CHARLES AKINS IV, INSIDE SALES, 6810 EAST CHELSEA STREET,

813-528-7309, CONTRACTING@FLORIDA-CHEMICAL.COM

In signing below, I certify that I am the above-named Supplier or a person duly authorized by Supplier to bind Supplier to these terms and conditions.

Date signed: AUGUST 3, 2020

By: 

*(Signature)*

Printed Name: JULIE COTTY

Title: BUSINESS DEVELOPMENT DIRECTOR

## DRUG-FREE WORKPLACE CERTIFICATION

**IDENTICAL TIE OFFERS:** - If there are two or more low Responsive Offers from Responsible Suppliers that are identical in price and other evaluation criteria, the tie will be awarded to the following in order of preference: a) the Supplier qualifying for local preference under Code 30-86; b) the Supplier in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most Responsible Supplier as defined under the City Code 30-82 (9)(c).

In order to have a drug-free workplace program, a business will:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violation.
- 3) Give each employee engaged in providing the Commodities or contractual Services that are under Offer a copy of the statement specified in subsection 1).
- 4) In the statement specified in subsection 1), notify the employees that, as a condition of working on the Commodities or contractual Services that are underbid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or *nolo contendere* to, any violation occurring in the workplace no later than five days after such conviction.
- 5) Impose sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

  
\_\_\_\_\_  
(Signature)

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

I, JULIE COTTY, depose and state:

(1) I am, \_\_\_\_\_ Title BUSINESS DEV. DIR. of \_\_\_\_\_ COMPANY FLORIDA CHEMICAL SUPPLY,  
the Bidder that has submitted the attached Bid;

(2) I am fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

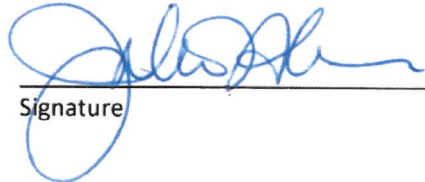
(4) Neither the said Bidder nor any of its officers, partners, owners, agent, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from Bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Daytona Beach, FL (Local Public Agency) or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Non-collusion Affidavit of Prime Bidder and that the facts stated in it are true.

JULIE COTTY  
Print Name

  
Signature

AUGUST 3, 2020  
Date

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

1. This sworn statement is submitted to CITY OF DAYTONA BEACH  
*(print name of the public entity)*  
by JULIE COTTY - BUSINESS DEVELOPMENT DIRECTOR  
*(print individual's name and title)*  
for FLORIDA CHEMICAL SUPPLY  
*(print name of entity submitting sworn statement)*  
whose business address is  
6810 EAST CHELSEA STREET  
TAMPA, FL 33610
- and (if applicable) its Federal Employer Identification Number (FEIN) is  
59-2037685

(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above:

2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(l)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(l)(a), Florida Statutes means:
- (a) A predecessor or successor of a person convicted of a public entity crime, or

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (*Indicate which statement applies.*)

  X   Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

       The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

       The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (*attach a copy of the final order.*)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

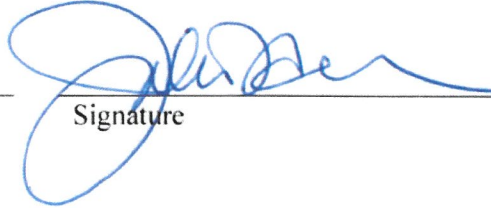
DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Sworn Statement Pursuant To Section 287.133(3)(A), Florida Statutes, On Public Entity Crimes and that the facts stated in it are true.

JULIE COTTY

Print Name



Signature

AUGUST 3, 2020

Date

Description	Quantity	Unit of Measure	Brenntag Mid-South, Inc.		Florida Chemical Supply		
			Price	Total	Price	Total	
Sodium Silicofluoride, a/k/a Sodium Fluorosilicate	40000	pounds		\$0.91	\$36,400.00	\$0.60	\$24,000.00