

Meeting Date: 8/26/2014

Report Type: Staff/Discussion

Report ID: 2014-00362

Title: Liquid Fluorosilicic Acid for Drinking Water Treatment (Reviewed 8/12/2014)

Location: Citywide

Recommendation: Pass a Motion 1) adopting the findings of fact issued by the Hearing Examiner on the bid protest filed by Thatcher Company of California, without hearing evidence from any party; 2) adopting the Hearing Examiner's recommended determination to deny the bid protest and find Solvay Fluorides, LLC to be the lowest responsible bidder; 3) denying the bid protest; 4) awarding a contract for the purchase of Liquid Fluorosilicic Acid (Bid# B14141111012) to Solvay Fluorides, LLC., for an initial term of one-year with up to four one-year extension options, in an amount not to exceed \$2,295,780.82 for the maximum five-year term; and 5) authorizing the City Manager, or the City Manager's designee, to approve the one-year extensions, provided that sufficient funds are available for this purpose in the budget adopted for the applicable fiscal year(s).

Contact: Michael Malone, Operations Manager, (916) 808-6226; Dave A. Phillips, Operations & Maintenance Superintendent, (916) 808-5652, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Water Production Operations

Dept ID: 14001111

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A - IFB B14141111012 Fluorosilicic Acid Solvay
- 4-Exhibit B- B14141111012 ADDENDUM 1 4-17-14
- 5-Exhibit C - IFB Eval Form B14141111012 Fluorosilicic Acid
- 6-Exhibit D - Bid Protest Thatcher Company
- 7-Exhibit E - DOU Response to Bid Protest
- 8-Exhibit F - Solvay Response to Bid Protest
- 9-Exhibit G - Hearing Examiner Recommendation

City Attorney Review

Approved as to Form
Joe Robinson
8/4/2014 10:29:25 AM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 7/31/2014 12:06:57 PM

Description/Analysis

Issue: The Department of Utilities (DOU) operates two water treatment plants, the Sacramento River Water Treatment Plant (SRWTP) on the Sacramento River and the E.A. Fairbairn Water Treatment Plant (EAFWTP) on the American River. During the water treatment process, Liquid Fluorosilicic Acid is used to treat the water. DOU has an ongoing need for Liquid Fluorosilicic Acid inventory.

The City received four bids, with Solvay Fluorides, LLC submitting the lowest bid, in the amount of 340,500. The second low bidder, Thatcher Company of California, filed a bid protest contending that the low bid should be rejected. In accordance with the City's bid protest procedures, City staff investigated the bid protest and prepared a response, and a bid protest hearing was held before an independent Hearing Examiner. After the hearing, the Hearing Examiner issued Findings of Fact finding Solvay to be responsive, and a Recommended Determination that the bid protest be denied. More information regarding the bid protest is provided in the Rationale for Recommendation section of this report, below. Staff is recommending that the City Council adopt the Hearing Examiner's Findings of Fact and Recommended Determination, deny the bid protest, and award the contract to Solvay Fluorides, LLC, as the lowest responsive and responsible bidder.

Policy Considerations: City Council approval is required for contract purchase amounts of \$100,000 or more.

Economic Impacts: Not Applicable

Environmental Considerations: The use of Liquid Fluorosilicic Acid is an ongoing activity at the Water Treatment Plant. This agreement would not result in any substantial change in the existing operations and processes. The use of Liquid Fluorosilicic Acid is regulated by permit requirements for the State of California, Department of Public Health.

The Community Development Department, Environmental Planning Services has reviewed the proposed purchase and determined that the project is exempt from review under the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines.. The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment the activity is not subject to CEQA. In addition, the ongoing purchase of supplies is not a "project" under CEQA Guidelines Section 15378(b)(2).

Sustainability: The Liquid Fluorosilicic Acid purchased under this contract complies with Section 8 of the City's Sustainability Master Plan to continue to protect the sources of water.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: DOU has an ongoing need to purchase Liquid Fluorosilicic Acid for its inventory to ensure continuation of services to its customers. The Department advertised for bids through the City Clerk and City Procurement website and the City Clerk opened four bids on April 23, 2014. The lowest responsible and responsive bidder was Solvay Fluorides, LLC with a total of \$340,500 for one year.

Liquid Fluorosilicic Acid		(Unit price - Tons delivered)		
Est. Qty - 750 Tons	Unit Price	Subtotal	Sales Tax	Annual Total
Solvay Fluorides, LLC	\$454	\$340,500	N/A	\$340,500
Thatcher Company of CA	\$461.79	\$346,342.50	N/A	\$346,342.50
Pencoco	\$585.50	\$439,125	N/A	\$439,125
Univar USA, Inc.	Submitted a No Bid Response			

Bid Protest

A bid protest was filed by the second low bidder, Thatcher Company of California (**see Exhibit D**). The Thatcher bid protest contended that their firm should receive the award due to the cost difference in the bid amounts being less than 2% and the fact that Thatcher has a local presence while Solvay does not.

Following receipt of the Thatcher bid protest, in accordance with the bid protest procedures specified in the City Code, Department staff investigated the bid protest and prepared a response (**see Exhibit E**). The City's bid protest response concluded that the Solvay bid was responsive, that contract award to Solvay followed all City Code and procurement guidelines, and that the bid protest should be rejected. Solvay also submitted a response to the bid protest, which is included as **Exhibit F**.

In accordance with the City's bid protest procedures, a bid protest hearing was scheduled before an independent Hearing Examiner at the Institute for Administrative Justice at McGeorge Law School. Following a hearing, the Hearing Examiner issued a written decision, dated July 8, 2014, setting forth the Hearing Examiner's findings of fact, and a recommended determination of the bid protest based on the Hearing Examiner's findings (**see Exhibit G**). In summary, the Hearing Examiner determined that 1) Solvay was the lowest responsible bidder; 2) the LBE Participation requirement for this bid had been waived; and 3) the City is required to award the contract to Solvay. For these reasons, the decision recommended that Thatcher's bid protest be denied.

Under Section 3.60.540 of the City Code, the City Council may in its discretion take any of the following actions prior to taking final action on the bid protest:

- A. *Adopt the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or*
- B. *Review the recording of the hearing, or a transcript thereof, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or*

C. In addition to or in lieu of reviewing the recording of the hearing, or a transcript thereof, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner.

City staff concurs with the Hearing Examiner's findings and recommendation, which wholly support the bid protest response previously prepared by the Department. Staff recommends that the City Council adopt the findings of fact issued by the Hearing Examiner without hearing factual evidence from any party, follow the Hearing Examiner's recommendation, and deny the bid protest. Staff recommends awarding the contract to Solvay Fluorides, LLC as the lowest responsive and responsible bidder.

Financial Considerations: The proposed contract has an initial one-year term, with the option to extend for up to four additional one-year terms, for a total amount not-to-exceed \$2,295,780.82 for the maximum five-year term. Sufficient funding for the initial one year term, in the amount of \$340,500 is available in the DOU FY2014/15 proposed operating budget. Extensions of the contract in succeeding fiscal years will be subject to funding availability in the adopted budgets for each fiscal year.

Local Business Enterprise (LBE): Solvay Fluorides, LLC is not an LBE. Prior to requesting bids, staff requested a LBE Participation Waiver prior to bidding to ensure competitive bidding in the best interests of the City. The Economic Development Department approved a waiver of the LBE participation requirement for this purchase, and this waiver was noted in the bid specifications.

Background

The Department of Utilities (DOU), Operations & Maintenance Division, operates two water treatment plants, the Sacramento River Water Treatment Plant (SRWTP) on the Sacramento River and the E.A. Fairbairn Water Treatment Plant (EAFWTP) on the American River. During the water treatment process, Liquid Fluorosilicic Acid is used to treat the water. DOU has an ongoing need for Liquid Fluorosilicic Acid inventory.

On April 1, 2014, an Invitation for Bid (IFB) was issued to procure Liquid Fluorosilicic Acid. The IFB was advertised through the City Clerk's office and the City's procurement website PlanetBids, in accordance with the requirements of API 4001-Procurement of Supplies. The IFB included notification that the minimum local business enterprise (LBE) participation level had been waived by the City for this bid.

DOU staff requested a LBE Participation Waiver from the Economic Development Department for the following reasons:

1. Due to lack of local manufacturers and a sole local distributor, staff wanted to include non-local vendors to ensure competitive bidding in the best interests of the City.
 - LBE participation waivers were also requested and approved for three other IFB's for chemicals that were posted for formal bid within the same month as the Liquid Fluorosilicic Acid bid to ensure competitive bidding.
2. If a manufacturer is the lowest responsible bidder, DOU prefers to obtain their chemicals from the manufacturer instead of a distributor. Dealing with the manufacturer reduces distribution costs and allows quality issues to be handled directly and resolved in a timely manner, which reduces staff time needed to ensure the chemical is acceptable for use to avoid public health and safety concerns and reduces the amount of time a treatment plant is potentially out of service.
 - Prior to issuance of the IFB staff determined that there are no local manufacturers of Liquid Fluorosilicic Acid.

The LBE participation waiver was signed by the Director of the Economic Development Department on March 28, 2014.

Bids were received by City Clerk's Office and opened by Clerk staff on April 23, 2014. Four bidders responded to the solicitation and the apparent low bidder at bid opening was announced as Solvay Fluorides, LLC, a manufacturer of Liquid Fluorosilicic Acid.

City Clerk forwarded the bids to DOU staff for award evaluation of available preference programs and discounts. Thatcher was the only local bidder, as a distributor of Liquid Fluorosilicic Acid. The LBE evaluation preference was not given to Thatcher as the

evaluation preference does not apply to supply contracts of \$100,000 or more. The City Sales Tax Deduction was not provided as sales tax is not charged on chemicals used for the production and purification of potable water for resale. The results of the competitive bid summarized in the IFB Evaluation Form (see Exhibit C) showed Solvay Fluorides as the apparent responsible low bidder.

Written notice of the staff recommendation to award the contract to Solvay Fluorides, LLC was sent to bidders by certified mail on May 1, 2014. Sections 3.60.460 through 3.60.560 of the Sacramento City Code allow bidders to file a protest against any staff recommendation, to be heard by an independent hearing examiner, and require any protest to be filed within five working days after the date the written notice of the staff recommendation is received.

Thatcher Company of California received the notice of staff recommendation on May 6, 2014 and filed a bid protest with City Clerk on May 9, 2014 within the five working day requirement. The bid protest is discussed in detail in the Description/Analysis portion of this report and in the referenced attachments.

DOU is requesting approval for a one-year contract, with the option to renew yearly for an additional four years, for a total term of not more than five years. Per Bid #B14141111011, the low bidder's unit price is \$454 per ton delivered at the estimated 750 tons for an initial one year total of \$340,500. The proposed pricing of \$454 per ton is lower than the City's current FY2013/14 pricing of \$634 per ton due to market changes and increased competition.

Pricing for subsequent years is subject to increases or decreases due to market demand and outside costs such as rail or freight expenses. Any increase in price for subsequent years requires written justification and is subject to review and approval by City staff. In addition, amount of chemical quantities used fluctuates from year to year and is dependent on multiple variables (i.e. amount of rainfall, river turbidity, temperature, etc.). In order to cover any potential increases in cost and/or increased quantities of materials used over the next five years, staff has estimated an average 15% increase per year. DOU is requesting a not-to-exceed amount of \$2,295,780.82 for the maximum potential term of five years. The table below indicates potential yearly cost increases, assuming a 15% per year cost increase.

Year 1	Year 2	Year 3	Year 4	Year 5	Total
\$340,500	\$391,575	\$450,311.25	\$517,857.94	\$595,536.63	\$2,295,780.82

CITY OF SACRAMENTO

**Bid No. B14141111009
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SECTION I REQUIREMENTS

SECTION I – REQUIREMENTS

A. Electronic Bid Document(s) Availability

1. Official Electronic copies of this bid document can be obtained only from the City of Sacramento's official web bid page. <http://www.planetbids.com/portal/portal.cfm?CompanyID=15300>
2. Any additional information (Addenda, Q&A, etc.) pertaining to this bid will also be found at the above official link.
3. Bid information obtained from third party sources **will not be considered official** and will not fulfill a bidder's responsibility for all official bid information as posted on our official site at the link above.

SECTION I – REQUIREMENTS**B. BID INSTRUCTIONS AND REQUIREMENTS**

No Bid Is In Legal Form Unless the Following Instructions Are Fully Complied With

1. **Additional Copies.** VENDORS ARE REQUIRED TO SUBMIT AN ORIGINAL BID, INCLUDING ALL REQUIRED ATTACHMENTS SUCH AS BROCHURES AND CATALOGS, TO THE CITY CLERK ON THE DATE AND AT THE TIME AND LOCATION SPECIFIED ON THE COVER SHEET. FAILURE TO DO SO MAY CAUSE YOUR BID TO BE REJECTED.
2. **Bid Forms.** Bid must be submitted on these printed forms and sealed in an appropriate envelope or package. Bid submission envelopes/packages shall exhibit the City's bid name and number, and include the vendor's name and address printed on the outside of the envelope/package
 - a) To obtain an electronic version of this bid go to Procurement's website at <http://www.planetbids.com/portal/portal.cfm?CompanyID=15300>
 - b) Bidders are invited to be present at the opening of bids. Bids will be opened, in public, in the Historic City Hall, Historic Chambers, 915 "I" Street, 2nd Floor, Sacramento, CA at or after 2:00 P.M. on Wednesday, April 23, 2014. After opening, Bids may be inspected in the City Clerk's Office.

(Note: Bids must be submitted up to 2:00 P.M. on the above date)

- c) All bids shall be clearly and distinctly written without erasure or modification, and properly signed by an authorized party, who shall indicate the capacity in which the signature is executed.
3. **Alternate Bids.** Alternate bids are invalid unless invited and covered by the specifications. **Please note all submissions are subject to rejection when unsolicited alternate bids are submitted.**
4. **Bid Security.** Bid Security is: Required Not Required

If required, bid security approved by the City must accompany the bid, in the amount of ___ % of the total amount of the bid. Bid security can be in the form of a cashier's check, certified check, or a bid bond from a surety company authorized to do business in the State of California. Bid securities will be returned to all except the three lowest Bidders within ten days after the opening of bids. The bid security of the two unsuccessful Contractors will be returned after the successful Contractor has executed the contract. Bid security of the successful Contractor will be returned when the contract is signed and all other contract award requirements have been met.
5. **Interest in More Than One Bid.** No bidder shall be interested in more than one bid (submit more than one bid for this solicitation) as provided by City Code Section 3.56.130(D).
6. **Rejection of Bids.** The right to reject any and all bids is reserved by the City, in its absolute discretion.
7. **Right to Waive.** The City reserves the right to waive any informalities or minor irregularities, as determined in its sole discretion, in connection with bids received.
- 7A. **City's Options.** City reserves the following options:
 1. The right to award in whole or in part.
 2. The right to reject all partial bids.
 3. The right to reject any or all bids or make no award.
 4. The right to issue subsequent Invitation For Bids (IFB).
 5. The right to approve or disapprove the use of particular subcontractors and/or suppliers.
 6. The right to waive any informality or irregularity in the bidding process and any bids.
 7. The right to accept a bidder's signed offer and issue a purchase order directly to the bidder based on the IFB.

- 8. **City Code.** All provisions of Chapter 3.56 of the City Code are applicable to any bid submitted or contract awarded.
- 9. **Equipment.** If equipment is bid, it shall be the newest and latest model in current production. Used, re-manufactured, shopworn, demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated by the City.
- 10. **Faithful Performance Bond.** A faithful performance bond is: Not Required Required

If required, the successful bidder must submit a performance bond in a form approved by the City Attorney, in the amount of _____.

- 11. **Payment Discounts.** Payment discounts offered for payment in less than twenty (20) days will not be considered as a basis of award. Payment discounts offered for payment in twenty (20) or more days will be subtracted from the total bid price for the purposes of bid evaluation. Any payment discount offered by the successful bidder will be accepted by the City of Sacramento, whether or not it was considered as a basis of award.
- 12. **Mandatory Pre-Bid Conference.** If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, all bidders are required to attend the conference. Failure to attend this conference will result in rejection of your bid. If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, bid packages will be made available only through the time and date of the conference. Subsequent addenda, if applicable, will be furnished only to those bidders who attended the Mandatory Pre-Bid Conference.
- 13. **Bid Inquiries.** Questions regarding this bid should be referred to:

Contractual Questions
 Department of Utilities, O&M Division
 Attention: Deanne Neighbours
 Email: dneighbours@cityofsacramento.org
 Phone: (916) 808-3536

Technical Questions
 Department of Utilities, O&M Division
 Attention: Mary Krizanosky
 Email: mrkrizanosky@cityofsacramento.org
 Phone: (916) 808-1311

These inquiries must be submitted at least 10 days prior to the bid opening date. Any interpretations by the City will be made in the form of a written amendment. The receipt of such an amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

- 14. **Bid Evaluation.** In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the Bid. When such a mathematical error appears on the face of the Bid, the City shall have the right to correct such error and to compute the total amount bid by the bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Bid, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the City's estimate of the quantity to be provided or performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the intent of the bid process. The total paid for each such item of work shall be based upon the item price and not the total price.

Should the Bid contain only a total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by City's estimate of the estimated quantities to be provided or performed.

If the Bid contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Bid shall be disregarded.

If prospective bidders are bidding an item "or equal" the bidders shall list the manufacturer's name and product number of the item offered in the space provided. If such information is not provided, it will be assumed that the bidder is offering the exact item specified. The City's decision as to whether an item is an equal to the item specified shall be final.

- 15. Determination of 'Lowest Responsible Bidder.** Sacramento City Code '3.56.020 provides that the lowest responsible bidder shall be determined as follows:
- a. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the City; (vi) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.
 - b. Based on the information provided in the bids, the City Council or the City Manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection c, below.
 - c. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of local business enterprises, energy conservation and sustainability in the City's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection b, above.
- 16. Pre-Award Conference.** The apparent lowest responsible bidder may be required to attend a pre-award conference at a mutually acceptable time at which requirements of the Contract will be reviewed. At that time, samples of forms, reports etc., will be submitted by the Contractor for final approval.
- 17. Award by Item or Group.** The City reserves the right to increase or decrease quantities listed, make separate awards for any item, line-item or category/group of items to the lowest responsible bidders for such items or category/groups of items.
- 18. Multiple Awards.** The City reserves the right to make multiple awards in order to provide alternate sources to insure continuity of supply if meeting the City's requirements within an acceptable time period exceeds the capacity or capability of the primary contractor(s).
- 19. Contract Award.** Within ninety (90) days after the bid opening, a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper. The time for awarding a contract may be extended in the sole discretion of the City, if required to evaluate bids or for such other purposes as the City may determine, unless the Bidder objects to such extension in writing with his/her bid. The City may accept this bid offer by issuance of a Notice of Award Letter, Contract and/or a Purchase order covering award of said bid to Bidder at any time on or before the 90th day following the day of this official bid is opened by the City. This offer shall be irrevocable for 90 days after bid opening or 90 days after City Council awards the bid, whichever comes last, however this period may be extended by mutual agreement of both parties.
- 20. Emergency/Declared Disaster Requirements.** In the event of an emergency or if a City facility is declared a disaster area by the county, state or federal government, this contract may be subjected to unusual usage. The consultant/vendor/supplier shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the consultant/vendor/supplier shall apply to serving the City's needs regardless of the circumstances. If the consultant/vendor/supplier is unable to supply the goods/services under the terms of the contract because of a disruption in its chain of supply or service, then the consultant/vendor/supplier shall provide proof of such disruption which may include, but not be limited to a copy of a letter from the source of supply or service stating reason for the disruption. Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted.

- 21. Acceptable bid format.** All bids must show the full name of the firm bidding and must be on forms furnished by the City of Sacramento. All responses must be written in ink, printed by typewriter or computer generated. Responses made in pencil will not be considered.
- 22. Submission of Bids.** The City is not responsible for misaddressed bids. Please assure that you utilize the address appropriate for the method of delivery. Bid submissions made via commercial express courier (FedEx, United Parcel Svs.) must be addressed as follows:

**Office of the City Clerk
915 I Street, New City Hall
4th Floor Public Counter
Sacramento, CA 95814**

Bid submissions made via personal delivery shall be delivered to:

**Office of the City Clerk
915 I Street, New City Hall
4th Floor Public Counter
Sacramento, CA 95814**

23. Bid Protest. Bid protests must be filled and maintained in accordance with the provisions of Sections 3.60.460 through 3.60.560 of the Sacramento City Code. Bid protests that do not comply with Sections 3.60.460 through 3.60.560 of the Sacramento City Code shall be invalid and shall not be considered. A bid protest fee of \$750.00 is required at the time of filing to be considered valid in accordance with City of Sacramento Resolution No. 2003-231 dated April 29, 2003. As used herein, the term "bid protest" includes any bid protest that (1) claims that one or more bidders on this contract should be disqualified or rejected for any reason, or (2) contests a City staff recommendation to award this contract to a particular bidder, or (3) contests a City staff recommendation to disqualify or reject one or more bidders on this contract. Sections 3.60.460 - 3.60.560 of the Sacramento City Code are available at: <http://www.qcode.us/codes/sacramento/>

**SUBJECT TO PARAGRAPH 7 ABOVE, THE CITY CANNOT ACCEPT A
BID FAILING TO COMPLY WITH ANY OF THE ABOVE REQUIREMENTS.**

SECTION I – REQUIREMENTS

C. BID SIGNATURE PAGE

BID NO. B14141111012

FOR SERVICES/SUPPLIES: Liquid Fluorosilicic Acid

To the City of Sacramento:

The undersigned bidder (hereafter referred to as the "Bidder" or the "Contractor") submits the attached bid, and certifies as follows: that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation; that in submitting this bid the bidder has examined all of the Contract Documents identified below; that the bidder proposes and agrees that if this bid is accepted, the bidder will execute and fully perform the contract for which bids are called; that the bidder shall perform all the work and/or furnish all the materials specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the bidder shall take in full payment therefor, the prices set forth in the attached Pricing Schedule.

CONTRACT DOCUMENTS

Performance of and payment for the contract for which bids are called shall be subject to all terms and conditions of the Invitation for Bid, the Bid Instructions and Requirements, the Bid, the Pricing Schedule(s), the Items Requiring Bidder Response, the Required Submittals, the General Conditions, and any Addenda, Amendments, Special Provisions, Specifications, Plans or other requirements applicable to performance of the work and/or furnishing the materials specified herein. Such documents, referred to herein as the Contract Documents, are fully incorporated herein by this reference and are collectively referred to as the Contract. By submitting this Bid, the Contractor agrees to fully perform each and every provision of the Contract, provided that City awards the Contract to the Contractor, and provided further that City shall have no obligation hereunder unless and until such award is made. Contractor shall not make any changes to this form without City's written approval, and any changes made without such approval shall be void.

To Be Filled Out By Bidder

NAME OF CONTRACTOR: Solvay Fluorides, LLC

ADDRESS: 3333 Richmond Avenue, Houston, TX 77098

PHONE #: 713-525-6872 FAX #: 713-525-7805 E-MAIL: Cherie.Ruffino@Solvay.com

STATE TAX I.D. #: _____ FED. TAX I.D. #: 06-1433584

City of Sacramento Business Operation Tax Certificate #: 115453
(Contract award will not be processed without a valid and current Certificate Number.)

TYPE OF BUSINESS ENTITY (check one): Individual/Sole Proprietor Partnership
 Corporation Limited Liability Company
 Other (please specify: _____)

BY: (signature of authorized person) 

PRINT NAME: Mark E. Looney

TITLE: Vice-President Sales & Marketing

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.

FOR CITY USE ONLY

The Bid was opened on _____.

Bid Bond Required: No; Yes - Amount: \$ _____

Received: Cashiers or Certified Check drawn on a California bank; Surety Bond

City Clerk

CONTRACT AWARD

Bid Items Included in the Contract: All Items, unless otherwise specified below

Specify: _____

Contract Not-to-Exceed Amount: \$ _____

Award Date: _____

CONTRACT APPROVAL

Approved as to Form:

Approved:

Attest:

City Attorney

City Manager
(Or Authorized Designee)

City Clerk

D. EQUAL BENEFITS ORDINANCE (EBO) REQUIREMENTS

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

ATTACHMENT A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

ATTACHMENT B



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY
CONTRACTORS ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

E. LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION REQUIREMENTS

(City Contracts no Federal Funds Used)

I. LBE PARTICIPATION REQUIREMENT

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference percentage and authorized City departments to require minimum LBE participation levels in specific contracts. Under City Code section 3.60.270, when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has established a minimum 5% participation level for LBEs, which has been waived for this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Bidders shall submit proof to the City demonstrating that the business and each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted are in compliance with all applicable laws relating to licensing and are not delinquent in payment of any City of Sacramento or County of Sacramento taxes, permits, or fees. Failure to submit the required LBE information may be grounds for finding the bid non-responsive.

II. LBE QUALIFICATION

- A. A LBE designated in the bid must be qualified as a LBE prior to the time set for submission of bids.
- B. Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Proof of legitimate business presence in the city or unincorporated county of Sacramento shall include:
 - 1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
 - 2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
 - a. The LBE's principle business office or workspace; or

- b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.
- C. A LBE must provide a physical address for the basis of location. This excludes P.O. Box addresses.
- D. A LBE must provide a current copy of the City of Sacramento Business Operations Tax Certificate or County of Sacramento Business License.

III. DETERMINATION OF LBE PARTICIPATION LEVEL

- A. LBE Participation: The percentage of LBE participation is determined based on the dollar value of the work to be performed or supplies to be furnished by certified LBEs designated in the bidder's Subcontractor and LBE Participation Verification Form, relative to the total dollar amount of the bid.
- B. Participation Credit: To receive credit for participation:(1) an LBE subcontractor must be responsible for the execution of a distinct element of the work, must possess any license or certification required for the work, and must actually perform, manage, or supervise the work without subcontracting or otherwise shifting any portion of the work to another subcontractor; and (2) an LBE supplier must furnish materials, equipment, or supplies that the supplier sells as a recurring, although not necessarily primary, part of its business, and that are necessary for performance of the work.
- C. Suppliers: Credit for an LBE supplier of materials, equipment, or supplies is counted as one hundred (100) percent of the amount paid to the supplier for the material, equipment, or supplies. To receive this credit, LBE suppliers must be listed on the bidder's Subcontractor and LBE Participation Verification Form.
- D. Subcontractors (including truckers): To receive credit for an LBE subcontractor, the subcontractor must be listed on the bidder's Subcontractor and LBE Participation Verification Form.
 - Truckers: Credit for an LBE trucker is counted as one hundred (100) percent of the amount paid to the trucker for trucking services, not including any amount paid to the trucker for the cost of any materials, equipment, or supplies being transported by the trucker.

IV. LBE REQUIREMENTS FOR CONTRACTOR

- A. LBE Records: The Contractor shall maintain records of all subcontracts with verified LBE subcontractors and records of materials purchased from verified LBE suppliers for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each LBE subcontractor or supplier and the total dollar amount actually paid each LBE subcontractor or supplier.

Not later than 30 days after completion of the work performed under the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide

such other information, records, reports, certifications or other documents as may be required by City, to determine compliance with any provision of the LBE program or these specifications.

- B. Performance of LBE Subcontractors and Suppliers: The LBEs listed by the Contractor shall perform the work and supply the materials, equipment, and supplies for which they are listed unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the material, equipment, or supplies from other sources. Reasons for requesting such authorization would include:
1. The listed LBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
 2. The listed LBE becomes bankrupt or insolvent.
 3. The listed LBE subcontractor fails to meet the bond requirements of the Contractor.
 4. The work performed or the materials/equipment/supplies provided by the listed LBE are unsatisfactory or are not in accordance with the plans and specifications, or the listed LBE fails to perform its contractual obligations.
 5. It would be in the best interest of the City.
- C. Subcontractor Substitution: No substitution of an LBE subcontractor shall be made at any time without compliance with the Subletting and Subcontracting Fair Practices Act. If an LBE subcontractor is unable to perform successfully and is to be replaced, the Contractor shall make reasonable efforts to replace the original LBE subcontractor with another verified LBE subcontractor. The new LBE subcontractor must be verified at the time of substitution.
- D. Reporting and Utilization Requirements and Sanctions: Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications, or failure to utilize one or more LBEs in substantial compliance with the LBE utilization indicated in the Contractor's bid (unless otherwise authorized by City as provided herein, or when such failure results from changes to the work approved by the City), shall be considered a breach of the contract, and a deduction may be made from the contract amount. The deduction shall be not more than ten (10) percent of the value of the work or materials/equipment/supplies that the subject LBE(s) were listed to perform/provide in the Contractor's bid, and shall be deducted from any payment due to the Contractor. This is in addition to any deduction that may be made under any other provision of the contract, the Sacramento City Code, or State law.
- E. Hearing and Review of Division Manager Decision: Prior to making a deduction pursuant to Section IV (D), above, the City shall provide written notice of the proposed deduction to the Contractor, and the Contractor may, not later than five (5) working days after receiving such notice, provide a written request to City for a

hearing to contest the proposed deduction. Upon receipt of a timely written request from the Contractor, the City shall schedule a hearing before the Division Manager (as defined in the City's Standard Specifications for Public Construction), and written notice of the date, time and location of the hearing shall be provided to the Contractor not less than five (5) working days prior to the date of the hearing. The hearing shall be conducted in the manner specified in Section 4-8 of the Standard Specifications, and the Division Manager shall prepare and forward to the Contractor a written decision as soon as practicable after the hearing. The Division Manager's decision shall be subject to review in accordance with the provisions of Section 4-9 of the Standard Specifications. Failure to request such review in compliance with the requirements set forth in Section 4-9 shall constitute acceptance of the Division Manager's decision by the Contractor.

The written notices and requests described above shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery, or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

V. DEFINITIONS

- A. Local Business Enterprise (LBE): A business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or any other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento.
- B. Contractor: The sole proprietorship, partnership, limited liability company, corporation, or any other business entity entering into a contract with the City of Sacramento.
- C. Subcontractor: The sole proprietorship, partnership, limited liability company, corporation, or other business entity entering into a contract with the prime contractor to perform a portion of the work.
- D. Supplier: The sole proprietorship, partnership, limited liability company, corporation, or other business entity to provide materials, equipment, or supplies necessary for performance of the work.
- E. Proposal: Any response to a City solicitation for Proposals or Qualifications.
- F. Bid: Any response to a City solicitation for bids.

SECTION II CONTRACT DOCUMENTS

SECTION II – CONTRACT DOCUMENTS

A. GENERAL CONDITIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

- 2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole

cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflict of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for

any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. **Termination for Cause.** If the City determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the

Contractor fails to correct the unsatisfactory condition(s) within 5 days, the City may declare the Contract terminated upon 30 days written notice and may, in the City's sole discretion, demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.

- B. Termination for Convenience. The City may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned, or any other costs, which have not been incurred, as of the date of termination.
- C. Termination After Completion Date. If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. The City may thereafter proceed to complete the Contract either by rebidding or otherwise, the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract on time. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of

CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an

authorized representative of the insurance carrier.

- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above; in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.
13. **Entire Agreement.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code. In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:
- A. Post-Award Amendments.
 - B. Pricing Schedule(s), as corrected by City, if applicable.
 - C. Pre-Award Addenda
 - D. Special Provisions.
 - E. Bid Instructions and Requirements
 - F. General Conditions
 - G. Technical Specifications and/or Plans
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act

and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
21. **Funding Availability.**
 - A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
 - B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council.
 - C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
 - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.
23. **Safety Data Sheets (SDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a SDS with the first shipment of any hazardous material. Also at any time the content of an SDS is revised, the Contractor shall provide new information relevant to the specific material.
24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 9 of these General Conditions.
25. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
26. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's

personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.

27. **Guarantee.** By submitting its bid, the Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.

SECTION II – CONTRACT DOCUMENTS

B. SPECIAL PROVISIONS

1. **Period of Performance.** Any contracts(s) resulting from this solicitation will be awarded for a one year term beginning on date of award, with the option to extend for up to four additional one-year terms, for a maximum five year term.
2. **Contract Extension.** If mutually agreeable to both parties, any resultant contract may be extended on a year to year basis under the same terms and conditions. However, in no case shall the renewal extend beyond 5 years from the date of award of the original contract.
3. **Estimated Quantities.** The bid quantity specified is based upon current known requirements and is subject to increase or decrease at the same terms and conditions. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.
4. **Pricing.** The prices quoted to the City shall be as low or lower than those charged the Contractor's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment. In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City. Prices are maximum for the one year term of the contract. Upon offer of contract renewal from the City for subsequent terms, Contractor may adjust pricing to the agreement of both parties.
5. **Purchase Order.** A Purchase Order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The Purchase Order will be enclosed with the resulting contract or will be issued shortly thereafter, and will become an integral part of the resulting contract. Each Purchase Order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th a second purchase order may be issued.
 - A. The Purchase Order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract and any modification thereto.
 - B. Delivery of material and/or services are not to begin until receipt of the Purchase Order and/or other notification by the City Procurement Services Manager.
6. **Invoices.** All Invoices under this Agreement shall be submitted to the City by Contractor and shall contain the following information at a minimum:
 - (1) Name of contractor and remit to address
 - (2) Invoice number and date
 - (3) Contractors Order number
 - (4) City's Contract or Purchase Order number
 - (5) Name of person placing order
 - (3) Description of Item
 - (4) Quantity of Item
 - (5) Item and invoice amounts

Requests for payment shall be sent to:

Department of Utilities
1391 35th Avenue, Sacramento, CA 95822
Phone (916) 808-1464 Fax (916) 808-7955
Attn: Alaina Jordan

7. **Billing Disputes.** Billing disputes will be addressed on an individual job by job basis. The burden of proof of an incorrect billing shall be on the Contractor. Upon presentation and verification of the information provided by the contractor, the City will review all records and make a final determination and present its finding to the Contractor.
8. **Payment Terms.** Payment terms are net 30 unless Contractor offers a prompt payment discount. All prompt payment discounts if taken shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice.
9. **Additional Services.** Those services not specifically named in the Pricing Schedule shall be negotiated on an individual basis.
10. **Subcontracts and Assignments.** No portion of the work or services, except for the purchase of necessary goods and materials, to be supplied hereunder (including the use of consultants) may be subcontracted in whole or in part, nor assigned by the contractor, nor may assignment of any money due or to become due the contractor under this contract be made without the prior written consent of the City.

Where authorized by the City, the contractor shall select all subcontractors and suppliers on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract.
11. **Modification of Contract.** The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:
 - A. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
 - B. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract, including the requirements of the specifications.
12. **Cooperative Purchasing.** If mutually agreeable to both parties, the use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

- 13. **Quantities Unrestricted.** The City is not limited to purchase all of its requirements from any contract resulting from this request.
- 13. **Points of Contact.** Requests for service(s) may be made by one or several organizational levels within the City.

Contract Manager: **Deanne Neighbours, Administration Technician**
 Department: **Utilities, Operations & Maintenance Division**
 Address **1391 35th Avenue, Sacramento, CA 95822**
 Phone **(916) 808-3536**
 E-Mail **dneighbours@cityofsacramento.org**

Project Manager: **David Phillips, O & M Superintendent**
 Department: **Utilities, Operations & Maintenance Division**
 Address **301 Water Street, Sacramento, CA 95811**
 Phone **(916) 808-5652**
 E-Mail **dphillips@cityofsacramento.org**

- 8. **Authorities / Technical Direction.** The Contractor shall take no direction from any City employee or any other person other than the Procurement Services Manager that changes the terms and condition of the contract action, the Scope of Work, or any change that impacts the cost/price or schedule. Changes authorized by the Procurement Manager will be in the form of a written, official, signed modification to the contract, received by the Contractor before the Contractor will act upon those changes.
- 9. **Document Protection.** Original documents shall be adequately protected at all times while they are in the possession of the Contractor and returned in the same condition as received.

 The Contractor shall not duplicate or allow for duplication of distribution of electronic data provided to Contractor, or created by the Contractor, and may not provide said files for review or use to any third party without written permission from the City of Sacramento.
- 17. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City.
- 18. **Confidentially of Information.** Contractor shall take all precautions necessary and appropriate to assure the confidentiality of City's record information. Contractor shall limit access to City's records only to contractor's authorized employees, except when they are authorized by the City, contractor shall not reproduce any of the City's records. The City shall have the right to review Contractor's procedures for handling City records and may make such inspections as it deems necessary to assure that Contractor is adequately safe-guarding City's record information.

Contractor acknowledges that in the course of providing services that they will have access to, and/or will be in possession of, confidential information of the City. Confidential information is defined as all information released to the Contractor for the purpose of having the Contractor perform the contracted for services.

The Contractor shall secure the City's confidential records in a manner to ensure that the information remains confidential. Contractor shall have access to the City's confidential information for the purposes of performing the contracted services.

19. **Inspection of Facilities.** The City may require an inspection tour of Contractor's facilities at the location where the work on this contract will be accomplished.
20. **Safety Requirements.** All services and products must comply with current California State Division of Industrial Safety Orders, Cal OSHA, and OSHA.
21. **Termination for Unsatisfactory Performance.** Whenever, in the opinion of the Procurement Services Manager, the Contractor's performance is not satisfactory, the Contractor shall be advised of the reasons. If the Contractor fails to correct the unsatisfactory conditions within 5 days, the Procurement Services Manager may declare this contract terminated upon 30 days written notice and contract with another Contractor. The City shall have no obligation to give more than two notices of unsatisfactory performance in any calendar year. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor(s) shall again fail to satisfactorily perform services pursuant to this contract, City may thereupon terminate this contract immediately. In the event of termination hereunder, the Contractor and/or surety will be liable and assessed for any and all costs for the re-procurement of the contract services.
22. **Environmentally Preferable Procurement**

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:

[http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable Purchasing Policy_SPP.pdf](http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf) or by contacting the Procurement Services Division at (916) 808-6240.

SECTION II – CONTRACT DOCUMENTS

C. TECHNICAL SPECIFICATIONS/PLANS/OTHER REQUIREMENTS

SPECIFICATIONS FOR LIQUID FLUROSILICIC ACID

The liquid fluorosilicic acid shall be furnished by the Contractor in accordance with these specifications.

QUALITY

The liquid fluorosilicic acid shall be in accordance with AWWA Standard B703-11 or the latest revision, except as modified or supplemented herein. The manufacturer or supplier shall provide an affidavit that the liquid fluorosilicic acid furnished under this specification complies with all applicable requirements of AWWA Standard B703 at the time of delivery.

Also, this material shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with American National Standards Institute (ANSI) / National Sanitation Foundation (NSF) Standard 60, Drinking Water Treatment Chemicals-Health Effects.

Fluorosilicic acid shall be in accordance with the United States Environmental Protection Agency (USEPA) regulations and shall be registered, labeled, and marked as prescribed by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Each load supplied under this bid shall meet the following criteria:

Product Standards	AWWA/ANSI B703 Fluorosilicic Acid
Product Certification	ANSI/NSF Standard 60 Drinking Water Treatment Chemicals – Health Effects
Solution Strength	Available fluorosilicic acid expressed as H ₂ SiF ₆ shall be a minimum 23 percent by weight and a maximum of 25 percent by weight
Contaminants	Total free acid shall be a maximum of 1 percent hydrofluoric acid expressed as HF.
	Material shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been treated with the material.
Clarity	Clear to amber colored liquid with no visible cloudiness, impurities, or sediment. Each load shall be visually inspected on-site by plant operational staff. Acceptance of each load based upon this visual inspection.

SDS, ANALYSIS DATA, AND CERTIFICATION

Bidders shall supply the Safety Data Sheet, an analysis of the fluorosilicic acid, the manufacturer's specification sheet, and the manufacturer's labeling instructions as part of the bid package together with the location of the manufacturer's plant site. Bidders shall also supply proof with each shipment that the proposed product has been certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF 60, Drinking Water Treatment Chemicals – Health Effects.

It is the responsibility of the supplier to inform the City of Sacramento that NSF or UL certification has been revoked or lapsed within 24 hours of the time the supplier receives verbal or written notification. Loss of certification shall constitute sufficient grounds for immediate termination of the contract between City of Sacramento and Contractor.

SAMPLES

Prior to the award of the contract, the City may require that samples be submitted for evaluation and/or testing. The samples provided by the Contractor shall represent the exact items and/or products bid and to be supplied. Samples must be received within 5 working days of the request for pre-award samples. Failure to satisfy any of the City's requirements and/or specifications may result in the rejection of the bid.

Prior to Contractor unloading materials, the City may perform quick tests and sample analysis to verify that the items and/or products supplied meet the requirements of this specification. A maximum of at least five different 500-mL portions shall be taken from different places in the container (top, middle, and bottom) and combined to form a composite sample that is representative of the entire container. The total gross sample taken shall consist of at least 2 L. The Contractor or its subcontractors shall allow 1 hour for this pre-unloading testing to be completed. If the City cannot complete the testing within the 1 hour period, the City shall allow the Contractor to unload the shipment. In the event that the load is rejected based upon test results, the Contractor shall have twenty-four (24) hours to supply another shipment. If the Contractor is unable or unwilling to supply another shipment within this time period, the City has the right to procure a shipment from another source. Two rejections of a lot or shipment in any twelve (12) month period shall constitute automatic termination of the Contractor's supply contract with the City of Sacramento.

At any time after unloading, the City reserves the right to perform complete tests and sample analysis to ensure that the items and/or products supplied meet the Environmental Protection Agency (EPA) specifications, AWWA B703 specifications, NSF 60/61 specifications, and the supplemental specifications provided within this document. A combination of two failures to comply with these specifications, whether from shipment rejections as outlined above or from failure to meet specifications after a complete laboratory analysis may result in termination of the Contractor's supply contract with the City of Sacramento.

ESTIMATED QUANTITIES

Quantities (or expenditures) shown are merely annual estimates. The quantity specified is based upon current known requirements and is subject to increase or decrease at the same terms and conditions. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period. The City of Sacramento does not guarantee to purchase minimum quantity, or to purchase any remaining products that Contractor may have acquired in support of this Agreement.

ORDERS

Orders will be made on an "as needed" basis during the contract period.

DELIVERY LOCATIONS AND CONTACTS

It may be required that the liquid fluorosilicic acid be delivered to either one or both of the delivery locations listed. All deliveries shall be made in agreement with the primary contact assigned to each location. Secondary contacts may be contacted, if for some reason primary contacts are not available.

Delivery Locations:

Sacramento River Water Treatment Plant (SRWTP)
301 Water Street
Sacramento, CA 95811

E.A. Fairbairn Water Treatment Plant (EAFWTP)
7501 College Town Drive
Sacramento, CA 95826

SRWTP Primary Contact:

Richard Dare, Sr. Plant Operator
 Office (916) 808-4961
 Cell (916) 798-7587
 Email rdare@cityofsacramento.org

EAFWTP Primary Contact:

Howard Moreland, Sr. Plant Operator
 Office (916) 808-3120
 Cell (916) 798-7582
 Email hmoreland@cityofsacramento.org

SRWTP Secondary Contact:

Rod Frizzell, Supervising Plant Operator
 Office (916) 808-5165
 Cell (916) 879-8194
 Email rfrizzell@cityofsacramento.org

EAFWTP Secondary Contact:

Mary Krizanosky, Supervising Plant Operator
 Office (916) 808-1311
 Cell (916) 801-5970
 Email mkrizanosky@cityofsacramento.org

DELIVERY

Deliveries shall be made in agreement with the Plant Operation's schedule after receipt of orders, typically within three (3) working days, at any time during the contract period. Delivery shall be made in 4,000 gallon or larger tank trucks or trailers that are modified to resist fluorosilicic acid. Trucks or trailers shall be equipped with a weight measurement system that will show the number of gallons or pounds of product delivered to the City's storage tank. If a truck is not equipped with a weight measurement system the driver shall provide a truck scale reading for each delivery. Delivery time of shipments shall not exceed two weeks from the time of product manufacture.

Deliveries shall be made Monday through Thursday, between 7:00 a.m. and 2:00 p.m., and Friday, between 7:00 a.m. and 1:00 p.m., during which time the City will provide personnel to monitor and assist with unloading the liquid fluorosilicic acid from tank truck to receiving storage. Unless otherwise directed, failure to observe this time constraint may result in a delay of the unloading to the following day, at no additional cost to the City. The City may reject any load with missing, damaged, or open seals or lack of chain of custody paperwork if delivery equipment lacks seals. Any trucks found to be leaking product will not be allowed to enter City property.

The tanks or trailers shall be clean and free of residue that may contaminate the Contractor's product or impede the unloading process. It is the Contractor's responsibility to verify the cleanliness of the transporting equipment before loading. All appurtenant valves, pumps, and discharge hoses used for the delivery of liquid fluorosilicic acid shall be supplied by the Contractor and shall be clean and free from contaminating material. The City of Sacramento may reject a load if the equipment is not properly cleaned.

Delivery driver shall provide an approved, leak-free connection device and must make all line connections from the tank truck to the City's feed system. The driver must be trained how to recognize leaks, how to shut-off the system, and how to make any emergency repairs necessary. The driver shall observe the transfer filling operation and be present at all times until the transfer is complete. The driver shall perform disconnection of all lines from the City's system and shall be responsible for minimizing any spillage due to such operation.

The Contractor shall be responsible for any spills resulting from failure of its delivery equipment or from failure of attendant delivery personnel in the proper performance of their duties. Proper performance shall require attendant 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. The City of Sacramento reserves the right to refuse any and all deliveries made with equipment that is poorly maintained and/or leaking liquid fluorosilicic acid.

The Contractor shall take immediate and appropriate actions to clean up any spilled liquid fluorosilicic acid. If the spill is not cleaned up, the 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 Contractor and deducted from the amount due to the Contractor. If the City of Sacramento's equipment, such as pipes, valves, level indications, or alarms, should fail and the spillage is not the fault of the Contractor, the Contractor shall be relieved of cleanup of the spill.

All tank truck deliveries must conform to any and all U.S. Department of Transportation regulations covering highway transport of fluorosilicic acid solution and comply in every respect with current Federal and State Hazardous Materials regulations. Packaging shall comply with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) under USEPA regulations.

EMERGENCY DELIVERIES

Due to weather events, the City may require emergency deliveries on weekends and holidays from time to time. Contractor shall provide an after -hours contact and phone number. Orders shall be placed with as much notice to the Contractor as possible and Contractor shall make every practicable effort to deliver product as needed.

DELIVERY DOCUMENTATION AND PROTOCOL

The City of Sacramento delivery sites listed require an email from the liquid fluorosilicic acid supplier the day of delivery, at least an hour prior to arrival. Information listed below shall be emailed to the delivery facility contacts listed below prior to delivery. The email must contain the following information;

1. Security Information Sheet (Must include the following)
 - Delivery Location
 - Driver Information
 - Estimated Time of Arrival
 - Bill of Lading Number
 - Truck Number
 - License Number
 - Seal Numbers
2. Driver Identification with photo
3. Assay/Certificate of analysis from the manufacturer that shall include the following information:
 - Date and Time of Manufacture
 - Batch or Lot Numbers
 - AWWA/NSF Compliance
 - Fluorosilicic Acid (H_2SiF_6) % by Weight
 - Hydrofluoric Acid (HF) % by Weight
 - Specific Gravity (Referenced at specific temperature)
 - Contaminant Concentrations

4. Weight Certificate

If applicable, provide the following additional items:

5. Washout Certificate or "last Contained" notation on CoA /Affidavit of Compliance

6. Product Tank Identification and Washout Checklist*

* Note: This requirement does NOT need to be emailed or faxed prior to delivery, but needs to be completed by the driver and suppliers facility personnel.

Upon arrival drivers will present the above information for verification by City of Sacramento Water Treatment Plant personnel. Deliveries will not be accepted by the City of Sacramento unless accompanied by Certificate of Analysis for the specific batch of liquid fluorosilicic acid delivered showing the above data and that it conforms to the required specifications.

NOTICE OF NON-CONFORMANCE

If the material or its container does not meet the chemical, physical, or safety requirements of the industry and regulatory standards and the City's specifications, notice shall be given to the supplier immediately after observing said non-compliance; but in any case, within 30 days of receipt of shipment. In this event, supplier shall remove the unsuitable product or container from the premises of the purchaser at the City's request and replace it with a like amount of satisfactory liquid fluorosilicic acid in an acceptable container; or, if there is an appropriate and safe solution for the problem, a price adjustment may be agreed upon between the supplier and the City.

FREIGHT

All items are to be supplied F.O.B. Destination, prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

PAYMENT

Payment will be made on the weight of product delivered. The contractor shall include with each shipment a certification of the total weight contained in each shipment.

SAFETY PROCEDURES & PROGRAM

Bidders shall supply copies of their safety procedures and/or program as part of the bid package. All services and/or products must comply with current California State Division of Industrial Safety Orders and Cal O.S.H.A. At a minimum, we would like information on the following pieces of your safety procedures/program:

- Any training specific to the Chemical material being provided
- Injury & Illness Prevention Program (IIPP)
- Hazard Communication Program and/or training
- Hazardous Materials Program and/or training
- Hazardous Material Spills Program and/or training if separate from Hazardous Materials

As part of its Emergency Preparedness Planning and Spill Response Plan, the successful bidder, upon award, shall submit a list of at least two degreed engineers (preferably Chemical Engineers) experienced in liquid fluoro-silicic acid operations to provide emergency support services on a 24/7 basis in the event of a spill, equipment failure, or other emergency. List shall include the following information for each engineer: name, a 24 hour access phone number, degree received, college or university attended, and year of graduation. Failure to submit this list including all of the required information or failure to adhere to this requirement may result in the bid being found non-responsive.

All delivery vehicle drivers shall be U.S. citizens and have a proper commercial driver's license with a Hazardous Material endorsement.

SECURITY PROCEDURES

Contractor shall provide the City with a "CD" containing digital photographs of all of its delivery drivers with names imposed. Contractor shall send the City an updated CD within 24 hours of any change to its drivers. The City of Sacramento shall use the CD to verify whether a driver is actually an employee of the Contractor.

Contractor's drivers shall display their driver's license whenever asked by a City of Sacramento representative during the delivery. Failure to show proper license or failure of driver to be listed on CD provided to the City may result in rejection of delivery and could result in termination of the Contractor's supply agreement.

SECTION III BIDDER RESPONSE DOCUMENTS

SECTION III – BIDDER RESPONSE DOCUMENTS

A. ITEMS REQUIRING BIDDER RESPONSE

1. LOCAL BUSINESS SALES/USE TAX DEDUCTION

The Sacramento City Code requires the City to identify those bids that are subject to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the Sacramento City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. The current rate at which such local sales or use tax is received by the City is one percent (1%). Therefore, in evaluating bids to determine the lowest responsible bidder, bids that are subject to this tax at the time of bid opening shall have an amount equal to one percent (1%) of the taxable total deducted from the bids. This deduction shall be in addition to the application of any bid price preferences or other deductions authorized by the City Code. Such deductions shall be made for bid evaluation purposes only. Contract awards shall be made at the actual bid amount.

In order to identify those bids that are subject to the City's local sales or use tax, all bidders shall respond to the following:

Does the bidder have fixed offices or locally taxable distribution points within the boundaries of the City of Sacramento? ___ Yes; or X No

If the answer to Question above is "Yes":

a) Provide the address of the bidder's fixed offices or locally taxable distribution point(s):

Specify: fixed office location or distribution point(s): _____

b) Provide the bidder's current, valid City of Sacramento Business Operations Tax Certificate Number: _____

2. DELIVERY GUARANTEE

Contractor guarantees delivery within 3 days after receipt of order (ARO).

3. PAYMENT DISCOUNT

Will you offer a prompt payment discount? Yes [] or No [x] (Net 30 days)

If Yes, the Payment Discount is _____% for payment within _____ calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

PAYMENT DISCOUNTS SHALL BE CONSIDERED IN AWARDING THE CONTRACT AS SET FORTH IN THE "BID INSTRUCTIONS AND REQUIREMENTS", PARAGRAPH 11 (ENTITLED "PAYMENT DISCOUNTS").

4. ELECTRONIC FUNDS TRANSFER (EFT) (informational only):

Do you have the ability to accept electronic payments (EFT)? Yes [x] or No []

If Yes, what percentage discount would you offer the City to be paid through EFT? 0 %

SECTION III – BIDDER RESPONSE DOCUMENTS

**B. ITEMS THAT MUST BE SUBMITTED BY SUCCESSFUL
BIDDER PRIOR TO START OF CONTRACT**

The following documents are required to be completed and submitted by the successful bidder prior to the award of contract of the contract:

1. CERTIFICATE OF INSURANCE

Successful bidders are REQUIRED to submit the necessary Certificate(s) of Insurance as called for in the General Conditions prior to award of the contract.

2. BUSINESS OPERATIONS TAX CERTIFICATE

Chapter 3.08 of the Sacramento City Code requires that anyone conducting business in the City of Sacramento obtain a **Business Operations Tax Certificate** and pay the applicable tax if necessary. Successful bidders will be REQUIRED to show compliance with this requirement prior to award of the contract.

To obtain information about the Business Operations Tax Certificate, contact the City of Sacramento, Revenue Division, 915 I Street, Room 1214, Sacramento, CA, 95814, or telephone (916) 808-8500.

SECTION III – BIDDER RESPONSE DOCUMENTS

C. DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Solvay Fluorides, LLC

Address: 3333 Richmond Avenue, Houston, TX 77098

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1)

year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

April 14, 2014
Date

Mark E. Looney
Print Name

Vice President Sales & Marketing
Title



SECTION III – BIDDER RESPONSE DOCUMENTS

D. LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION PROGRAM

NOTE: Bidders must provide responses where indicated to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of bid.

1. LBE FIVE PERCENT (5%) PARTICIPATION

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference and authorized City departments to require minimum LBE participation levels in individual contracts. Under City Code section 3.60.270, when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has waived the minimum 5% participation level for LBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
 - a. The LBE's principle business office or workspace; or
 - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

A. LOCAL BUSINESS ENTERPRISE (LBE)

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

YES - the firm submitting the bid is qualified as a local business enterprise.

NO - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

If the response to the above is **YES**, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address*:

* Address must be a physical address for the basis of location, this excludes P.O. Box addresses.

SECTION III – BIDDER RESPONSE DOCUMENTS

E. PRICING SCHEDULE

For furnishing to the City of Sacramento, liquid fluorosilicic acid, as required during the contract period, in accordance with the provision and specifications contained herein.

The bid item listed is for evaluation purposes only. The quantities and item specified are annual estimates only of the City's requirement. Vendor agrees to furnish more or less than the estimates at the unit price quoted in accordance with availability of funds and the actual needs as they occur throughout the contract period.

Prices shall be inclusive, i.e., freight, delivery, etc. Additional charges are not allowed. Sales tax is not applicable as this product is used in the production and purification of potable water for resale, California Resale Permit Number SYKH98-021076.

Liquid Fluorosilicic Acid

<u>Item No.</u>	<u>Quantity/Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extension</u>
1 of 1	750 tons	Liquid Fluorosilicic Acid per bid technical specifications	\$454.00/ton	\$340,500.00

* Price quoted is the total price on a 23% basis. Price is based on a 23% concentration and invoice amount will be made with price adjusted to actual assay. Material is supplied by Solvay Fluor Juarez, Mexico and PCS Aurora, NC

NAME OF SUPPLIER/CONTRACTOR: Solvay Fluorides, LLC

ADDRESS: 3333 Richmond Avenue, Houston, TX 77098

PHONE #: 713-525-6872 **EMAIL:** Cherie.Ruffino@Solvay.com

BY: (signature of authorized person) 

PRINTNAME: Mark E. Looney **TITLE:** Vice President Sales & Marketing



Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.



City of Sacramento Department of Utilities

INVITATION FOR BID B14141111012

LIQUID FLUOROSILICIC ACID

ADDENDUM #1

The following items shall become part of the Bid Documents:

Issued: April 17, 2014

Revisions: Section II - Contract Documents, Item C.
TECHNICAL SPECIFICATIONS/PLANS/OTHER REQUIREMENTS.
On page 37, under the **DELIVERY** section, the last sentence of the first paragraph incorrectly states "Delivery time of shipments shall not exceed two weeks from the time of product manufacture". Addendum #1 removes this statement.

For Information Contact:
Deanne Neighbours, Administrative Technician
(916) 808-3536 (voice) (916) 808-7955 (fax)
E-Mail: dneighbours@cityofsacramento.org
4/17/14

Mark E. Looney
Vice President Sales & Marketing



**SOLVAY
FLUORIDES, LLC**

CERTIFICATE OF ANALYSIS

SOLVAY CHEMICALS, Inc.

Customer

SACRAMENTO CITY OF FAIRBARIN
WATER TREATMENT PLANT
7501 COLLEGE TOWN DRIVE
SACRAMENTO CA 95826

Certificate recipient

SACRAMENTO RIVER WATER TREATMENT PL
1 WATER STREET
SACRAMENTO CA 95814

Transport 4106268333

Batch number FSB264-097

Delivery note 86502429 900001

Order 3851289 000010

Shipping date 04/07/2014

Customer ref. 20509

Packaging 1 CARGO TANK

Transport ID CB23

HYDROFLUOSILICIC ACID 23-25%

Batch number FSB264-097 / **Quantity** 45,320.000 LB

We certify that product loaded into the vessel meets AWWA Standard B703-11 and ANSI/NSF Standard 60 requirements.

Characteristics	Units	Value	Specification
Assay	%(m)	24.98	23.00 - 25.00
Color	APHA	0.0	< = 100.0
HF	%(m)	0.87	< = 1.00
Specific Gravity @ 60F		1.2200	
Arsenic (As)	ppm	33.00	
P2O5	%(m)	0.03	

NSF - 60

Maximum Use Level: 6.0 mg/L

This Certificate was automatically produced and is valid without signature

Supplier :

SOLVAY FLUORIDES, LLC
3333 Richmond Avenue
77098-3099 Houston, TX
Tel: 713 525-6500 - Fax: 713 525-7806

Approved by

Sarah Seaman
Quality Manager
Solvay Chemicals, Inc.
3333 Richmond Ave.
Houston, TX 77098 Phone 713-525-6510



CERTIFICATE OF COMPLIANCE

This is to certify that the Fluorosilicic Acid we intend to supply complies with the American Water Works Association Standard B703-11 as amended by Addendum B703a-13 and is certified by either NSF International or UL to meet NSF 60.

A handwritten signature in black ink, appearing to read 'Mark E. Looney', is written over a horizontal line.

Mark E. Looney
Vice President Sales & Marketing

April 17, 2014

Date



OFFICIAL LISTING

NSF International Certifies that the products appearing on this Listing conform to the requirements of NSF/ANSI Standard 60 - Drinking Water Treatment Chemicals - Health Effects

This is the Official Listing recorded on November 11, 2010.

Solvay Fluorides, LLC.
3333 Richmond Avenue
Houston, TX 77098
800-325-3332
713-525-6500

Facility: Distribution Center - Beauharnois, Quebec, Canada

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid and Hydrofluosilicic Acid for Fluoridation.

Facility: Distribution Center - Boston, MA

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid and Hydrofluosilicic Acid for Fluoridation.

Facility: Distribution Center - Buffalo, NY

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid and Hydrofluosilicic Acid for Fluoridation.

Facility: Distribution Center - East Chicago, IN

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid for Fluoridation.

Facility: Distribution Center - Philadelphia, PA

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid and Hydrofluosilicic Acid for Fluoridation.

Facility: Distribution Center - Southgate, CA

Table with 3 columns: Chemical/Trade Designation, Function, Max Use. Rows include Fluosilicic Acid for Fluoridation.

Note: Additions shall not be made to this document without prior evaluation and acceptance by NSF International.



Hydrofluosilicic Acid	Fluoridation	6	mg/L
Facility: Distribution Center - Stockton, CA			
Chemical/ Trade Designation	Function	Max Use	
Fluosilicic Acid			
Fluosilicic Acid	Fluoridation	6	mg/L
Hydrofluosilicic Acid	Fluoridation	6	mg/L
Facility: Alorton, IL			
Chemical/ Trade Designation	Function	Max Use	
Fluosilicic Acid			
Fluosilicic Acid	Fluoridation	6	mg/L
Hydrofluosilicic Acid	Fluoridation	6	mg/L
Sodium Fluoride			
Sodium Fluoride	Fluoridation	2.3	mg/L

Note: Additions shall not be made to this document without prior evaluation and acceptance by NSF International.

Fluorosilicic Acid

Fluorosilicic Acid (Hydrofluorosilicic Acid, HFS, FSA)

Technical Data Sheet

CHEMICAL ANALYSIS	SPECIFICATION	TYPICAL ANALYSIS
H ₂ SiF ₆ , %	23-25	23.5
Heavy Metals (as Pb), %		< 0.02
HF, %	1.0 max	0.5
Color, APHA	100 max	< 20
P ₂ O ₅ , %		< 0.2

Product meets ANSI/AWWA Standard B703-06, and is certified by NSF International or Classified by UL to ANSI/NSF Standard 60. Maximum use level for potable water treatment is 6.0 mg/L.

PHYSICAL PROPERTIES

Physical Description	Aqueous solution, water white to straw-yellow, corrosive acid, irritating to skin and having pungent odor.
Molecular Weight	144.08
Specific Gravity 23% solution @ 75°F	1.212
Boiling Point of Aqueous 23% Solution	221°F (Decomposes)
Freezing Point of Aqueous 23% Solution	5°F (approx.)
Freezing Point of Aqueous 25% Solution	-4°F
pH of 1%, H ₂ SiF ₆	1.2

CONTAINERS

Tank truck, rubber or plastic-lined	40,000 lb (approx.)
Tank car, rubber or plastic-lined	196,000 lb net (approx.)

DOT AND FREIGHT DESCRIPTION

Hazardous Material Description	Fluorosilicic acid
Haz. Mat. Class, I.D.#, Packaging Group	8, UN 1778, PG II
Freight Classification	Hydrofluorosilicic Acid
Principal CAS Number	16961-83-4
RQ	None
Placard	Corrosive
Label	Corrosive



Fluorosilicic Acid

Fluorosilicic Acid (Hydrofluorosilicic Acid, HFS, FSA) Technical Data Sheet

Use in public Water Treating Plants:

The reduction in dental caries by adjusting the fluoride content of public water supplies is a matter of common knowledge today, half a century following the first installation in Grand Rapids, Michigan. Approximately 170 million people in over three thousand communities are now drinking fluoride-treated water from water purification plants where fluoridation is currently practiced. Fluoridation is concerned with the controlled introduction to water of the fluoride ion. Other materials in the fluoride compound simultaneously introduced into the water with the fluoride ions are carriers which provide no benefits and are nontoxic. The addition of one part per million of fluoride requires that the product be soluble, of definite concentration and have high purity standards. In conformity with the American Water Works Association standard B703-94, the term fluorosilicic acid has replaced the more technical designation of hydrofluosilicic acid. After the original work with sodium fluoride proved the effectiveness of fluoride on tooth health and a broad fluoridation program was envisaged, new sources of fluoride and economics of their use were investigated. Fluorosilicic acid is a high purity source of fluoride. It is simpler to use than any other chemical approved for water fluoridation purposes, primarily because it is a liquid and can therefore be accurately measured and fed with a minimum of equipment. In contrast to powdered or granular chemicals, it presents no dust problems, no measuring problems and handling requires a minimum of labor. Today most of the large cities and many small ones are fluoridating with fluorosilicic acid. It is readily available in tank cars or tank trucks and can also be supplied in 15-gallon carboys and 55-gallon drums. The addition of fluorosilicic acid to a water supply can be readily controlled to give a total fluoride (F) level of one part per million which has been established as effective for reducing tooth decay. It should be used in accordance with procedures approved by each state's department of health.

Acid Characteristics:

Fluorosilicic acid is a transparent, clear to straw-colored, corrosive liquid having the chemical formula of H_2SiF_6 . It is manufactured in modern rubber-lined equipment producing an acid of high commercial purity. Commercial water solutions of the acid are available, having concentration of between 23% and 25% H_2SiF_6 . Fluorosilicic acid is generally believed not to exist in the vapor phase, but only in solution. Upon vaporizing, it decomposes into hydrofluoric acid (HF) and silicon tetrafluoride. This equilibrium exists at the surface of strong solutions of fluorosilicic acid and if stored in glass containers, the small concentration of hydrofluoric acid may very slowly attack the glass above the solution level. For this reason, it is generally shipped in polyethylene containers rather than glass carboys. A 23% fluorosilicic acid-water solution weighs 10.1 pounds per gallon at 75°F, and has a fluoride (F) content of 18.20%.

Fluorosilicic Acid

Fluorosilicic Acid (Hydrofluorosilicic Acid, HFS, FSA) Technical Data Sheet

Installation:

In a typical large plant installation, rubber-lined vented storage tanks are usually mounted outside the building with the tanks ranging in size from 4,500 to 6,500 gallon capacities. These tanks, equipped with recording level gauges, feed the acid through plastic piping or tubing to the dosage unit. Feeding is regulated by controlled volume pumps. Metering is used for accurate flow records. Fluorosilicic acid may be handled in rubber-lined, saran or other available corrosive-resistant equipment as suggested below:

Pipes and lines	-	rubber, saran or polyethylene
Pumps	-	Lucite, saran or Hastelloy
Valves	-	rubber-lined or polyethylene-lined
Tanks	-	rubber-lined, saran or polyethylene-lined

Acid should be pumped by positive diaphragm proportioning pumps.

Operation procedure:

The drum or drums of fluorosilicic acid should be mounted on a platform of sufficient size and capacity to permit weighing the amount used each day. Proportioning pumps deliver an accurate volume, but for small pumping rates, the dosage may be more satisfactorily regulated by periodic weighing of the drum. Whenever a drum of fluorosilicic acid is replaced on the scale, the time and weight should be recorded in the daily operating log. Whenever dosage is changed to a varying pumpage, the time and feeder setting should be recorded in the daily log.

To our actual knowledge, the information contained herein is accurate as of the date of this document. However, neither Solvay Fluorides, LLC nor any of its affiliates makes any warranty, express or implied, or accepts any liability in connection with this information or its use. This information is for use by technically skilled persons at their own discretion and risk and does not relate to the use of this product in combination with any other substance or any other process. This is not a license under any patent or other proprietary right. The user alone must finally determine suitability of any information or material for any contemplated use in compliance with applicable law, the manner of use and whether any patents are infringed. This information gives typical properties only and is not to be used for specification purposes. Solvay Fluorides, LLC reserves the right to make additions, deletions or modifications to the information at any time without prior notification.

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www.solvaychemicals.us 1.800.765.8292

SAFETY DATA SHEET
North American Version

FLUOROSILICIC ACID, 23-25%

1. PRODUCT AND COMPANY IDENTIFICATION

1.1. Identification of the substance or preparation

Product name : FLUOROSILICIC ACID, 23-25%
Synonyms : Fluorosilicic Acid, Fluosilicic Acid, Hydrofluorosilicic Acid
Molecular formula : H₂SiF₆

1.2. Use of the Substance/Preparation

Recommended use : - Chemical intermediate
- Water treatment

1.3. Company/Undertaking Identification

Address : SOLVAY FLUORIDES, LLC
3333 RICHMOND AVENUE
HOUSTON TX 77098-3099
United States

1.4. Emergency and contact telephone numbers

Emergency telephone : 1 (800) 424-9300 CHEMTREC ® (USA & Canada)
01-800-00-214-00 (MEX. REPUBLIC)

Contact telephone number : US: +1-800-765-8292 (Product information)
(product information): US: +1-713-525-6500 (Product information)

2. HAZARDS IDENTIFICATION

2.1. Emergency Overview:

NFPA : H= 3 F= 0 I= 0 S= None
HMIS : H= 3 F= 0 R= 0 PPE = Supplied by User; dependent on local conditions

General Information

Appearance : liquid
Colour : colourless
Odour : pungent

Main effects

- Hazardous decomposition products formed under fire conditions.
- Corrosive
- Harmful by inhalation, in contact with skin and if swallowed.

2.2. Potential Health Effects:

Inhalation

- Inhalation of vapours is irritating to the respiratory system, may cause throat pain and cough.
- Breathing difficulties

P 28861 / USA
Issuing date 07/06/2009 / Report version 1.0
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www.solvaychemicals.us

SOLVAY
Fluorides



FLUOROSILICIC ACID, 23-25%
SAFETY DATA SHEET

- Aspiration may cause pulmonary oedema and pneumonitis.
- At high concentrations, risk of hypocalcemia with nervous problems (tetany) and cardiac arrhythmia.
- Repeated or prolonged exposure: sore throat, Nose bleeding, chronic bronchitis.

Eye contact

- May cause permanent eye injury.
- May cause blindness.
- Intoxication hazards by simultaneous inhalation of the product.
- Symptoms: Burn, Lachrymation, Redness, Swelling of tissue.

Skin contact

- Causes severe burns.
- Risk of shock.
- In case of contact with fingernails, severe pain after several hours.
- Risk of hypocalcemia following the extend of the lesions.
- Intoxication hazards by simultaneous inhalation of the product.
- Symptoms: Irritation, Redness, Swelling of tissue.

Ingestion

- If ingested, severe burns of the mouth and throat, as well as a danger of perforation of the oesophagus and the stomach.
- Risk of throat (o)edema and suffocation.
- Risk of chemical pneumonitis from product inhalation.
- risk of hypocalcemia with nervous problems (tetany) and cardiac arrhythmia
- Risk of convulsions, loss of consciousness, deep coma and cardiopulmonary arrest.
- Symptoms: Nausea, Bloody vomiting, Abdominal pain, Diarrhoea, Cough, Severe shortness of breath.

Other toxicity effects

- See section 11: Toxicological Information

2.3. Environmental Effects:

- See section 12: Ecological Information

3. COMPOSITION/INFORMATION ON INGREDIENTS

Hydrogen fluoride

CAS-No. : 7664-39-3
Concentration : <= 1.0 %

Hexafluorosilicic acid

CAS-No. : 16961-83-4
Concentration : >= 23.0 - <= 25.0 %

4. FIRST AID MEASURES

4.1. Inhalation

- In case of accident by inhalation: remove casualty to fresh air and keep at rest.
- Oxygen or artificial respiration if needed.
- Victim to lie down in the recovery position, cover and keep him warm.
- Call a physician immediately.
- Take victim immediately to hospital.

4.2. Eye contact

- Immediate medical attention is required.
- Take victim immediately to hospital.
- Rinse immediately with plenty of water, also under the eyelids, for at least 15 minutes.
- In the case of difficulty of opening the lids, administer an analgesic eye wash (oxybuprocaine).

4.3. Skin contact

- Call a physician immediately.
- Take victim immediately to hospital.
- Take off contaminated clothing and shoes immediately.
- Wash off with plenty of water.
- Keep warm and in a quiet place.

4.4. Ingestion

- Call a physician immediately.
- Take victim immediately to hospital.

If victim is conscious:

- If swallowed, rinse mouth with water (only if the person is conscious).
- Do NOT induce vomiting.
- Artificial respiration and/or oxygen may be necessary.

If victim is unconscious but breathing:

- Oxygen or artificial respiration if needed.

5. FIRE-FIGHTING MEASURES

5.1. Suitable extinguishing media

- Use extinguishing measures that are appropriate to local circumstances and the surrounding environment.

5.2. Extinguishing media which shall not be used for safety reasons

- None.

5.3. Special exposure hazards in a fire

- The product is not flammable.
- Not combustible.
- Heating can release hazardous gases.
- Gives off hydrogen by reaction with metals.

5.4. Hazardous decomposition products

- Hydrogen
- Hydrogen fluoride

5.5. Special protective equipment for fire-fighters

- Wear self-contained breathing apparatus and protective suit.
- Fire fighters must wear fire resistant personnel protective equipment.
- Wear chemical resistant oversuit
- Protect intervention team with a water spray as they approach the fire.

5.6. Other information

- Cool containers / tanks with water spray.
- Approach from upwind.
- Suppress (knock down) gases/vapours/mists with a water spray jet.
- After the fire, proceed rapidly with cleaning of surfaces exposed to the fumes in order to limit equipment damage.

6. ACCIDENTAL RELEASE MEASURES

6.1. Personal precautions

- Refer to protective measures listed in sections 7 and 8.
- Approach from upwind.
- Isolate the area.

- Wear self-contained breathing apparatus in confined spaces, in cases where the oxygen level is depleted, or in case of significant emissions.
- Prevent further leakage or spillage if safe to do so.
- Keep away from Incompatible products.
- Suppress (knock down) gases/vapours/mists with a water spray jet.
- Avoid spraying the leak source.
- Protect intervention team with a water spray as they approach the fire.

6.2. Environmental precautions

- If the product contaminates rivers and lakes or drains inform respective authorities.
- Do not flush into surface water or sanitary sewer system.

6.3. Methods for cleaning up

- Dam up.
- Soak up with inert absorbent material.
- Prevent product from entering drains.
- Dilute with water.
- Contact with water may produce heat release and presents risks of splashing.
- When diluting, always add the product to water. Never add water to the product.

7. HANDLING AND STORAGE

7.1. Handling

- Used in closed system
- Handle small quantities under a lab hood.
- Use only in well-ventilated areas.
- Use only equipment and materials which are compatible with the product.
- Keep away from Incompatible products.
- Preferably transfer by pump or gravity.
- For further information, please contact:
- Manufacturer, importer, supplier

7.2. Storage

- Keep container tightly closed.
- Keep in a cool, well-ventilated place.
- Keep away from heat.
- Keep away from Incompatible products.
- Keep in a banded area.
- Information about special precautions needed for bulk handling is available on request.

7.3. Packaging material

- Plastic material
- Steel coated.

7.4. Other information

- Provide tight electrical equipment well protected against corrosion.
- For personal protection see section 8.

8. EXPOSURE CONTROLS/PERSONAL PROTECTION

8.1. Exposure Limit Values

Hydrogen fluoride

- PEL (OSHA / USA)
TWA = 3 ppm

FLUOROSILICIC ACID, 23-25%
SAFETY DATA SHEET

- US. ACGIH Threshold Limit Values 2007
time weighted average = 0.5 ppm
Remarks: as F
- US. ACGIH Threshold Limit Values 2007
Ceiling Limit Value = 2 ppm
Remarks: as F
- US. OSHA Table Z-2 (29 CFR 1910.1000) 02 2006
time weighted average = 3 ppm
- US. OSHA Table Z-1 Limits for Air Contaminants (29 CFR 1910.1000) 02 2006
Permissible exposure limit = 2.5 mg/m³
Remarks: as F
- US. OSHA Table Z-1-A (29 CFR 1910.1000) 1989
time weighted average = 3 ppm
Remarks: as F
- US. OSHA Table Z-1-A (29 CFR 1910.1000) 1989
Short term exposure limit = 6 ppm
Remarks: as F
- US. ACGIH Threshold Limit Values 2008
Remarks: as F, Can be absorbed through skin.
- US. Tennessee. OELs. Occupational Exposure Limits, Table Z1A 06 2008
time weighted average = 3 ppm
Remarks: as F
- US. Tennessee. OELs. Occupational Exposure Limits, Table Z1A 06 2008
Short term exposure limit = 6 ppm
Remarks: as F

Hexafluorosilicic acid

- US. ACGIH Threshold Limit Values
Remarks: none established
- US. ACGIH Threshold Limit Values 2008
time weighted average = 2.5 mg/m³
Remarks: as F
- US. OSHA Table Z-2 (29 CFR 1910.1000) 02 2006
time weighted average = 2.5 mg/m³
Remarks: Dust
- US. OSHA Table Z-1 Limits for Air Contaminants (29 CFR 1910.1000) 02 2006
Permissible exposure limit = 2.5 mg/m³
Remarks: as F
- US. OSHA Table Z-1-A (29 CFR 1910.1000) 1989
time weighted average = 2.5 mg/m³
Remarks: as F
- US. Tennessee. OELs. Occupational Exposure Limits, Table Z1A 06 2008
time weighted average = 2.5 mg/m³
Remarks: as F

ACGIH® and TLV® are registered trademarks of the American Conference of Governmental Industrial Hygienists.
SAEL = Solvay Acceptable Exposure Limit, Time Weighted Average for 8 hour workdays. No Specific TLV STEL (Short Term Exposure Level) has been set. Excursions in exposure level may exceed 3 times the TLV TWA for no more than a total of 30 minutes during a workday and under no circumstances should they exceed 5 times the TLV TWA.

8.2. Engineering controls

- Provide appropriate exhaust ventilation at machinery.
- Apply technical measures to comply with the occupational exposure limits.
- Refer to protective measures listed in sections 7 and 8.

8.3. Personal protective equipment

8.3.1. Respiratory protection

- In the case of dust or aerosol formation use respirator with an approved filter.
- Self-contained breathing apparatus in medium confinement/insufficient oxygen/in case of large uncontrolled emissions/in all circumstances when the mask and cartridge do not give adequate protection.
- Use only respiratory protection that conforms to international/ national standards.
- Use NIOSH approved respiratory protection.

8.3.2. Hand protection

- Take note of the information given by the producer concerning permeability and break through times, and of special workplace conditions (mechanical strain, duration of contact).
- Protective gloves - impervious chemical resistant:
- Suitable material: butyl-rubber

8.3.3. Eye protection

- Face-shield
- Chemical resistant goggles must be worn.

8.3.4. Skin and body protection

- Chemical resistant apron
- If splashes are likely to occur, wear:
- butyl-rubber
- Boots
- Do not wear leather shoes.

8.3.5. Hygiene measures

- Use only in an area equipped with a safety shower.
- Eye wash bottle with pure water
- Take off contaminated clothing and shoes immediately.
- Wash contaminated clothing before re-use.
- Handle in accordance with good industrial hygiene and safety practice.

9. PHYSICAL AND CHEMICAL PROPERTIES

9.1. General Information

Appearance	: liquid
Colour	: colourless
Odour	: pungent

9.2. Important health safety and environmental information

pH	: 1	<i>Concentration: 100 g/l</i>
Boiling point/boiling range	: 108.5 °C (227.3 °F)	
Flash point	: <i>Remarks: not applicable</i>	
Flammability	: <i>Remarks: The product is not flammable.</i>	
Explosive properties	: <u><i>Explosion danger:</i></u> <i>Remarks: With certain materials (see section 10).</i>	
Oxidizing properties	: <i>Remarks: not applicable</i>	
Vapour pressure	: 30 hPa	<i>Temperature: 20 °C (68 °F)</i>

FLUOROSILICIC ACID, 23-25%
SAFETY DATA SHEET

Relative density / Density : 1.32
Temperature: 20 °C (68 °F)

Solubility : Water
Remarks: completely miscible, Reacts violently with water.

**Partition coefficient:
n-octanol/water** : *Remarks: not applicable*

Vapour density : > 1
Temperature: 20 °C (68 °F)

9.3. Other data

Freezing point: : < -30 °C (-22 °F)

**Decomposition
temperature** : 108 °C (226 °F)

10. STABILITY AND REACTIVITY

10.1. Stability

- Stable under recommended storage conditions.
- Corrosive in contact with metals
- Gives off hydrogen by reaction with metals.
- Risk of violent reaction.
- Risk of explosion.

10.2. Conditions to avoid

- To avoid thermal decomposition, do not overheat.
- Keep at temperature not exceeding: 108 °C (226 °F)

10.3. Materials to avoid

- glass, Strong oxidizing agents, Metals

10.4. Hazardous decomposition products

- Hydrogen, Hydrogen fluoride

11. TOXICOLOGICAL INFORMATION

Toxicological data

Acute oral toxicity

- LD 100, guinea pig, 80 mg/kg (2 % solution)

Acute inhalation toxicity

- LC50, 1 h, rat, 850 - 1,070 mg/m3

Irritation (other route)

- Corrosive

Chronic toxicity

- Inhalation, Prolonged exposure, rat, Target Organs: Respiratory system, Kidney, Liver, testes, observed effect, (hydrofluoric acid)
- Inhalation, Prolonged exposure, rat, Target Organs: cardio-vascular system, nervous system, observed effect, (hydrofluoric acid)

Remarks

- corrosive effects

- Liver and kidney injuries may occur.
- Chronic exposure may entail dental or skeletal fluorosis

12. ECOLOGICAL INFORMATION

12.1. Ecotoxicity effects

Acute toxicity

- Fishes, *Salmo gairdneri*, LC50, 96 h, 51 mg/l (Fluorides)
- Crustaceans, *Mysidopsis*, EC50, 96 h, 10.5 mg/l (Fluorides)
Remarks: salt water
- Crustaceans, *Daphnia magna*, EC50, 48 h, 97 mg/l (Fluorides)
Remarks: fresh water

Chronic toxicity

- Fishes, *Salmo gairdneri*, LC50, 21 Days, 2.7 - 4.7 mg/l (Fluorides)
- Crustaceans, *Daphnia magna*, NOEC, 21 Days, 3.7 mg/l (Fluorides)
- Algae, *Scenedesmus* sp., EC50, 96 h, 43 mg/l (Fluorides)

12.2. Mobility

- Air
Remarks: mobility as solid aerosols
- Water, Solubility, Mobility
- Soil/sediments, (fluoride)
Conditions: pH
Remarks: potential adsorption

12.3. Persistence and degradability

Abiotic degradation

- Air
Result: neutralization by natural alkalinity
- Water, Soil
Result: ionization/neutralization
- Water, Soil
Result: complexation/precipitation of inorganic materials

Biodegradation

- Remarks: The methods for determining the biological degradability are not applicable to inorganic substances.

12.4. Bioaccumulative potential

- Bioaccumulative potential: log Pow
Result: not applicable
- (Fluorides)
Result: accumulation into vegetable leaves

12.5. Other adverse effects

- no data available

12.6. Remarks

- No data is available on the product itself.
- Ecological data therefore refers only to the effects of the decomposition products.
- Harmful to aquatic organisms.
- Nevertheless, hazard for the environment is limited due to product properties:
- low chronic toxicity.
- Product fate is highly dependent on environmental conditions: pH, temperature, redox potential, mineral and organic content of the medium,...

13. DISPOSAL CONSIDERATIONS

13.1. Waste from residues / unused products

- In accordance with local and national regulations.
- Refer to manufacturer/supplier for information on recovery/recycling.

13.2. Packaging treatment

- Clean container with water.
- The empty and clean containers are to be reused in conformity with regulations.
- To avoid treatments, as far as possible, use dedicated containers.

13.3. RCRA Hazardous Waste

- Listed RCRA Hazardous Waste (40 CFR 302) - No
- Unlisted RCRA Hazardous Waste (40 CFR 302) - Yes
- D002 (corrosive waste)

14. TRANSPORT INFORMATION

UN-Number	1778
IATA-DGR	
Class	8
Packing group	II
ICAO-Labels	Corrosive
Proper shipping name: Fluorosilicic Acid	
IMDG	
Class	8
Packing group	II
ICAO-Labels	Corrosive
Proper shipping name: Fluorosilicic Acid	
U.S. Dept. of Transportation	
Class (Subsidiary)	8
Packing group	II
Label (Subsidiary)	Corrosive
Marine pollutant:	no
Emergency info:	ERG: 154
Proper shipping name: Fluorosilicic Acid	
Canada (TDG)	
Class (Subsidiary)	8
Packing group	III
Label (Subsidiary)	Corrosive
Marine pollutant:	no
Emergency info:	ERG: 154
Proper shipping name: Fluorosilicic Acid	

15. REGULATORY INFORMATION

15.1. Inventory Information

Australian Inventory of Chemical Substances (AICS)	: -	In compliance with inventory.
Canadian Domestic Substances List (DSL)	: -	In compliance with inventory.
Inventory of Existing Chemical Substances (China) (IECS)	: -	In compliance with inventory.
Japan (ENCS) List (ENCS (JP))	: -	In compliance with inventory.
New Zealand Interim Inventory of Chems. (NZ CLSC)	: -	In compliance with inventory.
Toxic Substance Control Act list (TSCA)	: -	In compliance with inventory.
EU list of existing chemical substances (EINECS)	: -	In compliance with inventory.
Korea Existing Chemicals Inv. (KECI) (KECI (KR))	: -	In compliance with inventory.
Philippines PICCS (PICCS (PH))	: -	In compliance with inventory.

15.2. Other regulations

US. EPA Emergency Planning and Community Right-To-Know Act (EPCRA) SARA Title III Section 302 Extremely Hazardous Substance (40 CFR 355, Appendix A)

- not regulated.

US. EPA Emergency Planning and Community Right-To-Know Act (EPCRA) SARA Title III Section 313 Toxic Chemicals (40 CFR 372.65) - Supplier Notification Required

- not regulated.

US. EPA CERCLA Hazardous Substances (40 CFR 302)

- not regulated.

US. Pennsylvania Worker and Community Right-to-Know Law (34 Pa. Code Chap. 301-323)

- yes.

US. California Safe Drinking Water & Toxic Enforcement Act (Proposition 65)

- not regulated.

15.3. Classification and labelling

Canada. Canadian Environmental Protection Act (CEPA). WHMIS Ingredient Disclosure List (Can. Gaz., Part II, Vol. 122, No. 2)

- E Corrosive Material

Remarks: This product has been classified in accordance with the hazard criteria of the Controlled Products Regulations and the MSDS contains all the information required by the Controlled Products Regulations.

EC Label

- Hazardous components which must be listed on the label: Hydrogen fluoride / Hexafluorosilicic acid

FLUOROSILICIC ACID, 23-25%
SAFETY DATA SHEET

Symbol(s)	Xn	Harmful
R-phrase(s)	R20/21/22 R36/37/38	Harmful by inhalation, in contact with skin and if swallowed. Irritating to eyes, respiratory system and skin.
S-phrase(s)	S 7/9 S26 S36/37 S45	Keep container tightly closed and in a well-ventilated place. In case of contact with eyes, rinse immediately with plenty of water and seek medical advice. Wear suitable protective clothing and gloves. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible).

16. OTHER INFORMATION

Ratings :

NFPA (National Fire Protection Association)

Health = 3 Flammability = 0 Instability = 0 Special =None

HMIS (Hazardous Material Information System)

Health = 3 Fire = 0 Reactivity = 0 PPE : Supplied by User; dependent on local conditions

Further information

- HF-Antidote Gel from IPS Healthcare is recommended as treatment for injuries from hydrofluoric acid.
- Update
This data sheet contains changes from the previous version in section(s): 1.1, 1.4
- Distribute new edition to clients

Material Safety Data Sheets contain country specific regulatory information; therefore, the MSDS's provided are for use only by customers of the company mentioned in section 1 in North America. If you are located in a country other than Canada, Mexico or the United States, please contact the Solvay Group company in your country for MSDS information applicable to your location. The previous information is based upon our current knowledge and experience of our product and is not exhaustive. It applies to the product as defined by the specifications. In case of combinations or mixtures, one must confirm that no new hazards are likely to exist. In any case, the user is not exempt from observing all legal, administrative and regulatory procedures relating to the product, personal hygiene, and integrity of the work environment. (Unless noted to the contrary, the technical information applies only to pure product). To our actual knowledge, the information contained herein is accurate as of the date of this document. However, neither the company mentioned in section 1 nor any of its affiliates makes any warranty, express or implied, including merchantability or fitness for use, or accepts any liability in connection with this information or its use. This information is for use by technically skilled persons at their own discretion and risk and does not relate to the use of this product in combination with any other substance or any other process. This is not a license under any patent or other proprietary right. The user alone must finally determine suitability of any information or material for any contemplated use in compliance with applicable law, the manner of use and whether any patents are infringed. This information gives typical properties only and is not to be used for specification purposes. The company mentioned in section 1 reserves the right to make additions, deletions or modifications to the information at any time without prior notification. Trademarks and/or other products of the company mentioned in section 1 referenced herein are either trademarks or registered trademarks of the company mentioned in section 1 or its affiliates, unless otherwise indicated.

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11/12

FLUROSILICIC ACID, 23-25%
SAFETY DATA SHEET

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12/12



City of Sacramento

Department of Utilities

INVITATION FOR BID

B1414111012

LIQUID FLUOROSILICIC ACID

ADDENDUM #1

The following items shall become part of the Bid Documents:

Issued: April 17, 2014

Revisions: Section II - Contract Documents, Item C.
TECHNICAL SPECIFICATIONS/PLANS/OTHER REQUIREMENTS.
On page 37, under the **DELIVERY** section, the last sentence of the first paragraph incorrectly states "Delivery time of shipments shall not exceed two weeks from the time of product manufacture". Addendum #1 removes this statement.

For Information Contact:
Deanne Neighbours, Administrative Technician
(916) 808-3536 (voice) (916) 808-7955 (fax)
E-Mail: dneighbours@cityofsacramento.org

City Information		Vendor # 1 - Name	Vendor # 2 - Name	Vendor # 3 - Name	Vendor # 4 - Name	Vendor # 5 - Name
Date	4/9/2014	Pencco	Solvay Fluorides	Thatcher	Univar USA	
Bid #	B14141111010	Quote Number				
Org. Name	Water Operations					
Req. No.		Phone	Phone	Phone	Phone	Phone
Org. No.	14001111	(979) 885-0005	(713) 525-6872	(916) 759-3385	(916) 759-3385	
Contact:	Rod Frizzell	Contact Person				
Phone #	808-5165	Monica Avila	Cherie Ruffino	Dennis Moore	Jennifer Perras	
Awarded to	Solvay Flourides					

PRICING SECTION

QTY	Description (All Items/Services/Fees/ Etc.)	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
750	Liquid Fluorosilicic Acid (Unit price - tons delivered)	\$ 585.50	\$ 439,125.00	\$ 454.00	\$ 340,500.00	\$ 461.79	\$ 346,342.50	No Bid	#VALUE!		#VALUE!
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -		\$ -		\$ -

BID EVALUATION SECTION

Line 1	Materials/Services/Non-Taxable Items Total (from above Line Items)	\$	439,125.00	\$	340,500.00	\$	346,342.50	#VALUE!	#VALUE!
Line 2	Freight, Labor, Warranty, Fees, Etc (Non-taxable Portion of Line 1)								
Line 3	* Enter Prompt Pay Disc % (Line 1 x Disc %)		\$0.00		\$0.00		\$0.00	#VALUE!	#VALUE!
Line 4	** LBE Preference Deduct (Line 1 x 5%)	N/A	0	N/A	0	N/A	0	N/A	0
Line 5	*** City Sales Tax Deduction (Line 1 x 1%)	N/A	0	N/A	0	N/A	0	N/A	0
Line 6	Sales Tax (Line 1 - Line 2) x 8.50%	\$	-	\$	-	\$	-	\$	-
Line 7	BID EVALUATION TOTAL (Total of lines 1,3,4,5,6.)	\$	439,125.00	\$	340,500.00	\$	346,342.50	NO BID	#VALUE!
Line 8	ACTUAL BID TOTAL (Add lines 1, 6)	\$	439,125.00	\$	340,500.00	\$	346,342.50	#VALUE!	#VALUE!

BIDDER INFORMATION SECTION

Notes/Comments	Payment Terms *:				
The 5% LBE Participation requirement was waived prior to bid. The 5% LBE preference does not apply as supply contract exceeds \$100,000. Sales tax is not applicable as this product is used in the production and purification of potable water for resale, California Resale Permit #SYKH98-021076 so City Sales Tax Deduction is not applicable.	Net 30				
	F.O.B. Point:				
	Delivery Date:				

* Include prompt-payment discount (on Line 3) ONLY IF PAYMENT TERMS ARE TWENTY (20) DAYS OR MORE (e.g., 2% - 20 days).

** Include a 5% preference (on Line 4) ONLY IF BUSINESS MEETS LOCAL ENTERPRISE (LBE) PREFERENCE LOCATION STANDARD

*** Include the one-percent (1%) City Sales Tax Preference (on Line 5) ONLY IF THE BUSINESS IS LOCATED WITHIN SACRAMENTO CITY LIMITS.

SBE has been removed. LBE raised to 5%. (11-20-2013)

THATCHER COMPANY OF CALIFORNIA, INC.

8625 Unsworth Avenue, Sacramento, CA 95828

Phone (916) 759-3385

Fax (916) 415-0228



May 9, 2014

City Clerk

City of Sacramento

915 I Street – Room 304

Sacramento, CA 95814

David Phillips, O & M Superintendent

Utilities, Operations & Maintenance Division

Department of Utilities

City of Sacramento

301 Water Street

Sacramento, CA 95811

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2014 MAY -9 P 4:13

Re: Letter of Bid Protest

Bid Number: B14141111012

For: Liquid Fluorosilicic Acid (HFS)

Bid Submittal Date: April 23, 2014

Issuing Department: Department of Utilities

Date Notice of Department Recommendation Received: May 6, 2014 (per attached copy of PS Form 3811)

Honorable City Clerk and Mr. Phillips:

Please accept this letter of bid protest based on Thatcher Company's contesting City staff recommendation to award the Liquid Fluorosilicic Acid (HFS) of Bid # B14141111012 to Solvay Fluorides, LLC. of Houston, Texas.

On behalf of myself and Thatcher Company California, I am asking the City Council to please consider Thatcher Company and buy local at a cost difference of \$5842.50 per year on a five year contract.

Thatcher Company is hoping the City of Sacramento can see the true economic advantage to the City to buy local when the bid cost difference is less than 2%.

Our newest Thatcher Company Plant in Sacramento began operations in June of 2013 at 8625 Unsworth Avenue, Sacramento, CA 95828. We are a local Sacramento business that brings added value to Sacramento because our employees and our contractors work, live and shop in Sacramento.

Thatcher Company has invested millions of dollars in the local Sacramento economy in an effort to partner with the City of Sacramento. In addition, a review of past chemical bid tabulations shows that we have already saved the City \$100,000.00 in competitive pricing.

May 9, 2014
City Clerk, City of Sacramento
Department of Utilities, City of Sacramento
Page Two of Two

As an overview, we see the City of Sacramento as a great market place for water treatment chemicals in Northern California. To Thatcher Company, Sacramento offers a diverse workforce, strong economy and a great place to live and grow our business. I ask that the City please recognize and consider the cost value of creating jobs and doing business in Sacramento. It is very expensive to construct a chemical plant in California compared to other states and without local business preference, what advantage is there to invest in Sacramento?

Thatcher Company sincerely appreciates the City's consideration and review of this bid protest. We are looking forward to providing any additional information the City needs to conduct its investigation and hearing.

Thank you again for your time.

Sincerely,



Dennis Moore
916 759-3385
Northern California Sales Manager
Dennis.Moore@Tchem.com
www.Tchem.com

Enclosures: Preliminary Award Notice from Department of Utilities
US Post Office, Domestic Return Receipt Form 3811

Delivery: City Clerk's Office, in person, May 9, 2014, with \$750 filing fee
Department of Utilities, via telecopy, fax number: (916) 808-4969, May 9, 2014

OPERATIONS &
MAINTENANCE
1391 35TH AVENUE
SACRAMENTO, CA
95822-2911

PH 916-808-3536
FAX 916-808-7955

May 1, 2014

Dennis Moore
Thatcher Company of California, Inc.
P.O. Box 27407
Salt Lake City, UT 84127-0407

RE: Notice of Department Recommendation
Invitation for Bid # B14141111012 - Liquid Fluorosilicic Acid

Dear Mr. Moore:

Thank you for submitting a bid on the above contract. Under Section 3.56.160 of the Sacramento City Code, the Sacramento City Council awards contracts for supplies to the lowest responsible bidder.

This letter is to inform you that you are not the apparent low bidder. The Department of Utilities will recommend that the City Council award the contract to Solvay Fluorides, LLC.

We wish to thank you for your participation and encourage you to continue to bid for other products and services the City may require.

A bid tabulation is available by going directly to the City's online procurement site PlanetBids at www.planetbids.com/portal/portal.cfm?CompanyID=15300 or by selecting the link to PlanetBids on the City's website at www.cityofsacramento.org/bids.

If you have any questions, please contact me at (916) 808-3536.

Sincerely,



Deanne Neighbours
Administrative Technician

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dennis Moore
Tletcher Company of CA, Inc.
P.O. Box 27407
Salt Lake City, UT 84127-0407

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee
X Wendy Richmond
B. Received by (Printed Name) Wendy Richmond
C. Date of Delivery 5-6-14
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

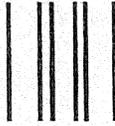
3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

7002 2410 0005 3847 8603

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Deanne Neighbours
City of Sacramento, Dept. of Utilities
1397 35th Avenue
Sacramento, CA 95822

TC
Recvd. 5-6-14

OPERATIONS &
MAINTENANCE
1391 35TH AVENUE
SACRAMENTO, CA
95822-2911

PH 916-808-3536
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City of Sacramento
Response to Bid Protest
May 22, 2014

Contract: Liquid Fluorosilicic Acid (Bid # B14141111012) (“Purchase”)
Protesting Bidder: Thatcher Company of California (“Thatcher”)
Bid Protest Date: May 9, 2014

Introduction:

Thatcher’s bid protest (copy attached as **Exhibit A**) contests the City of Sacramento (City) Department of Utilities (Department) staff recommendation to award a contract for the Purchase to the low bidder, Solvay Fluorides, LLC (“Solvay”), and asks that the contract be awarded to Thatcher because Thatcher has a plant located in Sacramento and Solvay is located in Texas.

Pursuant to Sacramento City Code section 3.60.510, Department staff has investigated the bid protest and has prepared this response to the bid protest. In brief, Department staff has determined that the bid protest should be rejected, because Solvay is the lowest responsible and responsive bidder, and the bid for the Purchase did not include any bid preference for bidders with a local presence.

Summary of Facts:

1. The bidding and award of contracts for the City of Sacramento’s supply purchases, including this Purchase, are governed by the provisions of Chapter 3.56 of the Sacramento City Code (copy attached as **Exhibit B**).
2. On April 1, 2014, the City advertised an Invitation for Bid for the Purchase (copy attached as **Exhibit C**).
3. Four bids for the Purchase were opened on April 23, 2014. Solvay was the apparent low bidder at \$454 per ton delivered or \$340,500 per year. Thatcher was the second low bidder at \$461.79 per ton delivered or \$346,342.50 per year. The contract, if awarded, would have an initial one-year term, with options to extend for up to four additional one-year terms. (See Invitation for Bid, at p. 30.)

4. Under City Code section 3.56.160, contracts for the purchase of supplies in an amount of \$100,000 or more are awarded to the lowest responsible bidder, unless the City Council rejects all bids.
5. The City has a Local Business Enterprise (LBE) Program, which, among other things, requires a minimum participation of LBEs in the contract equal to at least 5% of the bid amount for City supply contracts of \$100,000 or more. If this LBE participation requirement is included in an invitation or request for bids, a bidder must meet this 5% LBE participation requirement to be considered a responsive bidder, under City Code section 3.60.270. This LBE participation requirement only applies if it is included in the invitation or request for bids for a specific contract or agreement. A copy of the City Code provisions governing the City's LBE program, including City Code section 3.60.270, is attached as **Exhibit D**.
6. The Invitation for Bid for the Purchase did not include this minimum LBE participation requirement, but, instead, informed bidders that the minimum LBE participation level for LBEs had been waived for this bid and contract. (See Invitation for Bid, at pp. 15 and 47.)
7. After bid opening and issuance of the Department's written notice of its intention to recommend that the Sacramento City Council award the contract for the Purchase to Solvay, as the lowest responsible bidder, Thatcher submitted its bid protest, dated May 9, 2014. Pursuant to the Invitation for Bid (at p. 8), bid protests are governed by the provisions of sections 3.60.460 through 3.60.560 of the Sacramento City Code (copy attached as **Exhibit E**).
8. Solvay submitted a response to the Thatcher bid protest dated May 15, 2014 (copy attached as **Exhibit F**).

Department Response to Bid Protest:

Thatcher's bid protest argues that the City Council should award the contract to Thatcher because Thatcher is a local Sacramento business, and the cost difference in Thatcher's bid is only \$5842.50 per year for the potential maximum five-year contract term. The Department's response is provided below.

Department Response:

While Thatcher's desire to be awarded the contract is understandable, the Department does not find any basis to award the contract to Thatcher instead of Solvay. Under City Code section 3.56.160, contracts for the purchase of supplies in an amount of \$100,000 or more are awarded to the lowest responsible bidder, unless the City Council rejects all bids. Section 3.56.160 also reserves the City Council's right to waive any informalities or minor irregularities in the bids. This also is stated in the Invitation for Bid, which provides that "Within ninety (90) days after the bid opening, a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper." (See Invitation for Bid, at p. 7.)

It is a basic rule of competitive bidding that a bid can only be rejected as non-responsive, in order to award to a higher bidder, if the bid does not conform to the bid specifications.¹ The purposes of competitive bidding are to invite competition, guard against favoritism, fraud or corruption, and secure the best work or supplies at the lowest price, and the competitive bidding process exists for the benefit of the public, not individual bidders.² For this reason, bidding requirements must be strictly adhered to “in order to avoid the potential for abuse in the competitive bidding process.”³

Solvay submitted the lowest responsive bid in a public competitive bidding process. Thatcher’s bid protest does not contend that Solvay is not a responsible bidder, or that Solvay’s bid contains any informalities or irregularities that render Solvay’s bid non-responsive to the bid requirements. As noted above, the Invitation for Bid did not include any requirement for LBE participation, so there is no basis to reject Solvay’s bid because Thatcher is a local business and Solvay is not. For these reasons, the Department concludes that Solvay is the lowest responsible bidder to whom the contract should be awarded.

Conclusion:

Based on the foregoing analysis, it is the Department’s determination that Solvay is the lowest responsive and responsible bidder, and there is no basis to reject Solvay’s bid in favor of Thatcher’s higher bid. For these reasons, the Department has determined that the bid protest should be rejected.

- Exhibit A: Thatcher Bid Protest Letter
- Exhibit B: City Code Chapter 3.56
- Exhibit C: Invitation for Bid
- Exhibit D: City Code sections 3.60.260 through 3.60.310 (Participation of LBEs)
- Exhibit E: City Code sections 3.60.460 through 3.60.560 (Bid Protests)
- Exhibit F: Solvay Response to Bid Protest

1 See *Konica Business Machines, U.S.A., Inc. v. The Regents of the University of California* (1988) 206 Cal.App.3d 449, 454.

2 *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.

3 *Domar Electric, Inc. v. City of Los Angeles, supra*, at 175-76.

EXHIBIT A

THATCHER COMPANY OF CALIFORNIA, INC.

8625 Unsworth Avenue, Sacramento, CA 95828
Phone (916) 759-3385
Fax (916) 415-0228



May 9, 2014

City Clerk
City of Sacramento
915 I Street – Room 304
Sacramento, CA 95814

David Phillips, O & M Superintendent
Utilities, Operations & Maintenance Division
Department of Utilities
City of Sacramento
301 Water Street
Sacramento, CA 95811

2014 MAY - 9 PM
CITY OF SACRAMENTO
DEPARTMENT OF UTILITIES
301 WATER STREET
SACRAMENTO, CA 95811

Re: Letter of Bid Protest

Bid Number: B14141111012

For: Liquid Fluorosilicic Acid (HFS)

Bid Submittal Date: April 23, 2014

Issuing Department: Department of Utilities

Date Notice of Department Recommendation Received: May 6, 2014 (per attached copy of PS Form 3811)

Honorable City Clerk and Mr. Phillips:

Please accept this letter of bid protest based on Thatcher Company's contesting City staff recommendation to award the Liquid Fluorosilicic Acid (HFS) of Bid # B14141111012 to Solvay Fluorides, LLC. of Houston, Texas.

On behalf of myself and Thatcher Company California, I am asking the City Council to please consider Thatcher Company and buy local at a cost difference of \$5842.50 per year on a five year contract.

Thatcher Company is hoping the City of Sacramento can see the true economic advantage to the City to buy local when the bid cost difference is less than 2%.

Our newest Thatcher Company Plant in Sacramento began operations in June of 2013 at 8625 Unsworth Avenue, Sacramento, CA 95828. We are a local Sacramento business that brings added value to Sacramento because our employees and our contractors work, live and shop in Sacramento.

Thatcher Company has invested millions of dollars in the local Sacramento economy in an effort to partner with the City of Sacramento. In addition, a review of past chemical bid tabulations shows that we have already saved the City \$100,000.00 in competitive pricing.

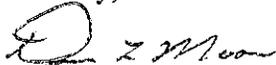
May 9, 2014
City Clerk, City of Sacramento
Department of Utilities, City of Sacramento
Page Two of Two

As an overview, we see the City of Sacramento as a great market place for water treatment chemicals in Northern California. To Thatcher Company, Sacramento offers a diverse workforce, strong economy and a great place to live and grow our business. I ask that the City please recognize and consider the cost value of creating jobs and doing business in Sacramento. It is very expensive to construct a chemical plant in California compared to other states and without local business preference, what advantage is there to invest in Sacramento?

Thatcher Company sincerely appreciates the City's consideration and review of this bid protest. We are looking forward to providing any additional information the City needs to conduct its investigation and hearing.

Thank you again for your time.

Sincerely,



Dennis Moore
916 759-3385
Northern California Sales Manager
Dennis.Moore@Tchem.com
www.Tchem.com

Enclosures: Preliminary Award Notice from Department of Utilities
US Post Office, Domestic Return Receipt Form 3811

Delivery: City Clerk's Office, in person, May 9, 2014, with \$750 filing fee
Department of Utilities, via telecopy, fax number: (916) 808-4969, May 9, 2014

EXHIBIT B

Sacramento City Code

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[Title 3 REVENUE AND FINANCE](#)

Chapter 3.56 PURCHASING OF SUPPLIES AND SERVICES**Article I. In General****3.56.010 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

"City manager" means the city manager of the city or an official specifically designated to act for the city manager. Authorization not specified in this chapter shall be made in writing by the city manager and filed with the city clerk.

"Nonprofessional services" means and includes services of a nonprofessional character of any type, description or variety including, but not limited to, tree trimming services, janitorial services, repair services for office machines and equipment, and automotive vehicles.

"Purchase" means and includes rental or leasing of supplies, as well as purchase.

"Supplies" means and includes supplies, goods, equipment and materials, including materials required for the maintenance or repair of any street, sewer or water work. (Prior code § 57.01.101)

3.56.020 Determination of lowest responsible bidder.

Where any provision of the City Charter or this chapter requires award of the contract for supplies or nonprofessional services to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (1) the quality and performance of the supplies to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (3) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (5) the quality of the bidder's performance on previous purchases by, or contracts with, the city; (6) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.

B. Based on the information provided in the bids, the city council or the city manager shall identify those bids that are subject at the time of bid opening to the city's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of this code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the city is deducted from the bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection C of this section.

C. The city council may by resolution adopt programs or procedures to provide bid price preferences, including, but not limited to, preferences to promote the participation and utilization of local business enterprises in the city's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. This calculation of preferences shall be in addition to any deduction of sales or use tax required by subsection B of this section. (Ord. 2013-0036 § 3; Ord. 2012-011 § 1; Ord. 2010-017 § 1; Ord. 99-025 § 1; Ord. 99-007 § 2; prior code § 57.01.102)

3.56.030 Contract splitting prohibited.

It is unlawful to split or separate into smaller units any requirement for supplies and nonprofessional services for the purpose of evading the provisions of this chapter. Splitting or separating a transaction shall mean and include the reducing the amount of any supplies or nonprofessional services to be furnished to the city under circumstances where there is a reasonable knowledge that the same supplies or nonprofessional services will be additionally required within the same budgetary term, there are funds available for that purchase, and the sole purpose is to knowingly avoid formally calling for bids. (Prior code § 57.01.103)

3.56.040 Administrative procedures.

The city manager shall prepare, subject to approval by the city council, administrative procedures sufficient to carry out the intent of this chapter. Such procedures shall include methods for the utilization of informal bidding procedures for those contracts and purchases to which the formal competitive bidding requirements of this chapter are inapplicable. (Prior code § 57.01.104)

3.56.050 Collusion with bidder.

Any officer or employee of the city, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish supplies or nonprofessional services at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the supplies called for,

or who shall knowingly accept supplies of a quality inferior to those called for by the contract, or to the receipt of a greater amount or different kind of supplies than has been actually received, shall be deemed guilty of a misdemeanor. (Prior code § 57.01.105)

3.56.060 Unauthorized purchases—Exceptions.

It is unlawful for any officer or employee to purchase or contract for supplies or nonprofessional services in behalf of the city, other than as herein prescribed, excepting purchases made from petty cash, emergency purchases or other purchases made in conformance with procedures established by the city manager. Any purchases, contract, or obligations to pay made contrary to the provisions of this chapter shall be null and void. (Prior code § 57.01.106)

3.56.070 Transition employment period for displaced janitors.

The sixty (60) day transition employment period set forth in Labor Code Section 1061 is extended to ninety (90) days. (Ord. 2010-005 § 3)

Article II. Authority of City Manager**3.56.080 Authority of city manager.**

Subject to the availability of funds and the procedures set forth in this chapter, the city

manager is authorized to bind the city, by written contract or purchase order, involving an expenditure under one hundred thousand dollars (\$100,000.00) in any one transaction, without first advertising therefore or obtaining specific authorization by the city council, for the purchase of supplies or nonprofessional services for the city. (Ord. 2000-017 § 4(a)(9); Ord. 99-024 § 1; prior code § 57.02.201)

3.56.090 Award of contracts by city council.

Unless otherwise provided herein, all contracts for supplies or nonprofessional services involving an expenditure of one hundred thousand dollars (\$100,000.00) or more shall be awarded by the city council. Such contracts shall be formal written agreements executed by the city manager on behalf of the city. The signature by the city manager shall constitute his or her certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract. (Ord. 99-024 § 2; prior code § 57.02.202)

3.56.100 Control procedures—Documents required.

The city manager shall institute control procedures for the execution of contracts and purchase orders as required herein. The city attorney shall approve the form and legality of all formal written agreements prior to the execution thereof. (Prior code § 57.02.203)

3.56.110 Control procedures—Petty cash expenditures.

The city manager shall establish control procedures for petty cash funds without prior use of purchase orders or contracts. (Prior code § 57.02.204)

Article III. Bid Procedure

3.56.120 When advertising required.

Where the cost of supplies or nonprofessional services required by the city equals or exceeds the sum of one hundred thousand dollars (\$100,000.00), the city manager shall request that the city clerk call for formal bids therefor by advertising at least once in the official newspaper of the city not less than ten (10) calendar days prior to the date set for receiving such bid. The city manager, when he or she deems it to be advisable, may require more than one advertising of the call for bids. (Ord. 99-024 § 3; prior code § 57.03.301)

3.56.130 Independent price determination.

No person submitting any bid or proposal in connection with the procurement of supplies or services by city shall:

- A. Propose or bid prices which have not been arrived at independently without consultation, communication, or agreement with any other bidder, offeror or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposal;
- B. Unless otherwise required by law, prior to opening of the bids or proposals,

knowingly disclose any price bid or proposal to any other bidder, offeror or to any competitor;

C. Make any attempt to induce any other person, firm or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition;

D. Knowingly be interested in more than one bid as the principal bidder; provided, however, subcontract bids to the principal bidders are excluded from this subsection.

In the case of joint venture bids, the joint venture and each and every member of the joint venture shall for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any violation of this section shall be unlawful and a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Any bid received or contract awarded where there was a violation of this section shall be a nullity and the city council shall dispose of the matter in the same manner as if the bidder involved had failed to enter the contract after award. (Prior code § 57.03.302)

3.56.140 Bid forms.

All bids shall be made upon forms to be prepared by the city and furnished upon application. The preparation of such forms by bidders shall be subject to procedures formulated by the city manager and shall include controls over erasures, corrections, and interlineations. (Prior code § 57.03.303)

3.56.150 Bid security.

Whenever, upon the call for bids for any purchase or contract the city council deems it to be advisable, each bidder shall be required to submit with the bid as bid security, either in cash, by cashier's check or certified check in favor of and payable at sight to the city, or by surety bond, an amount determined to be sufficient, but not to exceed ten (10) percent of the aggregate amount of the bid. If the bidder to whom the contract is awarded shall, for twenty (20) calendar days after receipt of such award, fail or neglect to enter into the contract and file the required bonds, the bid security shall be forfeited and the city manager shall draw the money due on such bid security and pay the same, or any cash deposited, into the city treasury. The bid security shall not be returned to the defaulting bidder in such case unless the city council approves the return thereof in whole or in part. Upon good cause being shown, the city manager may extend the time for the bidder to enter the contract for a period not to exceed thirty (30) days. (Prior code § 57.03.304)

3.56.160 Opening of bids—Awards.

All bids shall be sealed; identified as bids on the envelope, and shall be submitted to the city clerk at the place and time specified in public notice inviting bids. Bids shall be opened by the city clerk or his or her designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. Within the time set forth in the specifications, the contract shall be awarded by the city council to the lowest responsible bidder, as defined herein. The city council may reject any and all bids and waive any informalities or minor irregularities in the bids. (Prior code § 57.03.305)

3.56.170 Alternative award upon failure of bidder to enter into contract.

If the bidder to whom the contract is awarded shall fail to enter into the contract as required, the council may declare the award to that bidder a nullity, and award the contract to the next lowest responsible bidder, or it may readvertise for bids, or dispense with competitive bidding, as hereinafter provided. (Prior code § 57.03.306)

3.56.180 Readvertisement.

In the event the city council rejects any and all bids, or in the event the bidder to whom a contract award is made fails to enter into the contract as required and the council does not make an award to the next lowest responsible bidder, the council may readvertise for bids, or may dispense with competitive bidding, as hereinafter provided. (Prior code § 57.03.307)

3.56.190 Disposition of bid security.

All bid securities and bid bonds shall be returned to the unsuccessful bidders after award of the contract to the successful bidder. The bid security and bid bond of the successful bidder shall be returned after execution of the contract and deposit of the necessary bonds. (Prior code § 57.03.308)

3.56.200 Faithful performance bonds.

Whenever the city council deems it advisable, it may require that a faithful performance bond be given on any contract in an amount determined to be sufficient up to and including one hundred (100) percent of the contract price. Such bond shall be approved as to form by the city attorney. (Prior code § 57.03.309)

3.56.210 Time of completion.

The contract shall specify the time within which the supplies or nonprofessional services shall be furnished to the city and may provide for liquidated damages for failure to comply. The city manager may extend such time for acts of the city, acts of God, weather, strikes, or other circumstances over which the contractor has no control. The council may extend such time for causes other than those for which the city manager may grant an extension of time, but in no event shall the time for the performance of any contract be extended by the council more than ninety (90) days in addition to extensions as authorized by the city manager. (Prior code § 57.03.310)

3.56.220 Failure of completion.

In cause of failure on the part of the contractor to complete his or her contract within the time specified in the contract or within the extension of such time as herein provided, the contract may be terminated and the contractor shall not be paid or allowed any further compensation for any work done by him or her under such contract. The city council may proceed to complete such contract either by reletting or otherwise, and the contractor and his or her surety, if any, shall be liable to the city for all loss or damage which the city may suffer on account of his or her failure to complete the contract on time. (Prior code § 57.03.311)

Article IV. Exceptions to Competitive Bidding**3.56.230 Generally.**

The restrictions and provisions of this chapter requiring the award of contracts by competitive bidding shall not apply:

- A. When, after advertising for bids as required herein, no valid bids are received.
- B. When, after receiving bids, the city council rejects any and all of such bids, or which the bidder to whom an award is made fails to enter into the contract as required and the council does not make an award to the next lowest responsible bidder, as provided herein.
- C. When, upon a two-thirds vote of the city council, it is determined that it is in the best interests of the city to suspend competitive bidding for any purchase or contract. (Prior code § 57.04.401)

3.56.240 Cooperative purchasing agreements.

The city manager, where advantageous to the city, may, by cooperative purchasing agreements approved by the city council, purchase supplies or nonprofessional services through legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the city. (Prior code § 57.04.403)

3.56.250 Surplus supplies.

When it is advantageous to the city, the city manager, on approval by the city council, may direct the purchase of surplus supplies from the United States Government, or any agency thereof, or from the state of California, or any agency thereof, or any public body, without compliance with the competitive bidding requirements of this chapter. (Prior code § 57.04.404)

Article V. Contracts for Official Advertising**3.56.260 Annual contracts.**

The city council shall annually let a contract for the official advertising for the city in the ensuing fiscal year. For this purpose the council shall advertise for two consecutive days, setting forth distinctly and specifically the work contemplated to be done and asking for sealed proposals therefore. The council shall award the contract(s) for such official advertising to the lowest responsible bidder publishing a daily newspaper in the city which is a newspaper of general circulation. The council may reject any or all bids if they are found to be excessive and advertise for new bids. (Prior code § 57.05.501)

3.56.270 Official newspaper.

The newspaper to which the annual award of such advertising is made shall be known and designated as the official newspaper. Except when otherwise provided in the Charter or by general law, all official publications made by the city shall be made in the official newspaper. (Prior code § 57.05.502)

Article VI. Contract Supplements

3.56.280 Definitions.

As used in this article:

“Contract amount” means the price for which a contract for supplies or nonprofessional services is originally awarded, as amended by any contract supplements.

“Contract supplement” means an amendment to the terms of a contract for supplies or nonprofessional services. (Ord. 2010-002 § 1)

3.56.290 Authority of city manager.

A. Contract supplements that increase the contract amount.

1. For contracts originally awarded for a price of less than one hundred thousand dollars (\$100,000.00):

a. The city manager shall have the authority to issue contract supplements that increase the contract amount, provided that the contract amount remains less than one hundred thousand dollars (\$100,000.00).

b. City council approval is required for a contract supplement that increases the contract amount to one hundred thousand dollars (\$100,000.00) or more.

c. After the city council approves a contract supplement that increases the contract amount to one hundred thousand dollars (\$100,000.00) or more, the city manager shall have the authority to issue contract supplements that further increase the contract amount, provided that the sum of all such contract supplements issued by the city manager shall not exceed twenty-five thousand dollars (\$25,000.00).

2. For contracts originally awarded for a price of at least one hundred thousand dollars (\$100,000.00), but less than two hundred fifty thousand dollars (\$250,000.00):

The city manager shall have the authority to issue contract supplements that increase the contract amount, provided that the sum of all such contract supplements issued by the city manager shall not exceed twenty-five thousand dollars (\$25,000.00).

3. For contracts originally awarded for a price of at least two hundred fifty thousand dollars (\$250,000.00), but less than one million dollars (\$1,000,000.00):

The city manager shall have authority to issue contract supplements that increase the contract amount, provided that the sum of all such contract supplements issued by the city manager shall not exceed ten (10) percent of the original contract price.

4. For contracts originally awarded for a price of at least one million dollars (\$1,000,000.00) but less than ten million dollars (\$10,000,000.00):

The city manager shall have authority to issue contract supplements that increase the contract amount, provided that the sum of all such contract supplements issued by the city manager shall not exceed eight percent of the original contract price.

5. For contracts originally awarded for a price of ten million dollars (\$10,000,000.00) or more:

The city manager shall have the authority to issue contract supplements that increase the contract amount, provided that the sum of all such contract supplements issued by the city manager shall not exceed six percent of the original contract price.

B. Notwithstanding the foregoing, any single contract supplement that increases the

contract amount by more than one hundred thousand dollars (\$100,000.00) shall require city council approval.

C. The city manager is authorized to issue contract supplements that increase the contract amount in excess of the limitations set forth above, to the extent that it becomes reasonably necessary in the judgment of the city manager to take such action to:

1. Prevent an interruption of work or services that would result in a substantial increase in cost to the city; or

2. Protect any person, property, equipment, materials or the environment from substantial and immediate risk of damage or injury from any cause, or, where damage or injury has occurred, prevent the occurrence of further damage, injury or deterioration.

For any action taken pursuant to this subsection, the city manager shall present a report to the city council describing the action taken and the reason(s) for such action as soon as reasonably possible, but in any event not later than thirty (30) days after taking such action.

D. If the city manager issues one or more contract supplements to increase the contract amount pursuant to the city manager's authority specified in this article, and the city council subsequently ratifies the contract supplement(s) previously issued by the city manager, the city manager's authority to issue contract supplements as specified in this article shall be reset.

E. In issuing a contract supplement pursuant to the approval authority specified in this section, the city manager shall not be required to obtain city council approval for the transfer of funds necessary to pay for the contract supplement from any contingency previously approved for the contract by the city council.

F. For contracts in any amount, the city manager shall have the authority to issue contract supplements that decrease or do not change the contract amount. (Ord. 2010-002 § 1)

3.56.300 Limitation.

The authority of the city manager to issue contract supplements as specified in this article shall be limited to changes that do not exceed the general scope of the original contract unless in the judgment of the city manager a contract supplement exceeding the general scope of the original contract is necessary to protect any person, property, equipment, materials or the environment from the risk of damage or injury, or, where damage or injury has occurred, to prevent the occurrence of further damage, injury or deterioration. (Ord. 2010-002 § 1)

3.56.310 Variance.

The city council may by resolution modify the above limitations of the city manager's authority to issue contract supplements for a specific identified contract or contracts where the city council finds that the circumstances are such that a variance is appropriate. (Ord. 2010-008 § 1; Ord. 2010-002 § 1)

EXHIBIT C



CITY OF SACRAMENTO

Department of Utilities, Operations & Maintenance Division
(Responsible Department)

Bid Number: B14141111012

**INVITATION FOR BID
And
Contract Specifications for Supplies**

FOR: Liquid Fluorosilicic Acid

Bids Must Be Received Up To The Hour of 2:00 P.M. on April 23, 2014

Bids Must Be Submitted To: Office of the City Clerk
915 I Street, New City Hall
4th Floor Public Counter
Sacramento, CA 95814

Pre-Bid Conference:
Mandatory: Yes
 No

NAME AND ADDRESS OF BIDDER SUBMITTING THIS BID:
(Bidder to complete the following information)

Name of Bidder: _____

Address: _____

City, State, Zip Code: _____

Phone Number: _____

Email Address: _____

CITY OF SACRAMENTO

**Bid No. B14141111009
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SECTION I REQUIREMENTS

SECTION I – REQUIREMENTS

A. Electronic Bid Document(s) Availability

1. Official Electronic copies of this bid document can be obtained only from the City of Sacramento's official web bid page. <http://www.planetbids.com/portal/portal.cfm?CompanyID=15300>
2. Any additional information (Addenda, Q&A, etc.) pertaining to this bid will also be found at the above official link.
3. **Bid information obtained from third party sources will not be considered official and will not fulfill a bidder's responsibility for all official bid information as posted on our official site at the link above.**

SECTION I – REQUIREMENTS

B. BID INSTRUCTIONS AND REQUIREMENTS

No Bid Is In Legal Form Unless the Following Instructions Are Fully Complied With

1. **Additional Copies.** VENDORS ARE REQUIRED TO SUBMIT AN ORIGINAL BID, INCLUDING ALL REQUIRED ATTACHMENTS SUCH AS BROCHURES AND CATALOGS, TO THE CITY CLERK ON THE DATE AND AT THE TIME AND LOCATION SPECIFIED ON THE COVER SHEET. FAILURE TO DO SO MAY CAUSE YOUR BID TO BE REJECTED.
2. **Bid Forms.** Bid must be submitted on these printed forms and sealed in an appropriate envelope or package. Bid submission envelopes/packages shall exhibit the City's bid name and number, and include the vendor's name and address printed on the outside of the envelope/package
 - a) To obtain an electronic version of this bid go to Procurement's website at <http://www.planetbids.com/portal/portal.cfm?CompanyID=15300>
 - b) Bidders are invited to be present at the opening of bids. Bids will be opened, in public, in the Historic City Hall, Historic Chambers, 915 "I" Street, 2nd Floor, Sacramento, CA at or after 2:00 P.M. on Wednesday, April 23, 2014. After opening, Bids may be inspected in the City Clerk's Office.

(Note: Bids must be submitted up to 2:00 P.M. on the above date)

- c) All bids shall be clearly and distinctly written without erasure or modification, and properly signed by an authorized party, who shall indicate the capacity in which the signature is executed.
3. **Alternate Bids.** Alternate bids are invalid unless invited and covered by the specifications. **Please note all submissions are subject to rejection when unsolicited alternate bids are submitted.**
4. **Bid Security.** Bid Security is: Required Not Required

If required, bid security approved by the City must accompany the bid, in the amount of ____ % of the total amount of the bid. Bid security can be in the form of a cashier's check, certified check, or a bid bond from a surety company authorized to do business in the State of California. Bid securities will be returned to all except the three lowest Bidders within ten days after the opening of bids. The bid security of the two unsuccessful Contractors will be returned after the successful Contractor has executed the contract. Bid security of the successful Contractor will be returned when the contract is signed and all other contract award requirements have been met.

5. **Interest in More Than One Bid.** No bidder shall be interested in more than one bid (submit more than one bid for this solicitation) as provided by City Code Section 3.56.130(D).
6. **Rejection of Bids.** The right to reject any and all bids is reserved by the City, in its absolute discretion.
7. **Right to Waive.** The City reserves the right to waive any informalities or minor irregularities, as determined in its sole discretion, in connection with bids received.
- 7A. **City's Options.** City reserves the following options:
 1. The right to award in whole or in part.
 2. The right to reject all partial bids.
 3. The right to reject any or all bids or make no award.
 4. The right to issue subsequent Invitation For Bids (IFB).
 5. The right to approve or disapprove the use of particular subcontractors and/or suppliers.
 6. The right to waive any informality or irregularity in the bidding process and any bids.
 7. The right to accept a bidder's signed offer and issue a purchase order directly to the bidder based on the IFB.

8. **City Code.** All provisions of Chapter 3.56 of the City Code are applicable to any bid submitted or contract awarded.
9. **Equipment.** If equipment is bid, it shall be the newest and latest model in current production. Used, re-manufactured, shopworn, demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated by the City.
10. **Faithful Performance Bond.** A faithful performance bond is: Not Required Required

If required, the successful bidder must submit a performance bond in a form approved by the City Attorney, in the amount of _____.

11. **Payment Discounts.** Payment discounts offered for payment in less than twenty (20) days will not be considered as a basis of award. Payment discounts offered for payment in twenty (20) or more days will be subtracted from the total bid price for the purposes of bid evaluation. Any payment discount offered by the successful bidder will be accepted by the City of Sacramento, whether or not it was considered as a basis of award.
12. **Mandatory Pre-Bid Conference.** If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, all bidders are required to attend the conference. Failure to attend this conference will result in rejection of your bid. If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, bid packages will be made available only through the time and date of the conference. Subsequent addenda, if applicable, will be furnished only to those bidders who attended the Mandatory Pre-Bid Conference.
13. **Bid Inquiries.** Questions regarding this bid should be referred to:

Contractual Questions

*Department of Utilities, O&M Division
Attention: Deanne Neighbours
Email: dneighbours@cityofsacramento.org
Phone: (916) 808-3536*

Technical Questions

*Department of Utilities, O&M Division
Attention: Mary Krizanosky
Email: mrkrizanosky@cityofsacramento.org
Phone: (916) 808-1311*

These inquiries must be submitted at least 10 days prior to the bid opening date. Any interpretations by the City will be made in the form of a written amendment. The receipt of such an amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

14. **Bid Evaluation.** In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the Bid. When such a mathematical error appears on the face of the Bid, the City shall have the right to correct such error and to compute the total amount bid by the bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Bid, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the City's estimate of the quantity to be provided or performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the intent of the bid process. The total paid for each such item of work shall be based upon the item price and not the total price.

Should the Bid contain only a total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by City's estimate of the estimated quantities to be provided or performed.

If the Bid contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Bid shall be disregarded.

If prospective bidders are bidding an item "or equal" the bidders shall list the manufacturer's name and product number of the item offered in the space provided. If such information is not provided, it will be assumed that the bidder is offering the exact item specified. The City's decision as to whether an item is an equal to the item specified shall be final.

- 15. Determination of Lowest Responsible Bidder.** Sacramento City Code '3.56.020 provides that the lowest responsible bidder shall be determined as follows:
- a. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the City; (vi) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.
 - b. Based on the information provided in the bids, the City Council or the City Manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection c, below.
 - c. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of local business enterprises, energy conservation and sustainability in the City's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection b, above.
- 16. Pre-Award Conference.** The apparent lowest responsible bidder may be required to attend a pre-award conference at a mutually acceptable time at which requirements of the Contract will be reviewed. At that time, samples of forms, reports etc., will be submitted by the Contractor for final approval.
- 17. Award by Item or Group.** The City reserves the right to increase or decrease quantities listed, make separate awards for any item, line-item or category/group of items to the lowest responsible bidders for such items or category/groups of items.
- 18. Multiple Awards.** The City reserves the right to make multiple awards in order to provide alternate sources to insure continuity of supply if meeting the City's requirements within an acceptable time period exceeds the capacity or capability of the primary contractor(s).
- 19. Contract Award.** Within ninety (90) days after the bid opening, a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper. The time for awarding a contract may be extended in the sole discretion of the City, if required to evaluate bids or for such other purposes as the City may determine, unless the Bidder objects to such extension in writing with his/her bid. The City may accept this bid offer by issuance of a Notice of Award Letter, Contract and/or a Purchase order covering award of said bid to Bidder at any time on or before the 90th day following the day of this official bid is opened by the City. This offer shall be irrevocable for 90 days after bid opening or 90 days after City Council awards the bid, whichever comes last, however this period may be extended by mutual agreement of both parties.
- 20. Emergency/Declared Disaster Requirements.** In the event of an emergency or if a City facility is declared a disaster area by the county, state or federal government, this contract may be subjected to unusual usage. The consultant/vendor/supplier shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the consultant/vendor/supplier shall apply to serving the City's needs regardless of the circumstances. If the consultant/vendor/supplier is unable to supply the goods/services under the terms of the contract because of a disruption in its chain of supply or service, then the consultant/vendor/supplier shall provide proof of such disruption which may include, but not be limited to a copy of a letter from the source of supply or service stating reason for the disruption. Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted.

- 21. Acceptable bid format.** All bids must show the full name of the firm bidding and must be on forms furnished by the City of Sacramento. All responses must be written in ink, printed by typewriter or computer generated. Responses made in pencil will not be considered.
- 22. Submission of Bids.** The City is not responsible for misaddressed bids. Please assure that you utilize the address appropriate for the method of delivery. Bid submissions made via commercial express courier (FedEx, United Parcel Svs.) must be addressed as follows:

**Office of the City Clerk
915 I Street, New City Hall
4th Floor Public Counter
Sacramento, CA 95814**

Bid submissions made via personal delivery shall be delivered to:

**Office of the City Clerk
915 I Street, New City Hall
4th Floor Public Counter
Sacramento, CA 95814**

- 23. Bid Protest.** Bid protests must be filled and maintained in accordance with the provisions of Sections 3.60.460 through 3.60.560 of the Sacramento City Code. Bid protests that do not comply with Sections 3.60.460 through 3.60.560 of the Sacramento City Code shall be invalid and shall not be considered. A bid protest fee of \$750.00 is required at the time of filing to be considered valid in accordance with City of Sacramento Resolution No. 2003-231 dated April 29, 2003. As used herein, the term "bid protest" includes any bid protest that (1) claims that one or more bidders on this contract should be disqualified or rejected for any reason, or (2) contests a City staff recommendation to award this contract to a particular bidder, or (3) contests a City staff recommendation to disqualify or reject one or more bidders on this contract. Sections 3.60.460 - 3.60.560 of the Sacramento City Code are available at: <http://www.qcode.us/codes/sacramento/>

**SUBJECT TO PARAGRAPH 7 ABOVE, THE CITY CANNOT ACCEPT A
BID FAILING TO COMPLY WITH ANY OF THE ABOVE REQUIREMENTS.**

SECTION I – REQUIREMENTS

C. BID SIGNATURE PAGE

BID NO. B14141111012

FOR SERVICES/SUPPLIES: Liquid Fluorosilicic Acid

To the City of Sacramento:

The undersigned bidder (hereafter referred to as the "Bidder" or the "Contractor") submits the attached bid, and certifies as follows: that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation; that in submitting this bid the bidder has examined all of the Contract Documents identified below; that the bidder proposes and agrees that if this bid is accepted, the bidder will execute and fully perform the contract for which bids are called; that the bidder shall perform all the work and/or furnish all the materials specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the bidder shall take in full payment therefor, the prices set forth in the attached Pricing Schedule.

CONTRACT DOCUMENTS

Performance of and payment for the contract for which bids are called shall be subject to all terms and conditions of the Invitation for Bid, the Bid Instructions and Requirements, the Bid, the Pricing Schedule(s), the Items Requiring Bidder Response, the Required Submittals, the General Conditions, and any Addenda, Amendments, Special Provisions, Specifications, Plans or other requirements applicable to performance of the work and/or furnishing the materials specified herein. Such documents, referred to herein as the Contract Documents, are fully incorporated herein by this reference and are collectively referred to as the Contract. By submitting this Bid, the Contractor agrees to fully perform each and every provision of the Contract, provided that City awards the Contract to the Contractor, and provided further that City shall have no obligation hereunder unless and until such award is made. Contractor shall not make any changes to this form without City's written approval, and any changes made without such approval shall be void.

To Be Filled Out By Bidder

NAME OF CONTRACTOR: _____

ADDRESS: _____

PHONE #: _____ FAX #: _____ E-MAIL: _____

STATE TAX I.D. #: _____ FED. TAX I.D. #: _____

City of Sacramento Business Operation Tax Certificate #: _____
(Contract award will not be processed without a valid and current Certificate Number.)

TYPE OF BUSINESS ENTITY (check one): _____ Individual/Sole Proprietor _____ Partnership
_____ Corporation _____ Limited Liability Company
_____ Other (please specify: _____)

BY: (signature of authorized person) _____

PRINT NAME: _____

TITLE: _____

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.

FOR CITY USE ONLY

The Bid was opened on _____.

Bid Bond Required: No; Yes - Amount: \$ _____

Received: Cashiers or Certified Check drawn on a California bank; Surety Bond

City Clerk

CONTRACT AWARD

Bid Items Included in the Contract: All Items, unless otherwise specified below

Specify: _____

Contract Not-to-Exceed Amount: \$ _____

Award Date: _____

CONTRACT APPROVAL

Approved as to Form:

Approved:

Attest:

City Attorney

City Manager
(Or Authorized Designee)

City Clerk

D. EQUAL BENEFITS ORDINANCE (EBO) REQUIREMENTS

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

ATTACHMENT A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

ATTACHMENT B



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY
CONTRACTORS ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

E. LOCAL BUSINESS ENTERPRISE (LBE)
PARTICIPATION REQUIREMENTS

(City Contracts no Federal Funds Used)

I. LBE PARTICIPATION REQUIREMENT

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference percentage and authorized City departments to require minimum LBE participation levels in specific contracts. Under City Code section 3.60.270, when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has established a minimum 5% participation level for LBEs, which has been waived for this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Bidders shall submit proof to the City demonstrating that the business and each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted are in compliance with all applicable laws relating to licensing and are not delinquent in payment of any City of Sacramento or County of Sacramento taxes, permits, or fees. Failure to submit the required LBE information may be grounds for finding the bid non-responsive.

II. LBE QUALIFICATION

- A. A LBE designated in the bid must be qualified as a LBE prior to the time set for submission of bids.
- B. Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Proof of legitimate business presence in the city or unincorporated county of Sacramento shall include:
 - 1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
 - 2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
 - a. The LBE's principle business office or workspace; or

- b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.
- C. A LBE must provide a physical address for the basis of location. This excludes P.O. Box addresses.
- D. A LBE must provide a current copy of the City of Sacramento Business Operations Tax Certificate or County of Sacramento Business License.

III. DETERMINATION OF LBE PARTICIPATION LEVEL

- A. LBE Participation: The percentage of LBE participation is determined based on the dollar value of the work to be performed or supplies to be furnished by certified LBEs designated in the bidder's Subcontractor and LBE Participation Verification Form, relative to the total dollar amount of the bid.
- B. Participation Credit: To receive credit for participation:(1) an LBE subcontractor must be responsible for the execution of a distinct element of the work, must possess any license or certification required for the work, and must actually perform, manage, or supervise the work without subcontracting or otherwise shifting any portion of the work to another subcontractor; and (2) an LBE supplier must furnish materials, equipment, or supplies that the supplier sells as a recurring, although not necessarily primary, part of its business, and that are necessary for performance of the work.
- C. Suppliers: Credit for an LBE supplier of materials, equipment, or supplies is counted as one hundred (100) percent of the amount paid to the supplier for the material, equipment, or supplies. To receive this credit, LBE suppliers must be listed on the bidder's Subcontractor and LBE Participation Verification Form.
- D. Subcontractors (including truckers): To receive credit for an LBE subcontractor, the subcontractor must be listed on the bidder's Subcontractor and LBE Participation Verification Form.
 - Truckers: Credit for an LBE trucker is counted as one hundred (100) percent of the amount paid to the trucker for trucking services, not including any amount paid to the trucker for the cost of any materials, equipment, or supplies being transported by the trucker.

IV. LBE REQUIREMENTS FOR CONTRACTOR

- A. LBE Records: The Contractor shall maintain records of all subcontracts with verified LBE subcontractors and records of materials purchased from verified LBE suppliers for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each LBE subcontractor or supplier and the total dollar amount actually paid each LBE subcontractor or supplier.

Not later than 30 days after completion of the work performed under the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide

such other information, records, reports, certifications or other documents as may be required by City, to determine compliance with any provision of the LBE program or these specifications.

- B. Performance of LBE Subcontractors and Suppliers: The LBEs listed by the Contractor shall perform the work and supply the materials, equipment, and supplies for which they are listed unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the material, equipment, or supplies from other sources. Reasons for requesting such authorization would include:
1. The listed LBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
 2. The listed LBE becomes bankrupt or insolvent.
 3. The listed LBE subcontractor fails to meet the bond requirements of the Contractor.
 4. The work performed or the materials/equipment/supplies provided by the listed LBE are unsatisfactory or are not in accordance with the plans and specifications, or the listed LBE fails to perform its contractual obligations.
 5. It would be in the best interest of the City.
- C. Subcontractor Substitution: No substitution of an LBE subcontractor shall be made at any time without compliance with the Subletting and Subcontracting Fair Practices Act. If an LBE subcontractor is unable to perform successfully and is to be replaced, the Contractor shall make reasonable efforts to replace the original LBE subcontractor with another verified LBE subcontractor. The new LBE subcontractor must be verified at the time of substitution.
- D. Reporting and Utilization Requirements and Sanctions: Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications, or failure to utilize one or more LBEs in substantial compliance with the LBE utilization indicated in the Contractor's bid (unless otherwise authorized by City as provided herein, or when such failure results from changes to the work approved by the City), shall be considered a breach of the contract, and a deduction may be made from the contract amount. The deduction shall be not more than ten (10) percent of the value of the work or materials/equipment/supplies that the subject LBE(s) were listed to perform/provide in the Contractor's bid, and shall be deducted from any payment due to the Contractor. This is in addition to any deduction that may be made under any other provision of the contract, the Sacramento City Code, or State law.
- E. Hearing and Review of Division Manager Decision: Prior to making a deduction pursuant to Section IV (D), above, the City shall provide written notice of the proposed deduction to the Contractor, and the Contractor may, not later than five (5) working days after receiving such notice, provide a written request to City for a

hearing to contest the proposed deduction. Upon receipt of a timely written request from the Contractor, the City shall schedule a hearing before the Division Manager (as defined in the City's Standard Specifications for Public Construction), and written notice of the date, time and location of the hearing shall be provided to the Contractor not less than five (5) working days prior to the date of the hearing. The hearing shall be conducted in the manner specified in Section 4-8 of the Standard Specifications, and the Division Manager shall prepare and forward to the Contractor a written decision as soon as practicable after the hearing. The Division Manager's decision shall be subject to review in accordance with the provisions of Section 4-9 of the Standard Specifications. Failure to request such review in compliance with the requirements set forth in Section 4-9 shall constitute acceptance of the Division Manager's decision by the Contractor.

The written notices and requests described above shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery, or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

V. DEFINITIONS

- A. Local Business Enterprise (LBE): A business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or any other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento.
- B. Contractor: The sole proprietorship, partnership, limited liability company, corporation, or any other business entity entering into a contract with the City of Sacramento.
- C. Subcontractor: The sole proprietorship, partnership, limited liability company, corporation, or other business entity entering into a contract with the prime contractor to perform a portion of the work.
- D. Supplier: The sole proprietorship, partnership, limited liability company, corporation, or other business entity to provide materials, equipment, or supplies necessary for performance of the work.
- E. Proposal: Any response to a City solicitation for Proposals or Qualifications.
- F. Bid: Any response to a City solicitation for bids.

SECTION II CONTRACT DOCUMENTS

SECTION II – CONTRACT DOCUMENTS

A. GENERAL CONDITIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole

cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflict of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for

any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. **Termination for Cause.** If the City determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the

Contractor fails to correct the unsatisfactory condition(s) within 5 days, the City may declare the Contract terminated upon 30 days written notice and may, in the City's sole discretion, demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.

- B. Termination for Convenience. The City may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned, or any other costs, which have not been incurred, as of the date of termination.
- C. Termination After Completion Date. If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. The City may thereafter proceed to complete the Contract either by rebidding or otherwise, the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract on time. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of

CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an

authorized representative of the insurance carrier.

- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.
13. **Entire Agreement.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code. In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:
- A. Post-Award Amendments.
 - B. Pricing Schedule(s), as corrected by City, if applicable.
 - C. Pre-Award Addenda
 - D. Special Provisions.
 - E. Bid Instructions and Requirements
 - F. General Conditions
 - G. Technical Specifications and/or Plans
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act

and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
21. **Funding Availability.**
- A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
 - B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council.
 - C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
 - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.
23. **Safety Data Sheets (SDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a SDS with the first shipment of any hazardous material. Also at any time the content of an SDS is revised, the Contractor shall provide new information relevant to the specific material.
24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 9 of these General Conditions.
25. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
26. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's

personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.

- 27. Guarantee.** By submitting its bid, the Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.

SECTION II – CONTRACT DOCUMENTS

B. SPECIAL PROVISIONS

1. **Period of Performance.** Any contracts(s) resulting from this solicitation will be awarded for a one year term beginning on date of award, with the option to extend for up to four additional one-year terms, for a maximum five year term.
2. **Contract Extension.** If mutually agreeable to both parties, any resultant contract may be extended on a year to year basis under the same terms and conditions. However, in no case shall the renewal extend beyond 5 years from the date of award of the original contract.
3. **Estimated Quantities.** The bid quantity specified is based upon current known requirements and is subject to increase or decrease at the same terms and conditions. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.
4. **Pricing.** The prices quoted to the City shall be as low or lower than those charged the Contractor's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment. In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City. Prices are maximum for the one year term of the contract. Upon offer of contract renewal from the City for subsequent terms, Contractor may adjust pricing to the agreement of both parties.
5. **Purchase Order.** A Purchase Order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The Purchase Order will be enclosed with the resulting contract or will be issued shortly thereafter, and will become an integral part of the resulting contract. Each Purchase Order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th a second purchase order may be issued.
 - A. The Purchase Order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract and any modification thereto.
 - B. Delivery of material and/or services are not to begin until receipt of the Purchase Order and/or other notification by the City Procurement Services Manager.
6. **Invoices.** All Invoices under this Agreement shall be submitted to the City by Contractor and shall contain the following information at a minimum:
 - (1) Name of contractor and remit to address
 - (2) Invoice number and date
 - (3) Contractors Order number
 - (4) City's Contract or Purchase Order number
 - (5) Name of person placing order
 - (3) Description of Item
 - (4) Quantity of Item
 - (5) Item and invoice amounts

Requests for payment shall be sent to:

Department of Utilities
1391 35th Avenue, Sacramento, CA 95822
Phone (916) 808-1464 Fax (916) 808-7955
Attn: Alaina Jordan

7. **Billing Disputes.** Billing disputes will be addressed on an individual job by job basis. The burden of proof of an incorrect billing shall be on the Contractor. Upon presentation and verification of the information provided by the contractor, the City will review all records and make a final determination and present its finding to the Contractor.
8. **Payment Terms.** Payment terms are net 30 unless Contractor offers a prompt payment discount. All prompt payment discounts if taken shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice.
9. **Additional Services.** Those services not specifically named in the Pricing Schedule shall be negotiated on an individual basis.
10. **Subcontracts and Assignments.** No portion of the work or services, except for the purchase of necessary goods and materials, to be supplied hereunder (including the use of consultants) may be subcontracted in whole or in part, nor assigned by the contractor, nor may assignment of any money due or to become due the contractor under this contract be made without the prior written consent of the City.

Where authorized by the City, the contractor shall select all subcontractors and suppliers on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract.

11. **Modification of Contract.** The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:
 - A. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
 - B. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract, including the requirements of the specifications.
12. **Cooperative Purchasing.** If mutually agreeable to both parties, the use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

- 13. **Quantities Unrestricted.** The City is not limited to purchase all of its requirements from any contract resulting from this request.
- 13. **Points of Contact.** Requests for service(s) may be made by one or several organizational levels within the City.

Contract Manager: **Deanne Neighbours, Administration Technician**
 Department: **Utilities, Operations & Maintenance Division**
 Address **1391 35th Avenue, Sacramento, CA 95822**
 Phone **(916) 808-3536**
 E-Mail [**dneighbours@cityofsacramento.org**](mailto:dneighbours@cityofsacramento.org)

Project Manager: **David Phillips, O & M Superintendent**
 Department: **Utilities, Operations & Maintenance Division**
 Address **301 Water Street, Sacramento, CA 95811**
 Phone **(916) 808-5652**
 E-Mail [**dphillips@cityofsacramento.org**](mailto:dphillips@cityofsacramento.org)

- 8. **Authorities / Technical Direction.** The Contractor shall take no direction from any City employee or any other person other than the Procurement Services Manager that changes the terms and condition of the contract action, the Scope of Work, or any change that impacts the cost/price or schedule. Changes authorized by the Procurement Manager will be in the form of a written, official, signed modification to the contract, received by the Contractor before the Contractor will act upon those changes.

- 9. **Document Protection.** Original documents shall be adequately protected at all times while they are in the possession of the Contractor and returned in the same condition as received.

The Contractor shall not duplicate or allow for duplication of distribution of electronic data provided to Contractor, or created by the Contractor, and may not provide said files for review or use to any third party without written permission from the City of Sacramento.

- 17. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City.

- 18. **Confidentially of Information.** Contractor shall take all precautions necessary and appropriate to assure the confidentiality of City's record information. Contractor shall limit access to City's records only to contractor's authorized employees, except when they are authorized by the City, contractor shall not reproduce any of the City's records. The City shall have the right to review Contractor's procedures for handling City records and may make such inspections as it deems necessary to assure that Contractor is adequately safe-guarding City's record information.

Contractor acknowledges that in the course of providing services that they will have access to, and/or will be in possession of, confidential information of the City. Confidential information is defined as all information released to the Contractor for the purpose of having the Contractor perform the contracted for services.

The Contractor shall secure the City's confidential records in a manner to ensure that the information remains confidential. Contractor shall have access to the City's confidential information for the purposes of performing the contracted services.

19. **Inspection of Facilities.** The City may require an inspection tour of Contractor's facilities at the location where the work on this contract will be accomplished.
20. **Safety Requirements.** All services and products must comply with current California State Division of Industrial Safety Orders, Cal OSHA, and OSHA.
21. **Termination for Unsatisfactory Performance.** Whenever, in the opinion of the Procurement Services Manager, the Contractor's performance is not satisfactory, the Contractor shall be advised of the reasons. If the Contractor fails to correct the unsatisfactory conditions within 5 days, the Procurement Services Manager may declare this contract terminated upon 30 days written notice and contract with another Contractor. The City shall have no obligation to give more than two notices of unsatisfactory performance in any calendar year. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor(s) shall again fail to satisfactorily perform services pursuant to this contract, City may thereupon terminate this contract immediately. In the event of termination hereunder, the Contractor and/or surety will be liable and assessed for any and all costs for the re-procurement of the contract services.
22. **Environmentally Preferable Procurement**

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:

http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf or by contacting the Procurement Services Division at (916) 808-6240.

SECTION II – CONTRACT DOCUMENTS

C. TECHNICAL SPECIFICATIONS/PLANS/OTHER REQUIREMENTS

SPECIFICATIONS FOR LIQUID FLUOROSILICIC ACID

The liquid fluorosilicic acid shall be furnished by the Contractor in accordance with these specifications.

QUALITY

The liquid fluorosilicic acid shall be in accordance with AWWA Standard B703-11 or the latest revision, except as modified or supplemented herein. The manufacturer or supplier shall provide an affidavit that the liquid fluorosilicic acid furnished under this specification complies with all applicable requirements of AWWA Standard B703 at the time of delivery.

Also, this material shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with American National Standards Institute (ANSI) / National Sanitation Foundation (NSF) Standard 60, Drinking Water Treatment Chemicals-Health Effects.

Fluorosilicic acid shall be in accordance with the United States Environmental Protection Agency (USEPA) regulations and shall be registered, labeled, and marked as prescribed by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Each load supplied under this bid shall meet the following criteria:

Product Standards	AWWA/ANSI B703 Fluorosilicic Acid
Product Certification	ANSI/NSF Standard 60 Drinking Water Treatment Chemicals – Health Effects
Solution Strength	Available fluorosilicic acid expressed as H ₂ SiF ₆ shall be a minimum 23 percent by weight and a maximum of 25 percent by weight
Contaminants	Total free acid shall be a maximum of 1 percent hydrofluoric acid expressed as HF.
	Material shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been treated with the material.
Clarity	Clear to amber colored liquid with no visible cloudiness, impurities, or sediment. Each load shall be visually inspected on-site by plant operational staff. Acceptance of each load based upon this visual inspection.

SDS, ANALYSIS DATA, AND CERTIFICATION

Bidders shall supply the Safety Data Sheet, an analysis of the fluorosilicic acid, the manufacturer's specification sheet, and the manufacturer's labeling instructions as part of the bid package together with the location of the manufacturer's plant site. Bidders shall also supply proof with each shipment that the proposed product has been certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF 60, Drinking Water Treatment Chemicals – Health Effects.

It is the responsibility of the supplier to inform the City of Sacramento that NSF or UL certification has been revoked or lapsed within 24 hours of the time the supplier receives verbal or written notification. Loss of certification shall constitute sufficient grounds for immediate termination of the contract between City of Sacramento and Contractor.

SAMPLES

Prior to the award of the contract, the City may require that samples be submitted for evaluation and/or testing. The samples provided by the Contractor shall represent the exact items and/or products bid and to be supplied. Samples must be received within 5 working days of the request for pre-award samples. Failure to satisfy any of the City's requirements and/or specifications may result in the rejection of the bid.

Prior to Contractor unloading materials, the City may perform quick tests and sample analysis to verify that the items and/or products supplied meet the requirements of this specification. A maximum of at least five different 500-mL portions shall be taken from different places in the container (top, middle, and bottom) and combined to form a composite sample that is representative of the entire container. The total gross sample taken shall consist of at least 2 L. The Contractor or its subcontractors shall allow 1 hour for this pre-unloading testing to be completed. If the City cannot complete the testing within the 1 hour period, the City shall allow the Contractor to unload the shipment. In the event that the load is rejected based upon test results, the Contractor shall have twenty-four (24) hours to supply another shipment. If the Contractor is unable or unwilling to supply another shipment within this time period, the City has the right to procure a shipment from another source. Two rejections of a lot or shipment in any twelve (12) month period shall constitute automatic termination of the Contractor's supply contract with the City of Sacramento.

At any time after unloading, the City reserves the right to perform complete tests and sample analysis to ensure that the items and/or products supplied meet the Environmental Protection Agency (EPA) specifications, AWWA B703 specifications, NSF 60/61 specifications, and the supplemental specifications provided within this document. A combination of two failures to comply with these specifications, whether from shipment rejections as outlined above or from failure to meet specifications after a complete laboratory analysis may result in termination of the Contractor's supply contract with the City of Sacramento.

ESTIMATED QUANTITIES

Quantities (or expenditures) shown are merely annual estimates. The quantity specified is based upon current known requirements and is subject to increase or decrease at the same terms and conditions. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period. The City of Sacramento does not guarantee to purchase minimum quantity, or to purchase any remaining products that Contractor may have acquired in support of this Agreement.

ORDERS

Orders will be made on an "as needed" basis during the contract period.

DELIVERY LOCATIONS AND CONTACTS

It may be required that the liquid fluorosilicic acid be delivered to either one or both of the delivery locations listed. All deliveries shall be made in agreement with the primary contact assigned to each location. Secondary contacts may be contacted, if for some reason primary contacts are not available.

Delivery Locations:

Sacramento River Water Treatment Plant (SRWTP)
301 Water Street
Sacramento, CA 95811

E.A. Fairbairn Water Treatment Plant (EAFWTP)
7501 College Town Drive
Sacramento, CA 95826

SRWTP Primary Contact:

Richard Dare, Sr. Plant Operator
 Office (916) 808-4961
 Cell (916) 798-7587
 Email rdare@cityofsacramento.org

EAFWTP Primary Contact:

Howard Moreland, Sr. Plant Operator
 Office (916) 808-3120
 Cell (916) 798-7582
 Email hmoreland@cityofsacramento.org

SRWTP Secondary Contact:

Rod Frizzell, Supervising Plant Operator
 Office (916) 808-5165
 Cell (916) 879-8194
 Email rfrizzell@cityofsacramento.org

EAFWTP Secondary Contact:

Mary Krizanosky, Supervising Plant Operator
 Office (916) 808-1311
 Cell (916) 801-5970
 Email mkrizanosky@cityofsacramento.org

DELIVERY

Deliveries shall be made in agreement with the Plant Operation's schedule after receipt of orders, typically within three (3) working days, at any time during the contract period. Delivery shall be made in 4,000 gallon or larger tank trucks or trailers that are modified to resist fluorosilicic acid. Trucks or trailers shall be equipped with a weight measurement system that will show the number of gallons or pounds of product delivered to the City's storage tank. If a truck is not equipped with a weight measurement system the driver shall provide a truck scale reading for each delivery. Delivery time of shipments shall not exceed two weeks from the time of product manufacture.

Deliveries shall be made Monday through Thursday, between 7:00 a.m. and 2:00 p.m., and Friday, between 7:00 a.m. and 1:00 p.m., during which time the City will provide personnel to monitor and assist with unloading the liquid fluorosilicic acid from tank truck to receiving storage. Unless otherwise directed, failure to observe this time constraint may result in a delay of the unloading to the following day, at no additional cost to the City. The City may reject any load with missing, damaged, or open seals or lack of chain of custody paperwork if delivery equipment lacks seals. Any trucks found to be leaking product will not be allowed to enter City property.

The tanks or trailers shall be clean and free of residue that may contaminate the Contractor's product or impede the unloading process. It is the Contractor's responsibility to verify the cleanliness of the transporting equipment before loading. All appurtenant valves, pumps, and discharge hoses used for the delivery of liquid fluorosilicic acid shall be supplied by the Contractor and shall be clean and free from contaminating material. The City of Sacramento may reject a load if the equipment is not properly cleaned.

Delivery driver shall provide an approved, leak-free connection device and must make all line connections from the tank truck to the City's feed system. The driver must be trained how to recognize leaks, how to shut-off the system, and how to make any emergency repairs necessary. The driver shall observe the transfer filling operation and be present at all times until the transfer is complete. The driver shall perform disconnection of all lines from the City's system and shall be responsible for minimizing any spillage due to such operation.

The Contractor shall be responsible for any spills resulting from failure of its delivery equipment or from failure of attendant delivery personnel in the proper performance of their duties. Proper performance shall require attendant 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. The City of Sacramento reserves the right to refuse any and all deliveries made with equipment that is poorly maintained and/or leaking liquid fluorosilicic acid.

The Contractor shall take immediate and appropriate actions to clean up any spilled liquid fluorosilicic acid. If the spill is not cleaned up, the 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 Contractor and deducted from the amount due to the Contractor. If the City of Sacramento's equipment, such as pipes, valves, level indications, or alarms, should fail and the spillage is not the fault of the Contractor, the Contractor shall be relieved of cleanup of the spill.

All tank truck deliveries must conform to any and all U.S. Department of Transportation regulations covering highway transport of fluorosilicic acid solution and comply in every respect with current Federal and State Hazardous Materials regulations. Packaging shall comply with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) under USEPA regulations.

EMERGENCY DELIVERIES

Due to weather events, the City may require emergency deliveries on weekends and holidays from time to time. Contractor shall provide an after -hours contact and phone number. Orders shall be placed with as much notice to the Contractor as possible and Contractor shall make every practicable effort to deliver product as needed.

DELIVERY DOCUMENTATION AND PROTOCOL

The City of Sacramento delivery sites listed require an email from the liquid fluorosilicic acid supplier the day of delivery, at least an hour prior to arrival. Information listed below shall be emailed to the delivery facility contacts listed below prior to delivery. The email must contain the following information;

1. Security Information Sheet (Must include the following)
 - Delivery Location
 - Driver Information
 - Estimated Time of Arrival
 - Bill of Lading Number
 - Truck Number
 - License Number
 - Seal Numbers
2. Driver Identification with photo
3. Assay/Certificate of analysis from the manufacturer that shall include the following information:
 - Date and Time of Manufacture
 - Batch or Lot Numbers
 - AWWA/NSF Compliance
 - Fluorosilicic Acid (H₂SiF₆) % by Weight
 - Hydrofluoric Acid (HF) % by Weight
 - Specific Gravity (Referenced at specific temperature)
 - Contaminant Concentrations

4. Weight Certificate

If applicable, provide the following additional items:

5. Washout Certificate or "last Contained" notation on CoA /Affidavit of Compliance

6. Product Tank Identification and Washout Checklist*

* Note: This requirement does NOT need to be emailed or faxed prior to delivery, but needs to be completed by the driver and suppliers facility personnel.

Upon arrival drivers will present the above information for verification by City of Sacramento Water Treatment Plant personnel. Deliveries will not be accepted by the City of Sacramento unless accompanied by Certificate of Analysis for the specific batch of liquid fluorosilicic acid delivered showing the above data and that it conforms to the required specifications.

NOTICE OF NON-CONFORMANCE

If the material or its container does not meet the chemical, physical, or safety requirements of the industry and regulatory standards and the City's specifications, notice shall be given to the supplier immediately after observing said non-compliance; but in any case, within 30 days of receipt of shipment. In this event, supplier shall remove the unsuitable product or container from the premises of the purchaser at the City's request and replace it with a like amount of satisfactory liquid fluorosilicic acid in an acceptable container; or, if there is an appropriate and safe solution for the problem, a price adjustment may be agreed upon between the supplier and the City.

FREIGHT

All items are to be supplied F.O.B. Destination, prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

PAYMENT

Payment will be made on the weight of product delivered. The contractor shall include with each shipment a certification of the total weight contained in each shipment.

SAFETY PROCEDURES & PROGRAM

Bidders shall supply copies of their safety procedures and/or program as part of the bid package. All services and/or products must comply with current California State Division of Industrial Safety Orders and Cal O.S.H.A. At a minimum, we would like information on the following pieces of your safety procedures/program:

- Any training specific to the Chemical material being provided
- Injury & Illness Prevention Program (IIPP)
- Hazard Communication Program and/or training
- Hazardous Materials Program and/or training
- Hazardous Material Spills Program and/or training if separate from Hazardous Materials

As part of its Emergency Preparedness Planning and Spill Response Plan, the successful bidder, upon award, shall submit a list of at least two degreed engineers (preferably Chemical Engineers) experienced in liquid flourosilicic acid operations to provide emergency support services on a 24/7 basis in the event of a spill, equipment failure, or other emergency. List shall include the following information for each engineer: name, a 24 hour access phone number, degree received, college or university attended, and year of graduation. Failure to submit this list including all of the required information or failure to adhere to this requirement may result in the bid being found non-responsive.

All delivery vehicle drivers shall be U.S. citizens and have a proper commercial driver's license with a Hazardous Material endorsement.

SECURITY PROCEDURES

Contractor shall provide the City with a "CD" containing digital photographs of all of its delivery drivers with names imposed. Contractor shall send the City an updated CD within 24 hours of any change to its drivers. The City of Sacramento shall use the CD to verify whether a driver is actually an employee of the Contractor.

Contractor's drivers shall display their driver's license whenever asked by a City of Sacramento representative during the delivery. Failure to show proper license or failure of driver to be listed on CD provided to the City may result in rejection of delivery and could result in termination of the Contractor's supply agreement.

SECTION III BIDDER RESPONSE DOCUMENTS

SECTION III – BIDDER RESPONSE DOCUMENTS

A. ITEMS REQUIRING BIDDER RESPONSE

1. LOCAL BUSINESS SALES/USE TAX DEDUCTION

The Sacramento City Code requires the City to identify those bids that are subject to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the Sacramento City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. The current rate at which such local sales or use tax is received by the City is one percent (1%). Therefore, in evaluating bids to determine the lowest responsible bidder, bids that are subject to this tax at the time of bid opening shall have an amount equal to one percent (1%) of the taxable total deducted from the bids. This deduction shall be in addition to the application of any bid price preferences or other deductions authorized by the City Code. Such deductions shall be made for bid evaluation purposes only. Contract awards shall be made at the actual bid amount.

In order to identify those bids that are subject to the City's local sales or use tax, all bidders shall respond to the following:

Does the bidder have fixed offices or locally taxable distribution points within the boundaries of the City of Sacramento? Yes; or No

If the answer to Question above is "Yes":

a) Provide the address of the bidder's fixed offices or locally taxable distribution point(s):

Specify: fixed office location or distribution point(s): _____

b) Provide the bidder's current, valid City of Sacramento Business Operations Tax Certificate Number: _____

2. DELIVERY GUARANTEE

Contractor guarantees delivery within _____ days after receipt of order (ARO).

3. PAYMENT DISCOUNT

Will you offer a prompt payment discount? Yes [] or No [] (Net 30 days)

If Yes, the Payment Discount is _____% for payment within _____ calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

PAYMENT DISCOUNTS SHALL BE CONSIDERED IN AWARDING THE CONTRACT AS SET FORTH IN THE "BID INSTRUCTIONS AND REQUIREMENTS", PARAGRAPH 11 (ENTITLED "PAYMENT DISCOUNTS").

4. ELECTRONIC FUNDS TRANSFER (EFT) (informational only):

Do you have the ability to accept electronic payments (EFT)? Yes [] or No []

If Yes, what percentage discount would you offer the City to be paid through EFT? _____%

SECTION III – BIDDER RESPONSE DOCUMENTS

**B. ITEMS THAT MUST BE SUBMITTED BY SUCCESSFUL
BIDDER PRIOR TO START OF CONTRACT**

The following documents are required to be completed and submitted by the successful bidder prior to the award of contract of the contract:

1. CERTIFICATE OF INSURANCE

Successful bidders are REQUIRED to submit the necessary Certificate(s) of Insurance as called for in the General Conditions prior to award of the contract.

2. BUSINESS OPERATIONS TAX CERTIFICATE

Chapter 3.08 of the Sacramento City Code requires that anyone conducting business in the City of Sacramento obtain a **Business Operations Tax Certificate** and pay the applicable tax if necessary. Successful bidders will be REQUIRED to show compliance with this requirement prior to award of the contract.

To obtain information about the Business Operations Tax Certificate, contact the City of Sacramento, Revenue Division, 915 I Street, Room 1214, Sacramento, CA 95814, or telephone (916) 808-8500.

SECTION III – BIDDER RESPONSE DOCUMENTS

C. DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: _____

Address: _____

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1)

year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

SECTION III – BIDDER RESPONSE DOCUMENTS

D. LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION PROGRAM

NOTE: Bidders must provide responses where indicated to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of bid.

1. LBE FIVE PERCENT (5%) PARTICIPATION

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference and authorized City departments to require minimum LBE participation levels in individual contracts. Under City Code section 3.60.270 , when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has waived the minimum 5% participation level for LBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
 - a. The LBE's principle business office or workspace; or
 - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

A. LOCAL BUSINESS ENTERPRISE (LBE)

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

YES - the firm submitting the bid is qualified as a local business enterprise.

NO - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

If the response to the above is **YES**, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address*:

* Address must be a physical address for the basis of location, this excludes P.O. Box addresses.

SECTION III – BIDDER RESPONSE DOCUMENTS

E. PRICING SCHEDULE

For furnishing to the City of Sacramento, liquid fluorosilicic acid, as required during the contract period, in accordance with the provision and specifications contained herein.

The bid item listed is for evaluation purposes only. The quantities and item specified are annual estimates only of the City's requirement. Vendor agrees to furnish more or less than the estimates at the unit price quoted in accordance with availability of funds and the actual needs as they occur throughout the contract period.

Prices shall be inclusive, i.e., freight, delivery, etc. Additional charges are not allowed. Sales tax is not applicable as this product is used in the production and purification of potable water for resale, California Resale Permit Number SYKH98-021076.

Liquid Fluorosilicic Acid

<u>Item No.</u>	<u>Quantity/Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extension</u>
1 of 1	750 tons	Liquid Fluorosilicic Acid per bid technical specifications	\$ _____	\$ _____

NAME OF SUPPLIER/CONTRACTOR: _____

ADDRESS: _____

PHONE #: _____ EMAIL: _____

BY: (signature of authorized person) _____

PRINTNAME: _____ TITLE: _____

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.

EXHIBIT D

Sacramento City Code

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[Title 3 REVENUE AND FINANCE](#)

[Chapter 3.60 CONTRACTS FOR PUBLIC PROJECTS](#)

Article VIII. Participation of Local Business Enterprises

3.60.260 Local business enterprise (LBE) programs.

The city council may adopt by resolution, programs to promote and provide incentives for the participation of local business enterprises in city contracts or agreements awarded under the provisions of Chapters [3.56](#), [3.60](#), or [3.64](#). The city manager may adopt administrative procedures to implement the provisions of the programs. For purposes of this article, the term "LBE" shall refer to any business entity that is defined as a local business enterprise under the city manager's administrative procedures. (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.801)

3.60.270 LBE participation levels.

The specifications or request for bids or proposals for any contract or agreement awarded under the provisions of Chapters [3.56](#), [3.60](#), or [3.64](#) may establish minimum levels for participation in the contract or agreement by LBEs. No bidder or proposer on the contract or agreement shall be considered a responsive bidder or proposer unless its bid or proposal meets the minimum LBE participation levels established for the contract or agreement, in accordance with the administrative procedures authorized by Section [3.60.260](#). (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.802)

3.60.280 Sheltered market program.

The LBE programs and their respective administrative procedures authorized by Section [3.60.260](#) may provide for a sheltered market program that restricts bidding and awards for contracts and agreements that do not exceed the contract approval authority of the city manager under Sections [3.56.080](#), [3.60.080](#), and [3.64.030](#). (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.803)

3.60.290 MBE/WBE/DBE bid requirements.

Sections [3.60.260](#) through [3.60.280](#), inclusive, shall not apply to any contract or agreement awarded under or funded by any federal or state program that includes minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE) participation goals. Such contracts or agreements shall be awarded in accordance with the applicable MBE, WBE, or DBE requirements and procedures. (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.804)

3.60.300 Provision of false information a misdemeanor.

A. No person shall submit false information to the city, or to the city's representative, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a MBE, WBE, DBE, or LBE.

B. No person shall submit false information to the city or the city's representative in connection with any bid or proposal regarding the MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the MBE, WBE, DBE, or LBE participation levels included in a city contract or agreement.

C. Any person who violates this section is guilty of a misdemeanor punishable as provided in Section 1.28.010. This shall be in addition to any other remedies authorized by any other provisions of this code or provided for by any federal, state, or local law or regulation. (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.805)

3.60.310 Information to be provided under penalty of perjury.

Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the MBE, WBE, DBE, or LBE participation goals included in a city contract or agreement, such information shall be submitted under penalty of perjury. (Ord. 2013-0036 § 1; Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.806)

EXHIBIT E

Sacramento City Code

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[Title 3 REVENUE AND FINANCE](#)

[Chapter 3.60 CONTRACTS FOR PUBLIC PROJECTS](#)

Article X Bid Protest Procedures**3.60.460 Application.**

This article shall apply to bid protests relating to all contracts for public projects that are required to be awarded by the city council under the provisions of this chapter. This article shall not apply to any contract for a public project that may be awarded without city council authorization, or to any contract awarded under any other title of this code, unless specifically so provided in the request for bids for such contract. (Ord. 98-015 § 1; prior code § 58.10.1001)

3.60.470 Definitions.

For the purpose of this article, the following definitions shall apply:

“Bid” means any bid or proposal submitted on a contract.

“Bid protest” means a protest filed by a bidder on a contract in accordance with the provisions of this chapter, which protest (1) claims that one or more bidders on the contract should be disqualified or rejected for any reason, or (2) contests a city staff recommendation to award the contract to a particular bidder, or (3) contests a city staff recommendation to disqualify or reject one or more bidders on the contract. Only a bidder on a contract, or such bidder’s authorized representative, may file a bid protest on such contract.

“Bidder” means any person or firm that submits a bid on a contract.

“Contract” means any contract for a public project that is required to be awarded by the city council under the provisions of this chapter.

“Project manager” means the city staff member identified as the project manager or city staff contact person in the city’s request for bids.

“Protested bidder” means a bidder whom the bid protest claims should be disqualified or rejected.

“Protesting bidder” means a bidder on a contract, or such bidder’s authorized representative, who files a bid protest on the contract in accordance with the provisions of this chapter.

“Request for bids” means a written request or solicitation for bids to perform a contract issued by any department or division of the city. (Ord. 98-015 § 1; prior code § 58.10.1002)

3.60.480 Form of bid protest.

Bid protests shall be in writing, shall provide the name, address, telephone and telecopier numbers of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the city, and shall identify the city department or division issuing the request for bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest. Bid protests shall be addressed to the City Clerk, 915 I Street, Room 304, Sacramento, CA 95814. Any bid protest that is

not submitted as provided herein shall be invalid and shall not be considered. (Ord. 98-015 § 1; prior code § 58.10.1003)

3.60.490 Submission of bid protest to city.

Within the time period specified in Section 3.60.500 of this chapter, the bid protest shall be filed with the city clerk, and one additional copy of the bid protest shall be filed with the project manager at the address indicated in the request for bids. Bid protests may be filed by personal delivery, by registered or certified mail (return receipt requested) or by telecopy. At the time a bid protest is filed, the protesting bidder shall also deposit with the city clerk a bid protest fee in an amount established by resolution of the city council, which fee shall be used to pay the costs of a hearing and hearing examiner as set forth in Section 3.60.520(G) of this chapter. Any bid protest that is received by the city clerk and project manager after the time period specified in Section 3.60.500 of this chapter, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered. (Ord. 98-015 § 1; prior code § 58.10.1004)

3.60.500 Time for filing a bid protest.

After bids for a contract are received and opened by city, city staff shall provide each bidder a written notice of the city staff's preliminary recommendation for award of the contract. Any bid protest related to the contract shall be received by the city clerk and project manager no later than five working days after the date that such written notice is received by the protesting bidder. (Ord. 98-015 § 1; prior code § 58.10.1005)

3.60.510 Investigation by city.

If a valid bid protest is timely filed, city staff shall provide a copy of the bid protest to the protested bidder(s), and shall investigate or cause to be investigated the bid protest. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by city staff as part of such investigation. City staff shall prepare a written response to the bid protest, which shall be provided to the protesting bidder and protested bidder(s), if any, and to the hearing examiner as provided in Section 3.60.520 of this chapter. (Ord. 98-015 § 1; prior code § 58.10.1006)

3.60.520 Hearing of bid protest by a hearing examiner.

A. A bid protest shall be heard by a hearing examiner from a panel of hearing examiners designated for this purpose by resolution of the city council. Hearing examiners shall serve at the pleasure of the city council. A hearing examiner may not be a city employee at the time of the hearing.

B. After the hearing examiner is selected, city staff shall set the date of the hearing, and shall mail the protesting bidder and the protested bidder(s), if any, a written notice that specifies the location, time and date of the hearing, which shall be held no sooner than five days after the date of the notice of hearing. The hearing examiner may postpone the hearing at the request of city staff, the protesting bidder or the protested bidder(s), if any, or upon the hearing examiner's own motion. If the protesting bidder fails to attend the hearing, the bid protest shall be deemed withdrawn and shall no longer be considered by the city.

C. City staff shall provide the hearing examiner with copies of the request for bids, the

bid protest, the response of the protested bidder(s), if any, the city staff response to the bid protest, and any other relevant materials or information in city staff's possession. Any written information that the protesting or protested bidders wish to have considered in determining the protest that has not already been submitted to city staff shall be provided to the hearing examiner and to city staff, and must be received by the hearing examiner and city staff at least two working days prior to the hearing in order to be considered.

D. Evidence or argument at the hearing shall be received only from the city, the protesting bidder and the protested bidder(s), if any, their witnesses and authorized representatives. The proceedings at the hearing shall be reported by a tape recorder. Any party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. The hearing examiner may, upon request of either party, grant continuances for good cause shown, or upon his or her own motion. The hearing examiner shall administer the oath or affirmation. Government Code Section 11513 shall apply to hearings under this section, except that relevant hearsay evidence may be sufficient in itself to support a finding of fact, even if it would not be admissible over objection in a civil action, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

E. At the hearing, the protesting bidder shall bear the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner may take official notice, either before or after the close of the hearing, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records or documents of the city or any of its departments.

F. After the close of the hearing, the hearing examiner shall issue a written decision that includes findings of fact based on the record of facts and information presented to the hearing examiner, and also includes a recommended determination of the bid protest based on the findings of fact. The hearing examiner shall mail a copy of the decision to the city, the protesting bidder and the protested bidder(s), if any.

G. The city shall use the bid protest fee deposited by the protesting bidder pursuant to Section 3.60.490 of this chapter to pay all costs incurred by the city for the hearing and hearing examiner. If these costs are less than the bid protest fee deposited by the protesting bidder, the city shall return any unexpended amounts to the protesting bidder. If these costs exceed the bid protest fee deposited by the protesting bidder, the city may invoice the protesting bidder for any additional unpaid costs, and the protesting bidder shall pay all costs due no later than thirty (30) calendar days after the date of the invoice. Any protesting bidder that fails to pay an invoice as required herein shall be barred from filing a bid protest on any subsequent city contract until the city receives payment of all costs due plus interest, at the rate of ten (10) percent per annum, beginning thirty (30) calendar days after the date of the invoice. (Ord. 2003-015 § 1; Ord. 98-015 § 1; prior code § 58.10.1007)

3.60.530 Consideration of bid protest by the city council.

If a valid bid protest is timely filed and subsequently has not been withdrawn by the protesting bidder or by operation of the provisions of this chapter, the city council shall consider the protest at a public meeting after the hearing examiner's decision has been received by all parties. The city council may hear the bid protest as part of the city council's consideration of the award of the contract to which the bid protest relates or may hear the bid protest as a separate item, provided that the city council shall decide the bid protest prior to awarding the contract, unless the city council exercises its discretion to reject all bids. The city council may take action on the bid protest at the meeting when the bid protest is considered or may continue the matter of the protest and contract award to a future date.

(Ord. 98-015 § 1; prior code § 58.10.1008)

3.60.540 Conduct of the city council meeting.

The scope of the bid protest considered by the city council shall be limited to the issues and evidence set forth in the bid protest. The city council may exercise its discretion to take any of the following actions prior to taking final action on the bid protest:

A. Adopt the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or

B. Review the recording of the hearing, or a transcript thereof, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or

C. In addition to or in lieu of reviewing the recording of the hearing, or a transcript thereof, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner.

In addition to the foregoing actions, the city council may at any time exercise its discretion to reject all bids without adopting or rejecting the hearing examiner's findings of fact. The city council may take any action on the bid protest that is authorized by law, including adoption of the hearing examiner's recommended determination of the bid protest, adoption of a determination different from that recommended by the hearing examiner or the rejection of all bids without deciding the bid protest. The decision of the city council on a bid protest shall be the final administrative action on the protest. (Ord. 98-015 § 1; prior code § 58.10.1009)

3.60.550 Providing written notice.

Whenever this article requires that written notice be provided by or to the city or the hearing examiner, such written notice shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery. (Ord. 98-015 § 1; prior code § 58.10.1010)

3.60.560 Information in request for bids.

Every request for bids issued by the city for a contract subject to this article shall indicate that any bid protest related to the contract shall be filed and maintained in accordance with the provisions of this article, and that a copy of this article may be obtained from the department or division issuing the request for bids or the city clerk. (Ord. 98-015 § 1; prior code § 58.10.1011)

EXHIBIT F



May 15, 2014

Deanne Neighbours, Administrative Technician
Utilities, Operations & Maintenance Division
1391 35th Ave, Sacramento, CA 95822
(916) 808-3536

David Phillips, O&M Superintendent
Utilities, Operations & Maintenance Division
301 Water Street, Sacramento, CA 95811
(916) 808-5652

Re: Acknowledgment of Thatcher Company of California, Inc. Letter of Protest
dated May 9, 2014
Bid Number: B14141111012
Product: Liquid Fluorosilicic Acid
Bid Date: April 23, 2014

Dear Ms. Neighbours and Mr. Phillips,

This letter is to formally acknowledge the protest letter dated May 9, 2014 from Thatcher Company of California, Inc. to the City of Sacramento relative to the above referenced bid. After reviewing their protest letter and the requirements of your bid it is clear that Solvay Fluorides has met all of the requirements as stated and is the lowest responsible bidder.

Additionally, we would like to offer comments to further support the award to Solvay Fluorides.

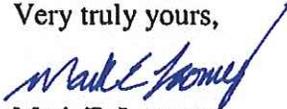
- Solvay Fluorides has supplied the City for over 10 years without any issue or failure to supply quality product as requested.
- During this period there have been market shortages but we have ensured that the City always received product.
- Solvay Fluorides is a Manufacturer of HFS and also has a co-producer agreement with another producer for supply of product mainly in the Eastern USA.

- We believe that Thatcher is only a distributor and has a very minor share of the market.
- Solvay Fluorides already has a proven supply chain that is NSF Std. 60
- Our product quality is very good and the color is water white and this cannot be said of all HFS in the market.
- The City waived the minimum 5% participation level for Local Business Enterprise in this contract.
- Solvay is a multinational company and has the financial strength and capability to support the requirements to manufacture ship and supply this hazardous product.
- Solvay has 40 years of experience in the Hydrofluorosilicic Acid business and has supplied city's such as Los Angeles, CA, San Francisco, CA, Chicago, IL, Boston, MA, New York, NY, Philadelphia, PA and many other major cities.

Therefore we feel it is in the best interest of the City of Sacramento to make the final award to Solvay Fluorides.

We look forward to receiving the final award contract notice and continuing our business partnership. If I may answer any additional questions you may have about our company please feel free to contact me at (713) 525-6872.

Very truly yours,



Mark E. Looney
Vice President – Sales & Marketing



May 15, 2014

Deanne Neighbours, Administrative Technician
Utilities, Operations & Maintenance Division
1391 35th Ave, Sacramento, CA 95822
(916) 808-3536

David Phillips, O&M Superintendent
Utilities, Operations & Maintenance Division
301 Water Street, Sacramento, CA 95811
(916) 808-5652

Re: Acknowledgment of Thatcher Company of California, Inc. Letter of Protest
dated May 9, 2014
Bid Number: B14141111012
Product: Liquid Fluorosilicic Acid
Bid Date: April 23, 2014

Dear Ms. Neighbours and Mr. Phillips,

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- During this period there have been market shortages but we have ensured that the City always received product.
- Solvay Fluorides is a Manufacturer of HFS and also has a co-producer agreement with another producer for supply of product mainly in the Eastern USA.

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- Our product quality is very good and the color is water white and this cannot be said of all HFS in the market.
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- Solvay has 40 years of experience in the Hydrofluorosilicic Acid business and has supplied city's such as Los Angeles, CA, San Francisco, CA, Chicago, IL, Boston, MA, New York, NY, Philadelphia, PA and many other major cities.

Therefore we feel it is in the best interest of the City of Sacramento to make the final award to Solvay Fluorides.

We look forward to receiving the final award contract notice and continuing our business partnership. If I may answer any additional questions you may have about our company please feel free to contact me at (713) 525-6872.

Very truly yours,



Mark E. Looney

Vice President – Sales & Marketing

July 8, 2014

~Sent via U.S. Mail and Email~

Dennis Moore
No. California Sales Manager
Thatcher Co. of California, Inc.
8625 Unsworth Avenue
Sacramento, CA 95828
Dennis.Moore@tchem.com

Joe Robinson
Deputy City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814
jrobinson@cityofsacramento.org

Mark Looney
Vice President of Sales and Marketing
Solvay Fluorides, LLC
3333 Richmond Avenue
Houston, TX 77098
Mark.Looney@Solvay.com

Institute for
Administrative Justice

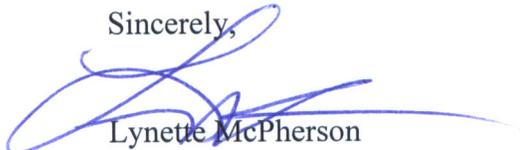
3200 Fifth Avenue
Sacramento, CA 95817
www.mcgeorge.edu
Tel 916.739.7049
Fax 916.669.3005

**RE: Decision on Administrative Appeal with Finding of
Fact and Recommended Determination; Bid Protest
Hearing – Thatcher Company of California
Solvay Fluorides, LLC
City of Sacramento
Case No.: B14141111012**

Dear Sirs:

Enclosed please find the Decision on Administrative Appeal with Finding of Fact and Recommended Determination from Hearing Examiner Kamardeep Athwal. This administrative hearing was held on June 23, 2014.

Sincerely,


Lynette McPherson
Paralegal 916.739.7052

Enclosure

INSTITUTE FOR ADMINISTRATIVE JUSTICE
 UNIVERSITY OF THE PACIFIC
 McGEORGE SCHOOL OF LAW
 3200 Fifth Avenue
 Sacramento, CA 95817
 Telephone: (916) 739-7049

**CITY OF SACRAMENTO
 BID PROTEST HEARING
 LIQUID FLUOROSILICIC ACID**

In the matter of:)	
)	
THATCHER COMPANY OF CALIFORNIA,)	Case Number: B14141111012
Protesting Bidder)	
)	
v.)	DECISION ON ADMINISTRATIVE
)	APPEAL WITH FINDING OF FACT
)	AND RECOMMENDED
SOLVAY FLUORIDES, LLC)	DETERMINATION
Protested Bidder)	
)	
and)	
)	
CITY OF SACRAMENTO,)	
Awarding Agency)	

I. INTRODUCTION

The bid protest by Thatcher Company of California (Thatcher) concerning the City of Sacramento’s proposed award of the Liquid Fluorosilicic Acid contract (IFB No.: B14141111012) to Solvay Fluorides, LLC (Solvay) was heard before Kamardeep Athwal, Hearing Examiner for the Institute for Administrative Justice, University of the Pacific, McGeorge School of Law, on June 23, 2014, in Sacramento, California.¹

II. APPEARANCES

Dennis Moore, Northern California Sales Manager of Thatcher, appeared on behalf of the protesting bidder, Thatcher. Joe Robinson, Deputy City Attorney, appeared on behalf of the awarding agency, City of Sacramento (City). Also present on behalf of the City was Deanne Neighbours, City Administrative Technician. Mark Looney, Vice President of Sales and Marketing of Solvay, appeared on behalf of Solvay. Each party presented oral arguments and the matter was then submitted for decision.

¹ The impartial hearing examiner was appointed pursuant to Sacramento City Code section 3.60.520.

III. JURISDICTION AND SCOPE OF REVIEW

Section 3.60.520 of the Sacramento City Code (SCC) sets forth the procedures for bid protest hearings before a hearing examiner appointed by the city council. The protesting bidder has the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner shall issue a written decision that includes findings of fact and a recommended determination of the bid protest based upon those findings of fact. Section 3.60.530 provides that after the hearing examiner issues a decision, the city council shall consider the protest at a public meeting. The council may hear the bid protest as part of the council's consideration of the award of the contract to which the bid relates, or it may hear the bid protest as a separate item. Section 3.60.540 states that "[t]he scope of the bid protest considered by the city council shall be limited to the issues and evidence set forth in the bid protest." The section lists various procedures that the City may exercise, in its discretion, before taking final action on the bid protest.

IV. ISSUE PRESENTED FOR HEARING

Should the City Council reject Solvay's bid and award Thatcher the contract because the cost difference between the two bids is less than 2% and Thatcher is a local business, while Solvay is not?

V. BACKGROUND

On April 1, 2014, the City advertised for an Invitation for Bid (IFB) for Liquid Fluorosilicic Acid. The City has a Local Business Enterprise (LBE) Program, which establishes a minimum participation by LBEs in the contract to equal at least 5% of the bid amount for City supply contracts of \$100,000 or more. Per Sacramento City Code section 3.60.270, if the LBE participation requirement is included in an IFB, a bidder must meet that requirement to be considered a responsive bidder; the LBE participation requirement only applies to if it is included in the IFB. In the City's IFB for Liquid Fluorosilicic Acid, they did not include a minimum LBE participation requirement; instead, the City specifically stated that the minimum LBE participation requirement had been waived for this bid and contract (Exhibit A). On page 15 of the IFB under section (I)(E)(1) LBE Participation Requirement, the City stated, in bold font, "[t]he City has established a minimum 5% participation level for LBEs, which has been waived for this contract." On page 47 of the IFB under section (III)(D)(1) LBE Five Percent 5% Participation, the City stated, in bold font, "[t]he City has waived the minimum 5% participation level for LBEs on this contract."

In response to the IFB, both Solvay and Thatcher submitted timely bid packages on April 23, 2014. Solvay was the low bidder at \$454 per ton delivered or \$340,500 per year (Exhibit C). Thatcher was the second low bidder at \$461.79 per ton delivered or \$346,342.50 per year (Exhibit D). The contract, if awarded, would have an initial one-year term with yearly options to extend up to four additional years.

On May 1, 2014, the Department issued written notice of its intention to recommend that the Sacramento City Council award the contract for Liquid Fluorosilicic Acid to Solvay since they were the lowest responsible bidder (Exhibits E, F). On May 9, 2014, Thatcher submitted a

bid protest, stating that the City Council should award Thatcher the contract because the cost difference between the two bids is less than 2%, and Thatcher is a local business, while Solvay is not (Exhibit H). On May 15, 2014, Solvay submitted a response to the Thatcher bid protest, stating that the 5% LBE participation requirement was waived and Solvay was the lowest responsible bidder; therefore, Solvay should be awarded the contract (Exhibit I). On May 22, 2014, the City responded to the bid protest and determined it had no right to reject Solvay's bid (Exhibit J).

Thatcher requested the matter be set for hearing and the hearing was conducted on June 23, 2014.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Thatcher's bid protest letter asserted that the City should award Thatcher the contract because the cost difference between the two bids is less than 2%; and, Thatcher is a local business and Solvay is not. The bid protest letter stated that Thatcher opened a new plant in Sacramento in 2013; Thatcher further stated that they have invested millions of dollars in the local Sacramento economy in an effort to partner with the City. In addition, Thatcher stated that by calculating past chemical bids, they have saved the City over \$100,000 with their competitive pricing.

Dennis Moore, Northern California Sales Manager of Thatcher, reiterated this point at the hearing by stating that Thatcher gives the City the best value since they are a local business. Mr. Moore stated that what Thatcher spent in diesel fuel alone in the City more than overcomes the bid difference, which is \$5,842.50 per year. Mr. Moore stated he was surprised the City would waive the LBE participation requirement and felt the LBE participation requirement would make "outside" bids more competitive.

Joe Robinson, Deputy City Attorney, asserted that under SCC Chapter 3.56, the City is required to award the contract to the lowest responsible bidder unless it rejects all bids. Mr. Robinson stated that there is no question that Solvay was the lowest responsible bidder. Furthermore, Mr. Robinson stated that since the IFB did not contain a LBE participation requirement and Solvay was the lowest responsible bidder, there was no basis under SCC Chapter 3.56 to reject Solvay's bid.

Deanne Neighbours, City Administrative Technician, stated that she handles procurements and contracts for the Department of Utilities (Department). She stated that since the IFB for Liquid Fluorosilicic Acid was over \$100,000, the LBE participation requirement was mandatory; however, she stated that the Department has the ability to receive a waiver from the City's Economic Development Department when the Department feels the LBE participation requirement would be detrimental to the bid. The Department applied for and received the waiver. Ms. Neighbours stated that they noted this waiver in the IFB; and, since Solvay was the lowest responsible bidder, there was no basis to reject Solvay's bid. Ms. Neighbors stated that at the time they advertised for the IFB for Liquid Fluorosilicic Acid, they issued three other IFBs, all of which contained the LBE participation requirement waiver. Ms. Neighbors stated that the

reason for the waiver was to receive more competitive bids; she stated that without the waiver, "outside" bids would not be possible.

The Hearing Examiner finds the City's argument is persuasive. The City asserted that under SCC Chapter 3.56, they are required to award the contract to the lowest responsible bidder unless they reject all bids. The City asserted that there is no question that Solvay was the lowest responsible bidder. Furthermore, the City asserted that since the IFB did not contain a LBE participation requirement and Solvay was the lowest responsible bidder, there was no basis under SCC Chapter 3.56 to reject Solvay's bid. The Hearing Examiner agrees; there is no legal basis for rejecting Solvay's bid.

In conclusion, the Hearing Examiner finds that Solvay's bid should not be rejected.

VII. RECOMMENDED DETERMINATION

The hearing examiner has made the following findings:

The City demonstrated that Solvay was the lowest responsible bidder, the LBE participation requirement was waived, and they were required to award the contract to Solvay.

Accordingly, the hearing examiner recommends that Thatcher's bid protest be denied.

Date: July 8, 2014


Kamardeep Athwal, Hearing Officer
Institute for Administrative Justice
University of the Pacific
McGeorge School of Law

PROOF OF SERVICE VIA EMAIL & U.S. MAIL

I, Lynette McPherson, declare as follows:

I am employed in the County of Sacramento, California, the county where the mailing took place; I am over the age of 18 years and not a party to the within action. My business address is 3455 Fifth Avenue, Sacramento, California 95817. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On July 8, 2014, I served a copy of the following document:

**DECISION ON ADMINISTRATIVE APPEAL WITH FINDING OF FACT AND
RECOMMENDED DETERMINATION
Bid Protest Hearing
Thatcher Company of California
Solvay Fluorides, LLC
City of Sacramento
Case No.: B14141111012**

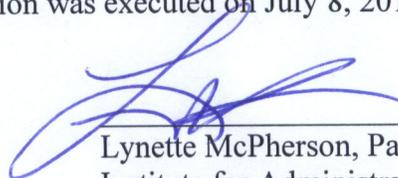
on the persons named below by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, that same day in the ordinary course of business, and via email, addressed as follows:

**Dennis Moore
No. California Sales Manager
Thatcher Co. of California, Inc.
8625 Unsworth Avenue
Sacramento, CA 95828
Dennis.Moore@tchem.com**

**Joe Robinson
Deputy City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814
jrobinson@cityofsacramento.org**

**Mark Looney
Vice President of Sales and Marketing
Solvay Fluorides, LLC
3333 Richmond Avenue
Houston, TX 77098
Mark.Looney@Solvay.com**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 8, 2014, in Sacramento, California.



Lynette McPherson, Paralegal
Institute for Administrative Justice
McGeorge School of Law