SUPPLY & DELIVERY OF
CHLORINE GAS CYLINDERS
AND
GRANULATED CALCIUM HYPOCHLORITE

Invitation for Bids

Bid Documents and Specifications

January 2012

City of Prescott
Public Works Department
433 N. Virginia St.
Prescott, AZ 86301

Supply & Deliver of
Chlorine Gas 2000 lb Cylinders
Granulated Calcium Hypochlorite 100 lb Containers

The City of Prescott is soliciting bids for the purchase of Chlorine Gas 2000 lb Cylinders and Granulated Calcium Hypochlorite 100 lb Containers. Sealed bids shall be opened on Thursday, February 9, 2012 at the time and place indicated in Section 2.2.

Table of Contents

Notice Inviting Bids 4
1.0 Solicitation Specifications/Scope of Work 5
2.0 Solicitation Process Requirements 5
3.0 General Contract Terms and Conditions 7
4.0 Standard Bid Information 11
5.0 Instructions for Submittal Forms 11
CONTRACT 13
Form A – Solicitation Response Cover Sheet 18
Form B – Price Sheet 19
Form C – Bid Certification 20
Form D – Non-Collusion Certificate 21
Form E – Bidder Qualifications, Representations and Warranties 22
Form F - Subcontractors List Bid Form 23

Notice Inviting Bids

SUPPLY & DELIVERY OF CHLORINE GAS CYLINDERS AND GRANULATED CALCIUM HYPOCHLORITE

Sealed bids will be received at the office of the Public Works Director, City of Prescott, 433 N. Virginia Street, Prescott, AZ, 86301, until 2:00 P.M., Thursday, February 9, 2012, for the purchase of Chlorine Gas and Calcium Hypochlorite for the Wastewater Treatment Facility. Any bid received after 2:00 pm on the above stated date and time will be returned unopened. The City of Prescott reserves the right to accept or reject any or all bids, and/or some or all of the alternates bid, and waive any informality deemed in the best interest of the City and to reject the bids of any persons who have been delinquent or unfaithful to any contract with the City of Prescott. The bid documents are available at the office of the Public Works Director, City of Prescott, 433 N. Virginia Street, Prescott, AZ, 86301, (928) 771-1130. The outside of the bid envelope shall be marked: "Chlorine Gas and Calcium Hypochlorite" and shall indicate the Company name and address of the bidder, the closing date and time, and shall be addressed to the Public Works Director, City of Prescott, 433 N. Virginia Street, Prescott, AZ, 86301.

_____

Erika Laster, Contract Specialist
PUBLISHED: Courier TC January 22 & 29, 2012

1.0 Solicitation Specifications/Scope of Work

1.1 The work is to supply and deliver approximately 4,000 lbs. of chlorine gas per month in one ton cylinders and/or one hundred fifty pound cylinders and approximately 400 lbs. of calcium hypochlorite in one hundred pound containers to the City of Prescott Wastewater Treatment Facilities.

1.2 The Sundog WWTP located at 1500 Sundog Ranch Road in Prescott and the Airport WRF located at 2800 Melville Road in Prescott each maintain an inventory of two (2) one ton cylinders, (one in use and one in reserve). Calcium hypochlorite inventory is maintained with a minimum of 400 lbs. to a maximum 1,200 lbs. therefore, monthly deliveries will be required.

1.3 The empty cylinders will be exchanged for full cylinders at the time of delivery. The supplier shall be the owner of the cylinders and will be responsible for providing safe, good quality cylinders. City personnel will be responsible for operating a monorail crane at each facility to unload the cylinders under the direction of the delivery driver on the truck.

1.4 This contract shall be for a term of three (3) years. It shall be in effect as of the date of Notice to Proceed by the Utilities Manager and shall be concluded as of the end of the contract period, subject to options for extension.

1.5 Supplier shall commence operations on the date specified in the Notice to Proceed.

1.6 An annual price adjustment may be requested by either party and adjusted prospectively at the anniversary date of the contract each year in proportion to the change in the last published Consumer Price Index (CPI), compared with the CPI last published one year prior with a maximum yearly adjustment (either upward or downward) of six percent (6%).

2.0 Solicitation Process Requirements

2.1. **Communications with the City**: All communications regarding this solicitation must be directed in writing to Wastewater Superintendent Scott Gregorio, City of Prescott, Prescott, AZ, 86301, before 2:00 pm on Thursday, February 2, 2012. Unless authorized by the Public Works Director, no other City official or employee is empowered to speak for the City with respect to this solicitation. Bidders are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Bidders are cautioned against contacting any City official or employee other than the Contact for this solicitation. Failure to observe this requirement may be grounds for rejection of Bidder's bid. The City's contact for this solicitation is:

Scott Gregorio, Wastewater Superintendent
City of Prescott
Utilities Division
Phone: 928-777-1628
E-mail:scott.gregorio@prescott-az.gov

2.2. **Schedule**

2.2.1. **Solicitation Advertisement**
Sunday, January 22 & 29, 2012

2.2.2. **Deadline for Questions and Requests for Addenda**
Thursday, February 2, 2012 COB

2.2.3. **Deadline for Issuance of Addenda via fax or e-mail**
Friday, February 3, 2012. COB

2.2.4. **Bids Due**
Thursday, February 9, 2012, at 2:00 pm
Public Works
433 N. Virginia St.
Prescott, AZ 86301

2.2.5. **Bid Opening**
Thursday, February 9, 2012, at 2:00 p.m.
Public Works
433 N. Virginia St.
Prescott, AZ 86301

2.3. **Questions and Requests for Addenda**

Bidders who have questions about or suggestions for changes to this solicitation may direct them to the City's Contact by email or phone. Questions and requests for addenda must be received by the City's Contact no later than the date and time listed in Section 2.2. Questions received after this time will not be considered or answered. Failure by a Bidder to request clarification of any inadequacy, omission or conflict shall not relieve the Bidder of the responsibility of being in compliance with the solicitation.

2.4. **City Answers and Addenda**

Changes to this solicitation will be made only by formal written addenda issued by the City's Contact. Any such addenda and City answers to questions will be issued no later than the date and time listed in Section 2.2. Addenda and City answers will be emailed or faxed to all Bidders who requested bid documents. Changes to this solicitation may be made by the City if, in the sole judgment of the City, the changes will not compromise the City's objectives in this acquisition. All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement.

2.5. **Proprietary Material**

A Bidder shall clearly mark any proprietary information contained in its bid with the words "proprietary information." Bidder shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a bid as proprietary may result in rejection of the bid. Bidders should be aware that the City is required by law to make its records available for public inspection upon award of project. The Bidder, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose these materials.

2.6. **Multiple Bids**

A Bidder may submit multiple bids for any solicitation however, each bid must be submitted separately (in its own complete package) from the others.

2.7. **Delivery of Bids**

Sealed bids must be received at the Public Works Department no later than the date and time listed in Section 2.2. The bids will be opened and read publicly in the Conference Room at that time.

Bidder shall enclose bid in a sealed envelope. The outside of the bid envelope shall be marked: "Chlorine Gas and Calcium Hypochlorite" and shall indicate the company name and address of the bidder, the closing date and time, and shall be addressed to the Public Works Director, City of Prescott, 433 N. Virginia St, Prescott, AZ 86301. The City shall not consider late bids, telegraphic (fax) or telephone bids. Bidder is solely responsible for ensuring that bids are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of bids. Bids received after the deadline will be returned unopened.

2.8. **Cost of Bids**

The City shall be not be liable for any costs incurred by Bidder in the preparation and submittal of a bid(s) in response to the solicitation or in the participation of any part of the acquisition process.

2.9. **Errors in Bids**

Bidder is responsible for all errors or omission in their bids, and any such errors or omission will not serve to diminish their obligations to the City.

2.10. **Withdrawal of Bids**

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Section 2.2. No bid may be withdrawn for a period of 120 calendar days after the bid due date and time.

2.11. **Changes in Bids**

Prior to the bid due date and time listed in Section 2.2, a Bidder may make changes to its bid provided the change is initialed and dated by the Bidder. Corrections and/or modifications received after the closing time specified will not be accepted.

2.12. **Rejection of Bids**

The City reserves the right to reject any and all bids and to waive any immaterial defects and irregularities in bids.

2.13. **Disposition of Bids**
All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.14. **Incorporation of Solicitation and Response in Agreement**
This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful bid shall be binding and shall become obligations of the agreement.

2.15. **Protests**
Any protest of a notice that a bid is non-responsive must be filed by 5:00 p.m. on the third business day after such notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and is filed with the Public Works Director, City of Prescott, 433 N Virginia Street, Prescott, AZ, 86301, FAX 928-771-5929. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the Apparent Successful Bidder(s). The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other bidder.

2.16. **Bid Submittal**
Bid must be sealed and the envelope must clearly indicate the information as described in Section 2.7. Bidder must fully complete and submit the following documents:

2.18.1. Bid Form A - Bidder Response Cover Sheet
2.18.2. Bid Form B - Price Sheet
2.18.3. Bid Form C - Bid Certification
2.18.4. Bid Form D - Non-Collusion Certificate
2.18.5. Bid Form E – Bidder Qualifications, Representations and Warranties
2.18.6. Bid Form F – Subcontractors list

3.0 General Contract Terms and Conditions

3.1. **Entire Agreement:** This contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's bid documents, all addenda, and the Contractor's response are explicitly included in this contract. Where there is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Contract amendment; the Contract; the most recently issued addendum to the City's bid documents; and the Contractor's response.

3.2. **Term**: The term of this Contract shall commence on the date the City's Contact signs the same and shall expire as stated within the Contract.

3.3. **Freight**: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

3.4. **Title**: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

3.5. **Overages/Underages:** Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

3.6. **Schedule**: Unless the City's Contact requests a change in schedule, the Contractor shall deliver the items or render the services as stated in the Contract. At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Contact of such difficulty and the length of the anticipated delay.

3.7. **Payment**: Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract.

No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefore.

3.8. **Unlawful Overcharges**: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.

3.9. **Price Warranty:** The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.

3.10. **Warranties**: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

3.11. **Date Warranty**: Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

3.12. **Equal Employment Opportunity:** During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

3.13. **Diversity:** The City encourages the Contractor to employ a workforce reflective of the region's diversity.

3.14. **Discrimination in Contracting**: The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

3.15. **Record-Keeping:** The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

3.16. **Publicity**: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.

3.17. **Proprietary and Confidential Information:** The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believe that this legal obligation would not require the disclosure of proprietary descriptive information that

contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.

3.18. **Indemnification**: The CONTRACTOR hereby agrees to defend, indemnify, and hold harmless the City, its officers, departments and divisions, employees and agents, from and against any and all claims, damages, losses, expenses, liabilities, attorney fees, court costs or other alternative dispute resolution costs arising out of or resulting from the performance of work under this Agreement or any other claim resulting from Contractor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Contractor further releases and discharges the City, officers, departments and divisions, agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Contractor has or may have against the City, its agents or employees, arising out of or in any way connected with the Contractor's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

3.19. **Insurance:** Contractor agrees, at its sole expense to maintain on a primary basis during the life of this Contract, or the performance of Work hereunder, insurance coverage, limits and endorsements, unless otherwise noted herein.

The Contractor agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

3.19.1. **Commercial General Liability** insurance as specified by Insurance Services Office (occurrence form, CG 0001, or equivalent).

Commercial General Liability – Occurrence Form

1. Commercial General Liability – Contractor agrees to maintain Commercial General Liability at a limit of liability no less than $1,000,000 Each Occurrence $2,000,000 Annual Aggregate. Contractor agrees it's coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The Contractor agrees any Self-Insured Retention or deductible shall not exceed $25,000.

3.19.2. Automobile Liability insurance as specified by Insurance Service Office, form number CA 0001 (Ed.1/87), code 1 (any auto), with an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Contractor agrees to maintain Business Automobile Liability at a limit of liability no less than $1,000,000 per accident for bodily injury and property damage, $5,000,000 if "Pollutants," as defined in CA 0001 exclusion 11, are to be transported.

3.19.3. Workers Compensations and Employers'' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

3.19.4. The insurance as provided under items 3.19.1 above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an **Additional Insured** per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.

3.20. **Compliance with Law:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

3.21. **Licenses and Similar Authorizations:** The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

3.22. **Taxes:** The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

3.23. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

3.24. **Adjustments**: The City's Purchasing Agent at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

3.25. **Amendments**: Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Purchasing Agent shall be the City's authorized agent.

3.26. **Assignment**: Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.

3.27. **Binding Effect**: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

3.28. **Waiver:** The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

3.29. **Applicable Law:** This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.

3.30. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

3.31. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

3.32. **Gratuities:** The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.

3.33. **Termination:**

3.33.1. **For Cause:** Either party may terminate this Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

3.33.2. **For Reasons Beyond Reasonable Control of a Party**: Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

3.33.3. **For Public Convenience:** The City may terminate this Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.

3.33.4. **Notice:** Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.

3.34. **Major Emergencies or Disasters:** The following provision shall be in effect only during major emergencies or disasters. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to

meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall provide the City with appropriate documentation of the additional costs. The Contractor acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above.

4.0 Standard Bid Information

4.1. **Default by Bidder**: In case of default by the bidder, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the bidder the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

4.2. **Cash Discounts**: In connection with any cash discount specified on this bid, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

4.3. **Warranty**: Manufacturer's warranties shall remain in effect. All equipment purchased shall be purchased from one (1) vendor. That one vendor shall be fully responsible for all warranty performance relating to any part of component of the purchased equipment. The vendor's responsibility shall include all warranty involving sub-contractors. The vendor shall supply a warranty on all parts and workmanship from the initial delivery date. The vendor shall guarantee further that the equipment to be supplied complies with all applicable regulations.

4.4. **Litigation**: The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. Neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract or another other state or federal statute.

4.5. **Cooperative Use of Contract**: This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

4.6. **Brand Names**: Brand names are only used for reference to indicate character or quality desired unless otherwise indicated.

5.0 Instructions for Submittal Forms

5.1. Form A - Solicitation Response Cover Sheet: Bidder shall complete, sign, and submit Form A as the first page of the bid package

5.2. Form B - Price Sheet: Bidder shall certify that its bid will be valid for 120 days after submission. Bidder may be asked to extend this certification. Bidder shall complete, sign, and submit Form B.

5.3. Form C - Bid Certification: Bidder shall complete, sign, and submit Form C

5.4. Form D - Non-Collusion Certificate: Bidder shall complete, sign, and submit Form D.

5.5. Form E - Bidder Qualifications, Representations and Warranties

5.5.1. Bidder shall complete and submit Solicitation Form E. Bidder shall provide additional information as required.

5.5.2. The City reserves the right to inspect any of Bidder's facilities and equipment after the bid due date and time listed in Section 2.2. The Bidder shall make such facilities and equipment available for the City's inspection within eight business hours of the City's request. The City may require additional information concerning a Bidder's facilities, equipment, personnel, and procedures. The Bidder shall supply such information within the time noted in the City's request.

5.5.3. The City shall consider awarding agreements only to responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement.

5.5.4. In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Bidder in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Bidder. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Bidder with the City or with other agencies, references provided by the Bidder to the City, information provided by the Bidder as part of the solicitation responses, and information not specifically provided by the Bidder but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the City. Such evaluation by the City shall be final and not subject to appeal. Furthermore, no agreement will be awarded to a Bidder if any owner of such Bidder has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Bidder has unsatisfied tax or judgment liens.

5.5.5. Bidder shall provide two (2) references and certify there are no unsatisfied tax liens or judgments on record. Bidder shall complete, sign and submit Form E.

5.6 Form F – Subcontractors form, list all subcontractors to be used in performing the requirements of the agreement resulting from this solicitation.

CONTRACT

Supply & Delivery of Chlorine Gas Cylinders & Granulated Calcium Hypochlorite

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between CONTRACTOR NAME of CITY, STATE, hereinafter known as the CONTRACTOR, and the CITY OF PRESCOTT, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter known as the CITY.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

ARTICLE I - SCOPE OF WORK
The CONTRACTOR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required for the delivery to the City, as requested by the Operations Manager or his designee, in a good and workmanlike and substantial manner, and to the satisfaction of the CITY through its agents and under the direction and supervision of the Operations Manager (hereinafter referred to as the "Project Director") or his properly authorized agents.

ARTICLE II - CONTRACT DOCUMENTS
Exhibit "A" (the City's RFB) and Exhibit "B" (the Contractor's Bid) are by this reference made a part of this Contract to the same extent as if set forth herein in full.

ARTICLE III - CONTRACT TERM
This Contract shall be for a period of thirty-six (36) months. CONTRACTOR shall have on hand sufficient quantities of material to meet the needs of the City; provided, however, that there are no guarantees by the City as to the minimum or maximum amount of material which may be purchased by the City during the term of this Agreement.

ARTICLE IV - COMPENSATION
A. For and in consideration of the faithful performance of the work herein embraced as set forth herein, the CITY agrees to pay the said CONTRACTOR as set forth in the attached Exhibit "B".

B. Payment shall be made by the City within thirty (30) days after the City receiving an itemized billing from the CONTRACTOR.

ARTICLE V - CONFLICT OF INTEREST
Pursuant to A.R.S. Section 38-511, the CITY may cancel this contract without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the CITY is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. In the foregoing event, the CITY further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the CITY from any other party to the Contract, arising as a result of the Contract.

ARTICLE VI - CANCELLATION
Notwithstanding the foregoing, this Agreement may be terminated by the City upon ten (10) days written notice, with or without cause. It may also be terminated by the City in the event that funding for the City's payments hereunder is dependent on grants or other commitments of funds from another governmental agency and those funds are terminated or substantially reduced for any reason. If this Agreement is terminated, the Contractor shall be paid for services performed to the date of Contractor's receipt of such termination notice.

ARTICLE VII - CHOICE OF LAW
This agreement shall be governed by and construed and interpreted in accordance with the laws of Arizona without reference to principles of conflict of laws.

ARTICLE VIII - VENUE AND JURISDICTION
The Parties agree that the venue of any legal action to enforce this contract or arising out of the contract shall be Yavapai County, Arizona, and that the U.S. District Courts or State Courts of Arizona shall have jurisdiction of any such matter, according to applicable law, and the parties waive any other jurisdiction.

ARTICLE IX - INDEPENDENT CONTRACTOR STATUS
It is expressly agreed and understood by and between the parties that the CONTRACTOR is being retained by the CITY as an independent contractor, and as such the CONTRACTOR shall not become a CITY employee, and is not entitled to payment or compensation from the CITY or to any fringe benefits to which other CITY employees are entitled other than that compensation as set forth in the Compensation Section of the Contract. As an independent contractor, the CONTRACTOR further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Contract. As an independent contractor, the CONTRACTOR further agrees that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the CITY, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE X - NONDISCRIMINATION
The CONTRACTOR, with regard to the work performed by it after award and during its performance of the Contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of contractors, subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4 as amended.

ARTICLE XI - CONTRACTOR IMMIGRATION WARRANTY
The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. §34-301, “Employment of Aliens on Public Works Prohibited,” and A.R.S. §34-302, as amended, “Residence Requirements for Employees.”

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors (“Subcontractors”) will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter “Contractor Immigration Warranty).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor’s employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of its Subcontractors to ensure compliance with the Contractor’s Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214 Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

ARTICLE XII - COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability to it of the American with disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the Provisions of A.R.S. 41-4401, Consultant hereby warrants to the city that the Consultant and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. 23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this contract and shall subject the Contractor to penalties up to and including termination of this contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Consultant or Subcontractors employee who works on this Contract to ensure that the Consultant or Subcontractor is complying with eh Contractor Immigration Warranty. Consultant agrees to assist the city in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Consultant and any subcontractors to ensure compliance with Contractor’s Immigration Warranty. Consultant agrees to assist the City in regard to any random verification performed.

Neither the Consultant nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Consultant or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. 23-214, Subsection A.

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

ARTICLE XIII - DOCUMENT CONTROL

In the event of a discrepancy between this Agreement and Exhibits "A" and "B", this Agreement shall control over Exhibits "A" and "B"; and in the event of a discrepancy between Exhibits "A" and "B", Exhibit "A" shall control over Exhibit "B".

ARTICLE XIV - INDEMNIFICATION

The Contractor hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Contractor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Contractor further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Contractor has or may have against the City, its agents or employees, arising out of or in any way connected with the Contractor's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents

ARTICLE XV - MINIMUM INSURANCE REQUIREMENTS

Contractor agrees, at its sole expense to maintain on a primary basis during the life of this Contract, or the performance of Work hereunder, insurance coverage, limits and endorsements, unless otherwise noted herein.

The Contractor agrees the insurance requirements herein as well as City’s review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

Commercial General Liability insurance as specified by Insurance Services Office (occurrence form, CG 0001, or equivalent).
Commercial General Liability – Occurrence Form

1. Commercial General Liability – Contractor agrees to maintain Commercial General Liability at a limit of liability no less than $1,000,000 Each Occurrence $2,000,000 Annual Aggregate. Contractor agrees it's coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The Contractor agrees any Self-Insured Retention or deductible shall not exceed $25,000.

Automobile Liability insurance as specified by Insurance Service Office, form number CA 0001 (Ed.1/87), code 1 (any auto), with an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.
Contractor agrees to maintain Business Automobile Liability at a limit of liability no less than $1,000,000 per accident for bodily injury and property damage, $5,000,000 if "Pollutants," as defined in CA 0001 exclusion 11, are to be transported.

Workers Compensations and Employers'' Liability

Workers' Compensation	Statutory	
Employers' Liability		
	Each Accident	$1,000,000
	Disease – Each Employee	$1,000,000
	Disease – Policy Limit	$1,000,000

The insurance as provided under items 3.19.1 above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an **Additional Insured** per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.

ARTICLE XVI - MISCELLANEOUS
(A) The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

(B) The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

ARTICLE XVII - AMBIGUITY
This Contract is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Contract is not to be construed against either party.

DATED THIS _____ DAY OF _____, 2012.

CITY OF PRESCOTT, a municipal corporation

_____
MARLIN A. KUYKENDALL
Mayor

CONTRACTOR

_____
NAME

_____
TITLE

ATTEST:

APPROVED AS TO FORM:

_____	_____
ELIZABETH A. BURKE	GARY D. KIDD
City Clerk	City Attorney

Form A – Solicitation Response Cover Sheet

City of Prescott
Solicitation Response

Description: **Chlorine Gas Cylinders & Granulated Calcium Hypochlorite**

Please note all that apply:

☐ Total Price per 2000 lb chlorine gas cylinder…….. $_____

☐ Total Price per 100 lb granulated calcium hypochlorite container..……..…… $_____

☐ Total Price per 150 lb chlorine gas cylinder…..…… $_____

☐ Addenda Number(s) Received (if any) ……..…….. _____

☐ Original Forms A through F

Business Name: _____

Business Address: _____

_____

Business Phone: (_____) _____

Business Fax (_____) _____

Business Contact: _____

Business Email _____

Supplier Comments: _____

_____

_____

_____

_____

Form B – Price Sheet

Item	Quantity	
Chlorine Gas Cylinder	2,000 lbs. (1 cylinder)	$_____
	150lb cylinder	$_____
	Applicable Tax _____%	$_____
	Total	$_____
Please indicate shipping costs FOB Prescott, AZ per unit		$_____

Delivery After Receiving Order (ARO) _____ Days (Not to exceed 14 days)

Item	Quantity	
Calcium Hypochlorite	100 lbs. (1 container)	$_____
	Applicable Tax _____%	$_____
	Total	$_____
Please indicate shipping costs FOB Prescott, AZ per unit		$_____

Delivery After Receiving Order (ARO) _____ Days (Not to exceed 14 days)

Payment Terms: Payment shall be made by the City within thirty (30) days after the City receiving an itemized billing from the Contractor.

Dated this _____ day of _____ 2012.

_____
Signature

_____
Title

Form C – Bid Certification

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

C.1 That he/she has read The City of Prescott's solicitation documents, its appendices and attachments, and the following Addenda, and to the best of his/her knowledge, has complied with the mandatory requirements stated therein.

Addendum	Issue Date
_____	_____
_____	_____

C.2 That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

C.3 That the Bidder's bid consists of the following:

1. Form A – Solicitation response package cover sheet
2. Form B – Price Sheet
3. Form C – Bid Certification
4. Form D – Non-Collusion Certificate
5. Form E – Bidder Qualifications, Representations and Warranties; Bidder to provide attachment: Attachment – Subcontractor's List
6. Form F – Subcontractor's list bid form

C.4 That the Bidder's bid is valid for 120 days.

Dated this _____ day of _____ 2012.

_____ _____

Signature **Title**

Form D – Non-Collusion Certificate

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a bid to The City of Prescott for consideration in the award of this solicitation.

Dated this _____ day of _____ 2012.

_____ _____

Signature **Title**

Form E – Bidder Qualifications, Representations and Warranties

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

E1 **Taxes and Liens** - Bidder has no unsatisfied tax or judgment lien on record.

E2 **Subcontractors** – Bidder submits Bid Form F, a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm's name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted.

E3 **References** – The City will enter into an agreement only with a Bidder(s) having a reputation of satisfactory performance. The Bidder's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Bidder provides information for two clients, other than the City of Prescott, that presently contract with Bidder for similar goods or services:

Reference #1
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Reference #2
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Note: The bid evaluators may contact the customer references, as well as any other customers or customer employees including The City of Prescott. A Bidder with unsatisfactory references may have its bid rejected.

E4 **Bidder's Examination** - Bidder has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Bidder fully understands the character of the work and services, the manner in which payment is to be made, the terms and conditions of the contract and the solicitation. Bidder acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that is will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Bidder hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as bid.

Dated this _____ day of _____ 2012.

_____ _____
Signature Title

City of Prescott Public Works Department

Form F - Subcontractors List Bid Form

Supply & Delivery of Chlorine Gas Cylinders & Granulated Calcium Hypochlorite

	Company Name and License Number	Mailing Address	Phone Number
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
	Total Sub-Contract Amount		