NOTICE OF AWARD OF CONTRACT

TO: UNIVAR USA, INC.  
201 SUBURBAN DRIVE  
SUFFOLK, VA 23434

DATE ISSUED: APRIL 19, 2012

CONTRACT NO: 720-12

CONTRACT TITLE: CHEMICAL - CAUSTIC SODA

PRIOR REFERENCE NO: 22-11

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on JANUARY 31, 2013.

This is the FIRST year of a possible THREE year contract.

The contract documents consist of the Notice of Award, terms and conditions, and specifications of FAIRFAX COUNTY WATER AUTHORITY IFB NO. 12-07 and the bid of the Contractor.

CONTRACT PRICING:

REFER TO FAIRFAX COUNTY WATER AUTHORITY PRICING SHEET FOR 2012 (ATTACHED)

1) CAUSTIC SODA 25%: $586.67 / DST

2) PRICE ADJUSTMENT FOR EXTENSION OPTIONS BASED ON PRODUCER PRICE INDEX (PPI) NOT SEASONALLY ADJUSTED FOR CHEMICALS AND ALLIED PRODUCTS

ATTACHMENTS

PRICING SHEET
FAIRFAX WATER NOTICE OF AWARD AND IFB 12-07

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: KEVIN KILMARTIN  
VENDOR TEL. NO: 800-944-9457

VENDOR EMAIL: Kevin.kilmartin@univarusa.com  
VENDOR FAX: 804-748-2904

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: DAVID CARTER  
COUNTY TEL NO: 703-228-6887

VENDOR CONTACT: KEVIN KILMARTIN  
VENDOR TEL. NO: 800-944-9457

VENDOR EMAIL: Kevin.kilmartin@univarusa.com  
VENDOR FAX: 804-748-2904

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: DAVID CARTER  
COUNTY TEL NO: 703-228-6887

CONTRACT AUTHORIZATION

DELPHINE LAMBERT  
Buyer  
04/19/12

DISTRIBUTION

VENDOR: 1

BID FOLDER: 2
PUBLIC NOTICE OF CONTRACT AWARD

DATE: April 16, 2012

IFB NUMBER: 12-07

TITLE: CAUSTIC SODA & COPPER SULFATE PENTAHYDRATE (LIQUID)

AWARDED TO AMOUNT
1. Caustic Soda, 25% $ 58,667.00
   Univar USA, Inc.
2. Caustic Soda, 50% $925,460.00
   Univar USA, Inc.
3. Copper Sulfate Pentahydrate $ 36,754.00
   (Liquid) SCI-62 (Totes)
   Chem-A-Co., Inc.

POST THROUGH: May 1, 2012

PROCUREMENT CONTACT: Melanie Tillotson, CPPB
                      Buyer II
                      Telephone: (703) 289-6264
                      Facsimile: (703) 289-6262
                      E-mail: mtillotson@fairfaxwater.org
<table>
<thead>
<tr>
<th>Item</th>
<th>Delivery ARO</th>
<th>Terms</th>
<th>Unit Price</th>
<th>Total Price</th>
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<td>1.</td>
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Colonial Chemical Solutions

Kuemhe Chemical Co. Inc.

Suffolk Solutions Inc.

Notes: This is an excerpt from a document related to the contract year from April 16, 2012 to January 31, 2013. It includes information on terms, delivery ARO, and unit and total prices for different chemical solutions.
INVITATION FOR BIDS

<table>
<thead>
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<th>12-07</th>
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<tr>
<td>Requirement:</td>
<td>Caustic Soda &amp; Copper Sulfate Pentahydrate (Liquid)</td>
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<tr>
<td>Date Issued:</td>
<td>March 5, 2012</td>
</tr>
<tr>
<td>Deadline for Questions:</td>
<td>2:00 p.m., Friday, March 9, 2012</td>
</tr>
<tr>
<td>Bid Due Date:</td>
<td>2:00 p.m., Monday, March 19, 2012</td>
</tr>
<tr>
<td>IFB Delivery Location and Place of Bid Opening:</td>
<td>Procurement Department Fairfax Water 8570 Executive Park Avenue Fairfax, Virginia 22031</td>
</tr>
<tr>
<td>Procurement Contact:</td>
<td>Melanie Tillotson, CPPB Buyer II Telephone: (703) 289-6264 Facsimile: (703) 289-6262 E-Mail: <a href="mailto:procm@fairfaxwater.org">procm@fairfaxwater.org</a></td>
</tr>
</tbody>
</table>
IFB #12-07 Chemicals

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IFB #12-07 Chemicals
SECTION 1

1. SUMMARY INFORMATION AND SUBMISSION OF BIDS

1.1 Introduction

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by Fairfax County on September 26, 1957. Fairfax Water is managed by a ten member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

1.2 Objective

The objective of this Invitation to Bid (IFB) is to award annual requirements contracts (i.e., Blanket Purchase Orders) for the Chemicals specified in Appendix A. Contracts awarded as a result of this solicitation will be renewable for up to two additional one-year periods. This solicitation is a collaborative effort conducted on behalf of itself, Fairfax County, and Fairfax City (i.e., the “Members”).

1.3 Questions and Communications

All contact between prospective Bidders and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received on or before the deadline for submitting questions. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

FW shall respond to all timely questions and comments that are properly submitted and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Bidders at the addresses furnished to FW for such purpose. Oral communications between FW and any Bidder regarding the interpretation or meaning of any aspect of this IFB are not authorized and may not be relied upon for any purpose.

1.4 Bid Opening and Instructions for Submitting Bids

The deadline for submitting bids and the location for opening bids is shown on the cover sheet. Bids will be opened immediately following the deadline for submitting bids. Bids will be opened in accordance with the provisions of the Virginia Public Procurement Act.

All bids must be submitted in a sealed package(s), no other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Bid packages must be identified on the outside as follows:

From: ____________________________

Name of Bidder

Street SAMPLE

Due Date

IFB No.

1
1.5 Bid Submission Form

Attachment 2 is the bid submission form. It must be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell, to the terms, conditions and specifications contained herein as well as any addenda to this solicitation.

1.6 Proprietary Information

A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 et seq., the “Virginia FOIA”).

B. A Bidder, Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to Fairfax Water prior to or at the time of submission of its proposal or bid a separate, written notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Bidder, Offeror, or Contractor wishes to invoke the protections of this section; (ii) an identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

1.7 Addenda to the IFB

A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids. If it becomes necessary to revise any part of this IFB, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Bidders who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.

B. It shall be the responsibility of each Bidder to contact the Purchasing Contact identified on the cover page to this solicitation prior to submission of a bid hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any Bidder to receive any Addenda shall neither constitute grounds for withdrawal of its bid, nor relieve such Bidder from any responsibility for incorporating the provisions of any Addenda in its proposal.

1.8 Receipt of Addenda

Acknowledge receipt of each addendum by signing it and submitting it by the bid deadline.
1.9 Late Bids

Bids or unsolicited amendments to bids arriving after the bid submission deadline will not be considered.

1.10 Contract Award

FW reserves the unilateral right to award each chemical to the lowest responsible and responsive bidder, to make an aggregate award for a group of chemicals to the overall best Bidder for the designated group of chemicals, or any combination of chemicals and groups of chemicals in whatever manner best serve the needs of the Members.

1.11 Public Notice of Award

Public notice of award will be posted on the official FW web site. (http://www.fcwa.org/procurement/index.htm).

1.12 Definitions

A. Acceptance – means the point in time when FW Project Manager confirms in writing that the contract has been completed as contracted for and the Contractor is released from any further obligations. All remaining payments due the Contractor shall be approved for payment at this time.

B. Award – means the decision by FW to execute a contract after all necessary approvals have been obtained.

C. Bid – means the response by a Bidder to an Invitation for Bids issued by a procurement agency to obtain goods or labor.

D. Bidder – means any person submitting a response to an IFB.

E. Contract – means the formal acceptance of a bid by FW.

F. Contractor – means the successful Bidder receiving a contract as a result of this solicitation.

G. Default – means that the Contractor has failed to fulfill its contractual obligations properly and on time.

H. FW – means Fairfax Water. The terms Owner and FW have the same meaning.

I. Notice – The term “Notice” or the requirement to notify means a written communication delivered in person, by facsimile, or by certified or registered mail to the individual or firm, or to an officer of the Contractor for whom it is intended.

J. Owner – Fairfax County Water Authority.

K. Project – The term “Project” means the same as the phrase “the Work.”

L. Project Manager – means FW employee assigned to this project for purposes of oversight of the project. The Project Manager is responsible for all aspects of the contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work.

M. Specifications – The term “Specifications” refers to the written technical description of materials, equipment, construction systems, standards, and workmanship to be applied to the Work and certain administrative details applicable thereto.

N. Work – The word “Work” shall include all material, labor equipment and tools, appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and any such additional items not specifically indicated or described which can be reasonably
1.13 Term of Contract and Contract Renewal

A. Term: The Contracts awarded as a result of this solicitation will be effective beginning on the date of issuance of a NOA through January 31, 2013, with the option to extend the contract for two additional one-year periods (February 1, 2013-January 31, 2014 and February 1, 2014-January 31, 2015).

B. Renewal: Renewal will be at the then current rates, terms and conditions (see section 3.2 “Annual Economic Price Adjustment”). Issuance of a purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.

END SECTION 1
2. BID SPECIFICATIONS AND RELATED REQUIREMENTS

2.1 Chemical Specifications

The Calendar Year (CY) 2012 (Date from NOA through January 31, 2013) chemical specifications are contained in Appendix A: Chemical Requirements.

2.2 Spot Testing of Chemicals at Time of Delivery

The Members reserve the right to have chemical shipments tested by an independent laboratory. Failure of a shipment to comply with the bid specification will be sufficient reason for rejection of the shipment. Should a shipment be rejected, it will be returned to the Contractor, who shall pay all handling and shipping charges in both directions. Upon notice of rejection of a shipment, the Contractor shall furnish another shipment immediately, which shall comply in all respects with the prescribed analysis. In the event the Contractor is unable to promptly furnish the chemical of acceptable quality, the jurisdiction will obtain the chemical elsewhere. Any additional cost incurred by the jurisdiction will be charged to the Contractor either as a credit against an outstanding invoice or as an invoice for immediate reimbursement.

2.3 Shipping

Contractor shall ship chemicals in accordance with standard commercial practices and all Federal, State and local laws and regulations. Contractor shall be solely responsible for the shipment until delivery at the designated facility.

2.4 Weight at Time of Delivery

The Members reserve the right to weigh the shipments on their scales before and after delivery. In order to reduce the time and money required to resolve and adjust for minor weight differences, the net weight shown on the Contractor’s weight ticket will be accepted unless it exceeds the net weight shown on the Members’ ticket by more than 200 lbs. If the net weight shown on the Contractor’s ticket exceeds the net weight on the Members ticket by more than 200 lbs., the net weight shown on the Members ticket will be used.

2.5 Virginia Department of Health Requirements

The Virginia Department of Health (VDH) requires that all containers are labeled in accordance with all applicable federal regulations. The Contractor is responsible for ensuring that state and federal regulatory compliance is maintained for any chemical and related container furnished under the contract. Failure to maintain compliance as specified in this paragraph or elsewhere in this IFB will result in termination of the contract.
2.6 MSDS Reports

Provide the following MSDS related documentation:
1. A copy of the most current MSDS Report for each chemical being bid by your firm must be included with your bid submission.
2. National Sanitation Foundation certification for the quoted chemical, by the manufacturer for drinking water, and
3. Chemical certificate of analysis for all chemicals.

2.7 Estimated Quantities

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year, and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to the actual needs of the Members. Bidders agree that the Participants will only be responsible for the amounts actually ordered.

2.8 Priority Customer

By submitting a bid in response to this solicitation, Bidder understands and acknowledges that the Members provide services that are essential to the health and welfare of the public. Failure of a Contractor to provide chemicals under any Contract issued pursuant to the terms, conditions, and specifications contained in this IFB may jeopardize Members’ ability to provide timely services, which may affect the health and welfare of the public served by FW. In the event of product shortages at any level of the production to delivery chain, Bidder agrees and affirms that Members will be given the earliest possible notice and the highest priority for allocation of the item(s) listed herein. To the extent that the Contractor must prioritize and/or allocate delivery among its customers, the requirements of the Members will be honored before chemicals are provided to a customer with no obligations with regard to the public health and welfare. To the extent that chemicals are insufficient to meet the requirements of all of the clients who are responsible for the health and welfare of the public, the Chemicals will be allocated in a manner deemed to be fair and reasonable to all such clients.

2.9 Warranty

A. By submitting a bid in response to this solicitation, Bidders warrant that chemicals provided as a result of this solicitation:
   1. Conform to the most current NSF 60/61 and/or ANSI/AWWA standards for water and/or wastewater chemicals,
   2. Conform in all respects to the chemical specifications contained herein,
   3. Are suitable for a public drinking water supply and/or waste water treatment,
   4. Are free from adulterants or impurities of any kind, and
   5. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this solicitation.

B. If at any time, any chemical supplied by the vendor fails to conform to the specifications, then the Contractor shall, at no additional cost to the Member (s), promptly replace any such
chemical. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, The Member (s) may undertake to remedy the nonconformity and in such a case the Contractor shall reimburse the Member (s) for any costs thereby incurred.

2.10 References

Each Bidder must submit with its Bid, three references (See Attachment 1 – References). References shall be from customers of similar size and scope of operations as FW, to whom the Bidder has supplied the same services within the past 12 months. References must be able to attest without reservation to the fact that the Bidder provided the contracted goods/services without a significant problem of any kind, and at any time during the contract period.

2.11 Insurance Claims against Bidder.

In addition to the mandatory insurance requirements listed in Subsection 3.25 (Insurance Requirements) and at the request of FW, the apparent low bidder shall submit a list of all insurance claims made against it within the past 12 months. Failure to include this information within ten calendar days of request by FW may result in rejection of your bid.

2.12 Delivery

Each Member will establish its own delivery schedule based upon its own requirements and the Bidder's specified time to deliver after receipt of an order. Failure to honor delivery schedules (including partial deliveries) may result in damages to the participating Member. Members may at their own option and convenience cure late, partial, or missing deliveries in any manner that best resolves the shortage. The Contractor is liable for any and all costs incurred by a Member due to such failures by claiming Liquidated Damages as specified in Section 4 and also recovering any additional losses by deducting the outstanding amount from unpaid invoices, making a claim against a Performance Bond (if one is on file), submitting an invoice to the Contractor, or any other method that best suits the Member.

2.13 Delivery Requirements

A. Homeland Security Advisory System: If the Homeland Security Advisor System places the water waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor’s yard, the Plant is to be advised as to the driver’s name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor’s risk and expense.

B. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of chemicals within the delivery schedule. Failure to deliver within the time specified, or as amended in writing by the contracting Member, or failure to make replacements of rejected chemicals, shall constitute a breach of contract. In the event of such breach, the Member has the option to exercise its declare the Contractor in default and claim damages as provided in the Liquidated Damages section contained in Section three.
IFB #12-07 Chemicals

C. Contractor shall comply with all regulations for tank/truck unloading as established by the US DOT, as well as any State and local requirements for tank/truck unloading.

D. Chemical containers supplied by the Contractor shall be the sole responsibility of the Contractor at all times and in any circumstance. Members will not pay demurrage or other charges unless the Member specifically requests that the Contractor leave the container beyond the delivery date.

E. The control number shall be provided to the Treatment Plant at the same time as the other required delivery information. A broken seal prior to acceptance of the batch by the utility may be cause for refusal of the delivery.

F. All deliveries shall be accompanied by a receiving ticket under this contract that shall be supported by:

- Contractor’s Name,
- Purchase Order and Call Order Number (release number),
- Date of Delivery and Date of Order,
- Materials furnished,
- Quantity, unit price and extension of each item, and total, in accordance with the contract, and
- Name of authorized representative ordering the supplies.

G. The Contractor’s delivery ticket will be signed in duplicate by the Member’s designated representative. One copy will be given to the employee signing for the delivery and the second copy will be retained by the Contractor.

H. If required by a Member, the Contractor will call the plant prior to delivery and shall fax a copy of the driver’s license, and a Chemical Shipping Itinerary sheet, which must include the manifest number and the above referenced information.

I. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to the affected member(s). If delivery is not made on time, the jurisdiction shall have the right to procure the material on the open market. Any additional costs incurred by the Member as a result of the Contractors failure to provide timely delivery will be at the sole risk and expense of the Contractor.

J. The Members reserve the unilateral right to reject any late or partial delivery. Any related costs shall be borne by the Contractor.

K. Members have the right to refuse delivery if chemical packaging is damaged, appears to have been tampered with, or is deemed to be a safety hazard or potential safety hazard.

L. Contractor(s) shall comply with all regulations for tank / truck routing and unloading as established by the US DOT, as well as any State and local requirements for tank / truck unloading.

M. All chemicals shall be delivered F.O.B. delivered. All cost for shipping, handling, insurance and related delivery charges must be included in the unit price for each bid item.

N. Delivery Free period shall be 5 hours for Powdered Activated Carbon and 2 hours for all other chemicals.

O. Hours of delivery will be determined by each jurisdiction.

P. Regardless of the reason, the Contractor shall be solely responsible for spills, delivering chemicals to the wrong storage locations/tanks. Any and all cost associated with remediation, including, but not limited to Hazmat, site cleanup, and tank cleaning etc.
IFB #12-07 Chemicals

Q. Contractors shall provide and maintain any and all special tools required to load or dispense chemicals. If required, contractor shall provide pre-set torque wrenches; and will be solely responsible for damages, leaks, etc. caused by malfunctioning or improperly set tools.

R. Delivery vehicles must be in good working order and compliant with all Federal, State, and local transportation laws and regulations. If Contractor intends to subcontract delivery to a third party carrier, the Contractor must submit the name of the carrier and a complete list of all state and interstate violations for which the subcontractor, its drivers and or its vehicles have been cited within the past 2 years.

2.14 Inspection

The Members reserve the right to inspect and test any chemical at any time during or after delivery. No inspection, test, approval or acceptance of any Commodity shall relieve Contractor from liability for defects or other failure to satisfy the requirements set forth in the Contract Documents.

2.15 Principals Only

The use of Sub-Contractors, agents, etc. is prohibited. Fairfax Water will enter into contracts with bidders whose primary business is the sale of the chemical(s) for which the bidder is submitting a bid.

END SECTION 2
3 STANDARD TERMS AND CONDITIONS

3.1 Authorization to do Business in Virginia

Each bidder that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Virginia Commission. Any bidder that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the bidder is not required to be so authorized.

3.2 Annual Economic Price Adjustment

A. In the case of annually renewable contracts, the Contractors may submit a request for contract price increases once annually for each renewal year. Economic increases shall be limited to the increase specified in the Bureau of Labor Statistics for the 12 month period ending 90 days prior to the end of the then current contract year.

B. For services: Annual rate increases will be based on the Consumer Price Index-U (CPI-U).

C. For commodities: If the CPI-U is not the appropriate index for the item(s) being bid, the bidder may substitute any other single BLS price index – Not Seasonally Adjusted (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Bidder may specify a different index for different bid items based on the conditions identified above. Bidder must specify the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237)).

D. Negative BLS index: If the agreed upon index is a negative number the contractor shall reduce contract rates by the same amount for new contract year.

3.3 Anti-Discrimination

By submitting their bids, Bidders certify to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization’s religious character, or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3.4 Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

3.5 Arrearage

By submitting a Bid in response to this solicitation, the individual or firm submitting the bid shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Bidder further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

3.6 Assignment of Interest

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

3.7 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

3.8 Brand Names

In the case of bids specifying brand names or models:

A. Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Each Bidder is responsible to clearly identify the product being offered (by manufacturer’s name, model, part number, etc.)
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and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. Unless the Bidder clearly indicates that the product offered is an “equal” product, such bid will be considered to offer the brand name product specified in this solicitation.

B. For purposes of this solicitation and any contract that may result herefrom, FW’s designation of any one or more manufacturers and/or suppliers as “preapproved” or “acceptable” shall signify only that such manufacturers and/or suppliers previously have submitted work samples or the like to FW which satisfied FW’s requirements. FW’s designation of any one or more manufacturers and/or suppliers as “preapproved” or “acceptable” shall in no event be deemed or construed to be a representation or warranty on the part of FW of any such manufacturer’s or supplier’s capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this solicitation in accordance with the terms and conditions hereof. Each Bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

3.9 Cancellation

FW may cancel this solicitation at any time and for any reason prior to contract award.

3.10 Compliance with Laws, Regulations and Codes

The Offeror hereby represents and warrants that:

A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

3.11 Conflicting Terms and Conditions

By submitting a bid in response to this solicitation, the Bidder agrees that the Terms, Conditions and Specifications contained herein shall control any contract arising from an award of this solicitation. Any proposed terms and conditions, any/or contract form that the Bidder proposes to use, shall be submitted as part of the Bidder’s offer to sell. Terms and conditions submitted by a Bidder after the deadline for submitting offers to sell will be rejected and the Bidder will be held to the terms and conditions contained herein. Contract award is contingent on the Bidder and FW agreeing on mutually acceptable terms and conditions. Failure to do so will automatically disqualify the Bidder from contract award. To the extent that a conflict arises or is found to exist between the Bidder’s offer to sell and this solicitation, including any addenda thereto, the terms, conditions and specifications contained in this solicitation and any addenda thereto shall in all cases prevail.
3.12 Contract Changes / Change Orders

A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page. Contract changes shall be in writing, and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.

B. Changes can be made to the contract in any of the following ways:
   1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
   2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
      a. By mutual agreement between the parties in writing; or
      b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW’s right to audit the Contractor’s records and/or to determine the correct number of units independently; or
      c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

3.13 Contractor’s Responsibilities

A. The Contractor shall be responsible for all products and/or services as required by this IFB. The use of subcontractors is prohibited unless:
   1. A request to include a subcontractor is included in the bid and,
   2. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.

B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.

D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

3.14 Contract Use by Other Public Entities

Subject to the mutual agreement between the parties, other public entities (to include jurisdictions comprising the Metropolitan Washington Council of Governments), may enter into a contract for the services described and defined herein. Contracts awarded as a result of this solicitation will be subject to these terms and conditions and at pricing as offered by the successful bidder and subsequently accepted by FW. However, to the extent that transportation costs vary, the contractor and the public entity may negotiate a markup or discount to reflect the true cost of transportation.

3.15 Debarment Status

By submitting a Bid in response to this solicitation, each Bidder certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

3.16 Delivery

In the case of solicitations that require delivery to FW:

A. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of contract items within the timeframe specified herein or as indicated in the bidders bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies the Members may be entitled to.

B. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.

C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water/waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.
3.17 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting bids. If an award is not made during that period, all bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an award is made or proper notice is given to FW of Bidder's intent to withdraw its bid. Bids may only be withdrawn by submitting written notice at least seven days before the expiration of the then current 90-day period.

3.18 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

3.19 Examination of Records

Bidder agrees that in any resulting contract, either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

3.20 Familiarity with Specifications

Each Bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that Bidder has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Bidder shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation.

The submission by a Bidder of a Bid in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to Fairfax Water in the manner prescribed herein.

3.21 Formation of Contract

A. The words “Contract” and “Purchase Order” are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:

1. Any Change Orders;
2. All Purchase Orders;
3. Any Addenda to the IFB;
4. This IFB (including all Appendices and Attachments hereto); and
5. The Bidder’s completed Bid Tabulation Form (including any drawings and submittals).
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B. The contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:

1. The fully executed contract between the parties, or FW Purchase Order,
2. The IFB and any Addenda to the IFB,
3. The Bidder’s response to the IFB (including any drawings and submittals), and
4. All correspondence between the parties regarding this IFB.

C. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3.22 Governing Law; Venue; Waiver of Jury Trial

Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

3.23 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation. By submitting a bid in response to this solicitation, all Bidders acknowledge the VPPA and agree to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website (http://www.eva.state.va.us/dps/Manuals/docs/VPPA_2008.doc).

3.24 Indemnification and Responsibility for Claims and Liability

With respect to any contract that results from this solicitation, Bidder is bound by the following:

A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.

B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.

C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
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D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any and all loss, including Attorneys’ fees arising out of any such claim.

3.25 Insurance Requirements

A. In addition to the mandatory insurance requirements listed in this Section and at the request of FW, the apparent low bidder shall provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW’s opinion the amount or number of claims is deemed to be excessive. Failure to provide this information may result in rejection of your bid. If no claims have been made then the Bidder shall so state in its bid.

B. Before commencing work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be from insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best’s rating of at least A- and a financial size of class VIII or better in the latest edition of Best’s Insurance Reports.

C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor’s obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor’s performance under this contract.

D. With the exception of Workers’ Compensation and Employers’ Liability Insurance, any additional insurance policies specified herein shall name FW as additional insured with regard to work performed under any subsequent Contract.

E. The Contractor shall provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Included with the certificate of insurance shall be an endorsement from the insurer that certifies that the contractor has a policy in effect and that FW is included as an additional insured. The endorsement shall include the policy number for this requirement and certify that the amounts specified below are available, and that all monies on the policy apply solely to this contract.

F. Insurance certificates and endorsements shall stipulate e that FW must be notified at least 30 days prior to any impending change or cancellation of the insurance policies.

G. Workers’ Compensation and Employers’ Liability Insurance: Statutory requirements and benefits; require that the Fairfax County Water Authority be added as an additional named insured on contractor’s policy. The Contractor shall obtain Statutory Workers’ Compensation Insurance covering injury to employees of the Contractor while performing work within the scope of their employment and Employers’ Liability Insurance with limits of at least $100,000/$500,000/$100,000.

H. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:
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- General Aggregate Limit $1,000,000
- (Other than Products-Completed Operations)
- Products-Completed Operations Aggregate Limit $500,000
- Personal & Advertising Injury Limit $500,000
- Each Occurrence Limit $500,000
- Directors & Officers – Errors & Omissions $2,000,000

I. Business Automobile Liability Insurance: This insurance shall apply to any auto, including all owned, hired and non-owned vehicles, covering Bodily Injury and Property Damage with a combined single limit of at least $500,000 each accident.

3.26 Negotiation with Low Bidder

If the lowest bid submitted by a responsive and responsible bidder exceeds available funds for this procurement, then Fairfax Water may, in its discretion, conduct negotiations with the lowest responsive and responsible bidder (the “Low Bidder”) in an effort to obtain a contract price that is within available funds. In such event, Fairfax Water will notify the Low Bidder verbally or in writing that its bid exceeds available funds and will schedule a conference with the Low Bidder, Fairfax Water staff, and such advisors and consultants as Fairfax Water deems appropriate in order to discuss possible modifications to the scope of the procurement that may result in a price that is within available funds. The conference and any subsequent negotiations may be conducted in person or by telephone. If, during the conference, the parties arrive at an acceptable modification to the scope of the project and a contract price that is within available funds, then Fairfax Water may award a contract to the Low Bidder based upon the newly-modified terms and conditions. Otherwise, the Low Bidder will, within 15 days after the date of the conference (or such longer or shorter period as may be specified in writing by Fairfax Water), submit to Fairfax Water a written addendum to its original Bid Form which describes its proposed modification(s) to the scope of the procurement and sets forth the Low Bidder's newly adjusted bid price. Fairfax Water may conduct further negotiations with the Low Bidder or request additional clarifications or modifications. If the Low Bidder’s proposed modifications are acceptable to Fairfax Water and the associated contract price is within available funds, then Fairfax Water may award a contract to the Low Bidder based upon the modified terms and conditions. If the proposed modifications are not acceptable to Fairfax Water, or the associated price reductions are not within available funds, then Fairfax Water will terminate negotiations and reject all bids.

3.27 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, member, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee, member or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the
Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

3.28 Pass-through Price Increases and Decreases

A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.

B. Decreases: When and as pass through price increases are reduced or eliminated, the Contractor shall reduce the unit price accordingly.

C. Pass through price increases will not be a substitute for poor planning by the Contractor. No pass through increase will be allowed for the first contract year. In subsequent years, such requests cannot be submitted until after the sixth month of the then current contract year. Price increases will not be retroactive.

3.29 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

A. That any contract awarded by FW include the following clauses:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
   a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
   b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. Offerors shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.

4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
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B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

3.30 Payment

A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.

B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager

D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.

E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Offeror must waive the requirement in order to remain in consideration.

F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

3.31 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
3.32 Price Firm Period

Bid pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

3.33 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW’s designated facility.

3.34 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be effected by FW’s issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

3.35 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW’s tax identification number is 54-6025290.

3.36 Termination of Contract

A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good
faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

3.37 Unit Prices Prevail

In the event that there is a mathematical error on the summary sheet, the unit price for each item shall prevail. All costs to provide the goods and/or services specified in this solicitation shall be shown on the attached bid summary sheet. If there are additional costs to provide the goods and/or services specified herein either list them on the attached bid summary sheet or attach an additional sheet to it. Line items left blank will be interpreted as at no cost to FW.

3.38 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

3.39 Warranty

A. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.

B. Materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of 12 months following date of final acceptance. Should any defect be noted by the FW, the Project Manager will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

C. Work not conforming to these warranties shall be considered defective.

D. This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor’s other guarantees or obligations in this contract.

A. NOTE: Any implied warranties, including but not limited to the warranty for “Merchantability and Fitness for A Particular Purpose” cannot be waived and are a mandatory part of this solicitation and any ensuing Contract.
IFB #12-07 Chemicals

END SECTION 3
4. SPECIAL TERMS AND CONDITIONS

4.1 Contractor Replacement

In the event that a Contractor is declared to be in default, the next lowest responsive and responsible Bidder will be given an opportunity to accept a contract for the chemicals that were provided by the defaulting Contractor. If within 180 calendar days after contract award, the prospective Contractor must agree to provide the chemicals at its original bid price. After the first 180 calendar days, the Contractor will be allowed to adjust the original bid price by an amount equal to the annualized PPI-SA for Chemicals and Allied products or the specific series Id referenced on their original bid for the period of time between contract award and Fairfax Water’s offer to accept the contract. FW reserves unto itself, the unilateral right to either not extend an offer to the next lowest Bidder or to rebid the subject chemicals.

4.2 Contractor’s Compliance and Safety Program

A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:

1. The Virginia Uniform Statewide Building Code,
2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
3. Virginia Department of Health (VDH) regulations,
4. Virginia Department of Environmental Quality (DEQ) regulations,
5. Virginia-OSH (VOSH) regulations, and

4.3 Delays

A. By the Contractor: After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages, redeeming the Contractor’s Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW’s legal rights to recover damages due to Contractor default in any other way.

B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inaction’s of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.
4.4 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract: all without liability to Contractor on the part of FW or Member, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

4.5 Time Is Of The Essence

Time is of the essence! This is a time critical project! Once started, this project must continue without delay or interruption, and unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project and charge any additional or increased costs to the Contractor.

END SECTION 4
APPENDIX A

CHEMICAL REQUIREMENTS

Part 1 - General

1. Section includes a Table of Contents of Required Chemicals, Participating Jurisdictions street addresses and total estimated quantities.

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>CHEMICAL / DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Caustic Soda, dry 25%</td>
</tr>
<tr>
<td>2</td>
<td>Caustic Soda, dry, 50% (Bulk/Drums)</td>
</tr>
<tr>
<td>3</td>
<td>Copper Sulfate Pentahydrate (Liquid) SCI-62 or Equal</td>
</tr>
</tbody>
</table>
APPENDIX A

CHEMICAL REQUIREMENTS

2 Delivery addresses for each Member listed below.

<table>
<thead>
<tr>
<th>Fairfax County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Public Works</td>
</tr>
<tr>
<td>Wastewater Treatment Plant</td>
</tr>
<tr>
<td>9399 Richmond Highway</td>
</tr>
<tr>
<td>PO Box 268</td>
</tr>
<tr>
<td>Lorton, VA 22199-0268</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fairfax Water</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site A: Corbalis Treatment Facility</td>
</tr>
<tr>
<td>1295 Fred Morin Road</td>
</tr>
<tr>
<td>Herndon, VA 20170</td>
</tr>
<tr>
<td>Site B: Griffith Treatment Facility</td>
</tr>
<tr>
<td>9600 Ox Road</td>
</tr>
<tr>
<td>Lorton, VA 22079</td>
</tr>
</tbody>
</table>
APPENDIX A

CHEMICAL REQUIREMENTS

BID ITEM NO. 1

1. CAUSTIC SODA 25%

A. QUALITY/CONTENT

1. This liquid is to contain a minimum of 25% anhydrous sodium hydroxide, NaOH, and shall not contain any other substances capable of producing deleterious or injurious effects upon the health of those consuming the water to which the caustic soda has been added, or causing the water so treated to fail to meet the requirements of the USEPA Primary Drinking Water Standards.

B. SPECIAL NOTE

1. The members have included an explanation of CAUSTIC SODA – WEIGHTS AND SHIPMENTS. The explanation is described in Appendix B, Pages B-1 and B-2.

C. PACKAGING AND SHIPPING

1. Bulk – the contractor shall deliver liquid in tank truck lots of 3,000 to 4,000 gallons per load.

D. ESTIMATED QUANTITY and DELIVERY DESTINATIONS

<table>
<thead>
<tr>
<th>Location</th>
<th>Estimated Total usage</th>
<th>Delivery amount/order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairfax County DPW</td>
<td>290 Tons, Active</td>
<td>Full Truckload</td>
</tr>
</tbody>
</table>

END OF ITEM NO. 1
APPENDIX A

CHEMICAL REQUIREMENTS

BID ITEM NO. 2

2. CAUSTIC SODA 50%

A. QUALITY/CONTENT

1. This liquid is to contain a minimum of 50% anhydrous sodium hydroxide, NaOH, and shall meet the requirements as specified in ANSI/AWWA Standard B501-08, Sodium Hydroxide (Caustic Soda). This material shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with NSF/ANSI 60, Drinking Water Treatment Chemicals—Health Effects.

B. SPECIAL NOTE

1. The members have included an explanation of CAUSTIC SODA – WEIGHTS AND SHIPMENTS. The explanation is described in Appendix B, Pages B1 and B2.

C. PACKAGING AND SHIPPING

1. Bulk - the contractor shall deliver liquid in tank truck lots of 3,000 to 4,000 gallons per load. Billing is calculated on the dry weight content of sodium hydroxide on 76% of sodium oxide basis. Temperature of Caustic soda shall not go below 50°C. If temperature is found below 50°C, jurisdiction may reject shipment.

2. Drums - the contractor shall deliver liquid in 55 gallon drum containers per load. Billing is calculated on the dry weight content of sodium hydroxide on 76% of sodium oxide basis. Temperature of Caustic soda shall not go below 50°C. If temperature is found below 50°C, jurisdiction may reject shipment.

D. ESTIMATED QUANTITY and DELIVERY DESTINATIONS

<table>
<thead>
<tr>
<th>Location</th>
<th>Estimated Total usage</th>
<th>Delivery amount/order</th>
</tr>
</thead>
<tbody>
<tr>
<td>FW Site A</td>
<td>930 DST, Bulk</td>
<td>Full Truckload</td>
</tr>
<tr>
<td>FW Site B</td>
<td>830 DST, Bulk</td>
<td>Full Truckload</td>
</tr>
</tbody>
</table>

END OF ITEM NO. 2
APPENDIX A

CHEMICAL REQUIREMENTS

BID ITEM NO. 3

3. COPPER SULFATE PENTAHYDRATE (LIQUID) SCI-62 OR EQUAL

A. SPECIFICATIONS

1. The Copper based algicide/bactericide supplied shall contain no soluble material or organic substances in quantities capable of producing deleterious or injurious effects on health of those consuming water that has been treated properly with the Copper based algicide/bactericide products.

2. The active ingredient shall be Copper sulfate pentahydrate. The metallic Copper equivalent shall be at least 5% by weight. The Copper based algicide/bactericide shall self disperse, and evenly distribute throughout the treatment area without mixing. In order for product to stay in the water column, it shall be a chelated copper. It must not precipitate out of solution but remain fully dissolved ensuring long term algae control without over treatment. The Copper based algicide/bactericide shall be chelated, 100% water soluble, and non-combustible.

3. Product must be registered as an algicide/bactericide with the U.S. EPA.

4. Product must be certified to ANSI-NSF Standard 60 as a drinking water additive.

5. Product must be NSF Certified

B. PACKAGING AND SHIPPING

1. The Copper Sulfate Pentahydrate (Liquid) SCI-62 shall be packed in durable, dust tight 275-300 gallon plastic totes.

C. ESTIMATED QUANTITY and DELIVERY DESTINATIONS

<table>
<thead>
<tr>
<th>Location</th>
<th>Estimated Total Usage</th>
<th>Delivery Amount/Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>FW Site B</td>
<td>4,600 Gallons</td>
<td>(2 - 7) Totes</td>
</tr>
</tbody>
</table>

END OF ITEM NO. 3
IFB 12-07 Chemical Requirements
Appendix B
Weights and Shipments, Quality and Content
Chemical Requirements

CAUSTIC SODA
(Liquid Sodium Hydroxide)

The Members reserve the right to collect and test samples from all deliveries and to base rejection and/or gallons for payment on these tests. The Contractor’s driver will be required to assist the Member’s personnel in obtaining the sample if requested. If the result of the Member’s analysis of the percent Na₂O concentration is 1.0 or more below the percentage of Na₂O shown on the delivery ticket by the Contractor, the Member’s value will be used in the payment formula. The concentration, by weight, of Na₂O in each shipment shall be indicated on each delivery ticket. It shall be expressed as a percentage (%) and rounded to the nearest 0.01%. This shall be the actual concentration of Na₂O in the truck and not that of the concentrate from which it is prepared. The 25% Caustic Soda solution must be prepared prior to introduction into the delivery truck.

The contractor shall furnish a chart or table showing the percentage of Na₂O and NaOH for different specific gravity readings. The Member may, at its option, use this chart or table to determine the Na₂O and NaOH concentrations for some or all of its deliveries.

If a shipment is rejected, the Member may require the entire contents of the tank to which it was added, be removed and replaced by the Contractor at its sole risk and expense, including all handling and shipping charges.

Trucks used for delivery shall be of the tank-type and unloaded by a self-contained conveyance system. If the Contractor’s equipment requires the use of any other types of connections, other than the existing connection, his carrier must provide the required connection and remove it after each delivery. Delivery to more than one tank at each facility may be required at each delivery at no extra cost to the Member.

The following formula will be used for payment:

\[
\text{Dry tons of Sodium Hydroxide (NaOH)} = \frac{W \times C}{2,000 \times 0.76} = \frac{W \times C}{1,520}
\]

Where \(W\) = net wet (lbs.) of the Liquid Sodium Hydroxide shipment and \(C\) = the actual percentage concentration of Na₂O in the shipment expressed as a decimal. If no concentration is indicated on the delivery ticket, a concentration of 18.60% will be used unless the Members testing indicates a lower concentration, in which case the Member’s results will be used. If the Contractor indicates a range of concentration on the delivery ticket, the lower end of the range will be used unless the Members test results indicate a value that is 1.0 or more below the concentration shown on the delivery ticket, in which case the Member’s test results will be used.
The dry tons will be rounded to the nearest 0.01 ton; W to the nearest 10 pounds, C to the nearest 0.01%. The rounding shall be in accordance with the following rule: > 5 round up; ≤ 5 round down.

Caustic soda, liquid, to conform to AWWA Standard B-501-93 or later. Except as may be modified by the following requirements or by Specific Conditions of this Contract:

A. A minimum of 24% maximum-26% anhydrous sodium hydroxide, NaOH for the 25% product; 49% -51% range for the 50% product.

B. It shall not contain particles of sand, grit or gelatinous material in sizes that will clog metering pumps and appurtenances nor impurities causing harmful or deleterious effects upon biosolids or receiving waters.

C. It shall not have a temperature in excess of 104 °F upon delivery unless a higher temperature is approved by the Plant Superintendent.

D. It shall not contain particles of sand, grit or gelatinous material in sizes that will clog metering pumps and appurtenances nor impurities causing harmful or deleterious effects upon biosolids or receiving waters.

E. It shall have a specific gravity at 60° F of 1.278 for the 25% product, and 1.530 for the 50% product.

F. It shall have a boiling point of 234°F. (25%)

G. It shall have a freezing point of 0°F (25%)

I. It shall have a viscosity at 60°F of 9.8 cp.
March 9, 2012

To: All Prospective Offerors

Issued by: Melanie Tillotson, Buyer II

Subject: Addendum # 1 to IFB #12-07 “Caustic Soda & Copper Sulfate Pentahydrate (Liquid)”

The purpose of this addendum is to make revisions to the IFB and to answer questions submitted by the specified deadline for their submission.

I. Additions, Deletions, Corrections and Revisions to the IFB

1. Revise Appendix A, Page 1, Table of Contents, “Item No. 2” Change from (Bulk/Drums) to (Bulk/Full Truck Loads).

2. Revise Appendix A, Page 3, Bid Item 1; Section D, Change “Estimated Total Usage” from 290 Tons, Active to 100 Tons, Active.

II. Questions and Answers

1. Q. How many caustic soda 50% drums needed and how many per delivery?
   
   A. See Section I Above – Item 1.

2. Q. On the bid form, the use for Caustic Soda 25% at the Fairfax county Wastewater plant is listed as 290 short tons. Historical use at his site would indicate this may be a typo and the correct number may be 90 dry short tons. Would you please verify?
   
   A. See Section I Above – Item 2.

NO OTHER QUESTIONS WERE RECEIVED BY THE DEADLINE

III. Acknowledgement

Acknowledge your receipt of, and compliance with, this Addendum by either signing the attached acknowledgement, or referencing its receipt and your compliance, in your bid.