

SECOND AMENDMENT

No. 12652

THIS IS A SECOND AMENDMENT to the Memorandum of Understanding (“MOU”) No. 1866 dated _____, between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as “CITY,”

and

AIRGAS USA, LLC, a Delaware limited liability company authorized to do business in Florida, having its office and place of business at Suite 100, 259 N. Radnor-Chester Road, Radnor, Pennsylvania 19087-5283, hereinafter referred to as “CONTRACTOR.”

WHEREAS, the parties entered into MOU No. 1866 for deliveries of CO2 liquid gas on March 15, 2023, ("Original Agreement"), and approved by City Resolution No. 2023-92; and

WHEREAS, the parties entered into a first amendment to the Original Agreement on February 21, 2024; and

WHEREAS, the CITY and CONTRACTOR have mutually agreed to extend the Original Agreement for one (1) additional one-year period and to amend certain terms and conditions.

WITNESSETH:

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and CONTRACTOR agree as follows:

1. Each “WHEREAS” clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement No. 1866 effective March 15, 2023, approved and adopted by Resolution No. 2023-92, and subsequently amended on February 21, 2024, copies of which are attached hereto and made a part hereof as Exhibit "B," shall remain in full force and effect for the new contract extension term except as specifically amended herein below.

3. The parties hereto agree to extend the Original Agreement No. 1866 for one (1) additional one-year period, ending February 28, 2026 under the same terms and conditions.

4. That for the extension term CONTRACTOR has offered, and the CITY has accepted, the following pricing as described in the FY24-25 renewal letter attached hereto and incorporated herein as Exhibit “A”:

Product Price: \$0.285/lb. or 570/ton
Restricted Access: \$180.00/delivery
Call in Fee: \$120.00/delivery
Telemetry Charge: \$65.00/month

5. This Agreement shall bind the parties and their respective executors, administrators, successors and assigns and shall be fully effective as though the extension and amendment had been originally included in the Agreement.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

CITY OF POMPANO BEACH

KERVIN ALFRED, CITY CLERK

By: _____
REX HARDIN, MAYOR

(SEAL)

By: _____
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

"CONTRACTOR"

Airgas USA, LLC

Witnesses:

[Signature]
Tim JACKSON
(Print or Type Name)

By: [Signature]
John Sheehan, Pres. of the South Division

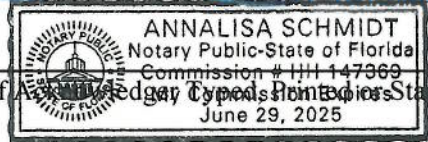
Sally S Hays
(Print or Type Name)

STATE OF Florida
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 21st day of november, 2024, by John Sheehan as President of the South Division of Airgas USA, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or who has produced _____ as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF Florida



(Name of Notary Public, Edged, Typed, Printed or Stamped)

Commission Number



Exhibit "B" Placeholder
Airgas USA, LLC
MOU ID #12562

Pending Vendor's submission of insurance and, subsequently, Risk Management's review and approval of said insurance.

PLACEHOLDER



City of Pompano Beach, Procurement & Contracts Department
1190 N.E. 3rd Avenue, Building C
Pompano Beach, Florida, 33060

Renewal Letter for FY24-25

October 24, 2024

R Jay Worley, Chief Operating Officer
Airgas USA, LLC
5249 Tampa West Blvd
Tampa, FL 33634
Via Email: katey.shartzter@airgas.com

Dear Mr. Worley,

As specified in T-11-23 Carbon Dioxide Liquid Bulk Delivery, we have an option to renew the existing Memorandum of Understanding (MOU) for an additional one-year period, based upon the original terms and conditions, and mutually agreed-upon pricing. For the extension Airgas has offered:

Product price: \$0.285/lb or 570/ton
Restricted Access: \$180.00/delivery
Call In Fee: \$120.00/delivery
Telemetry Charge: \$65.00/month

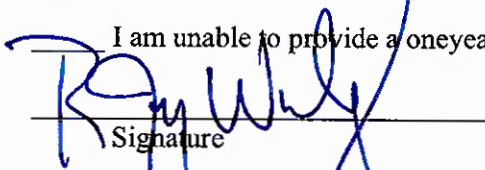
Please advise if a oneyear extension of our current MOU would be acceptable. If you do not wish to renew you must return this form to the Purchasing Division at Purchasing@copbfl.com by October 28, 2024. Thank you for your cooperation in this matter. Call me if you have any questions at (954) 7864099. This renewal will be for one year from February 29, 2025 to February 28, 2026. Thank you for your continued cooperation.

Very truly yours,

Jeff English
Purchasing Agent

I hereby agree to a oneyear extension of the subject contract.

I am unable to provide a oneyear extension of the subject contract.



Signature
R. Jay Worley

Name (print)

11-6-2024
Date



City of Pompano Beach, Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, Florida, 33060

February 20, 2024

Steve Jones, Vice President of Bulk Gases
Airgas USA, LLC
5249 Tampa West Blvd
Tampa, FL 33634
Via Email: katey.shartzter@airgas.com

Dear Mr. Jones,

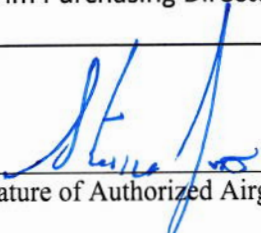
As specified in T-11-23 Carbon Dioxide Liquid Bulk Delivery, the period of the agreement between the City and Airgas USA, LLC may be renewed for an additional one-year period, based upon the modified terms and conditions of the Memorandum of Understanding (MOU) dated March 15, 2023. For the extension term Airgas has offered, and the City has accepted, the following pricing:

Product price: \$0.265/lb or 530/ton
Restricted Access: \$180.00/delivery
Call In Fee: \$120.00/delivery
Telemetry Charge: \$65.00/month


Please advise if a oneyear extension of our current MOU would be acceptable by signing and returning this letter to the City. Call me if you have any questions at (954) 7864098. This renewal will be for one year from February 29, 2024 to February 28, 2025. Thank you for your continued cooperation.

Thank you,

Antonio Pucci
Interim Purchasing Director


Signature of Authorized Airgas USA, LLC Representative


Date


Name (print)

RESOLUTION NO. 2023- 92

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING AWARD OF ITB #T-11-23 CARBON DIOXIDE, LIQUID, BULK DELIVERY (COOPERATIVE BID) TO THE SOLE RESPONSIVE, RESPONSIBLE BIDDER AIRGAS USA, LLC AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE MEMORANDUM OF UNDERSTANDING NO. 1866; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the City Commission approves and authorizes award of ITB #T-11-23 to Airgas USA, LLC as the sole responsive, responsible bidder.

SECTION 2. That a Memorandum of Understanding (MOU) between the City of Pompano Beach and Airgas USA, LLC, a copy of which MOU is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 3. That the proper City officials are hereby authorized to execute said MOU between the City of Pompano Beach and Airgas USA, LLC.

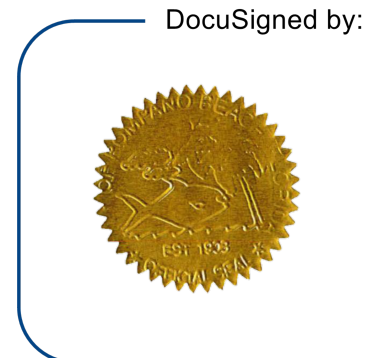
SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 28th day of February, 2023

DocuSigned by:
Rex Hardin
502CB780EB3E480
REX HARDIN, MAYOR

ATTEST:

DocuSigned by:
Kerwin Alfred
D1C913A8ED334CA
KERVIN ALFRED, CITY CLERK



Memorandum of Understanding

No. 1866

THIS AGREEMENT is made and entered into on March 15, 2023, by the City of Pompano Beach (“City”), and on behalf of the members of the Southeast Florida Governmental Purchasing Cooperative (Cooperative) and Airgas USA, LLC, a Florida Limited Liability Company (“Contractor”).

WHEREAS, City and Cooperative requires deliveries of CO2 liquified gas, which Contractor is capable and willing of providing; and

WHEREAS, Contractor has asked the City to modify the terms of Bid T-11-23, attached hereto, for which said CO2 liquified gas shall be provided by the Contractor.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

The following changes to the conditions set forth in the bid document being utilized as standards for the purchasing of CO2 liquid gas are hereby modified as follows for the final year of purchases pursuant to the bid. For the avoidance of doubt, Participating Agencies that purchase products under this Memorandum of Understanding (“MOU”) as part of the Cooperative shall be bound by the terms of the bid as modified by this MOU:

1. Section I – Specifications/Special Conditions changed as follows:

- a. Subsection B. “Contract Period” Third paragraph under subsection is deleted in its entirety.
- b. Subsection F. “Cost Adjustments” is now modified as follows:

The cost(s) shall remain firm for the initial twelve (12) month period of the contract term. Contractor may upon 60 days’ notice, adjust prices charged to the City in the event of any significant increase in Contractor’s cost to obtain, manufacture the products sold hereunder. During any period where Contractor’s prices are higher due to such events, the City may either pay the revised price, terminate the contract, or obtain products from another supplier without penalty to Contractor.

- c. Subsection K. “Participating Agencies/Contact Persons/Delivery Locations/Special Requirements” shall be deleted in its entirety and replaced with the following:

The following agencies are participating in this bid solicitation and the resulting contract (“Participating Agency”). Each Participating Agency shall be considered a party to this Agreement and shall be bound by the obligations contained herein:

Broward County
City of Boca Raton
City of Delray Beach
City of Pembroke Pines
City of Sunrise
Town of Davie
Village of Wellington

Other Co-op members may participate in this contract for new usage, during the contract term, or on any contract extension term, if approved by the lead agency and Contractor. New Co-op members may participate in any contract, on acceptance and approval by the lead agency and Contractor.”

d. Subsection M. “MSDS” is deleted in its entirety and replaced with “Material Safety Data Sheets shall be available upon request or from Bidder’s website.”

e. Subsection O. “Cancellation of Order” is amended as follows:

If contractor cannot fulfill delivery requirements, the City retains the right to cancel the order and make such purchase on the open market.

f. Subsection Q. “Market Conditions” is deleted in its entirety.

g. Subsection R. “Safety”, Paragraph 1, is amended as follows:

The successful bidder shall be responsible for initiating, maintaining and supervising all of its internal safety precautions and programs in connection with the work. The successful bidder shall comply with the rules and regulations of the state of Florida. Bidder, City and Cooperative shall comply with all applicable safety standards and regulations with regard to its transportation and delivery of any and all products pursuant to the bid.

h. Subsection R. “Safety, Paragraph 3, is deleted in its entirety.

i. Subsection R. “Safety, Paragraph 5, is amended to read as follows:

5. Customer-Owned Tanks: Prior to the initial delivery to a facility, Bidder shall conduct a basic tank inspection of Customer-Owned storage system and report any identified concerns to the owner.

j. Subsection U. “Insurance” shall be deleted and replaced with Exhibit A, attached hereto.

2. Section II General Conditions is amended as follows:

a. Paragraph 17 “Conflict of Instructions” is deleted in its entirety and replaced with:

Should a conflict exist between the terms contained in the bid document and this Memorandum of Understanding, the terms of this Memorandum of Understanding shall control.

b. Paragraph 19 “Warranties” is deleted in its entirety and replaced with:

Contractor warrants that the products will meet Compressed Gas Association guidelines and NSF Standards and any other products sold by Contractor will conform to Contractor’s or manufacturer’s standard specifications. Contractor makes no warranty with respect to products manufactured by others, but will, on request, to the extent permitted, pass on to The City any applicable manufacturer’s

warranty. Contractor warrants that the services shall be performed in a good and workmanlike manner. **CONTRACTOR SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE. CONTRACTOR MAKES NO WARRANTIES OF ANY KIND FOR ANY TECHNICAL ADVICE PROVIDED BY CONTRACTOR TO THE CITY AND ASSUMES NO OBLIGATION OR LIABILITY FOR ANY SUCH TECHNICAL ADVICE WITH REFERENCE TO THE USE OF PRODUCTS OR RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IF GIVEN AND ACCEPTED IS AT THE CITY'S SOLE RISK.**

- c. Paragraph 23 "Indemnification" is amended to read as follows:

Contractor covenants and agrees that it will indemnify, save, defend and hold harmless the City and all of the City's officers, agents, and employees from any third party claim, loss, damage, costs, charge or expense to the extent caused by its negligence in any act, action, or omission by contractor during the performance of duties pursuant to the bid, , except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence of City or any of its officers, agents, or employees. Furthermore to the extent of the limits provided in Section 768.28 Florida Statutes, as amended, the City and all member of the Southeast COOP shall indemnify save, defend, and hold harmless the Contractor for their negligence. Said indemnification shall not constitute a waiver under said statute, nor constitute authorization to be sued by any party.

3. The following provisions are added to Section II General Conditions:

39. Excuse of Performance: Contractor shall not be liable for failure to perform if prevented by circumstances beyond its reasonable control. If Contractor is unable to supply products to The City, then The City may obtain replacement products from other sources.

40. Allocation: If sufficient product is not available from Contractor's normal source of supply for any reason, Contractor may allocate Product among its own requirements and its customers. Contractor will make reasonable efforts to obtain additional product from other sources, provided The City shall pay all additional costs associated with such Product. Allocation in regard to this Section will completely satisfy and discharge Contractor's supply obligations and Contractor will, therefore, not be deemed to be in breach of such obligations.

41. City's and Cooperative's Responsibilities: Products are sold on the condition that they be handled, used and disposed of in conformance with recognized industry and professional standards, including those related to the protection of human

health and the environment. The City acknowledges that there are hazards associated with the use of the products, that it understands such hazards, and that it is the responsibility of the City to warn and protect all those exposed to such hazards. It is The City's responsibility to ensure that: (i) the installation and/or use of the products complies with all applicable laws, codes or regulations for the relevant jurisdiction; (ii) the products are safe for the intended use; and (iii) the products are handled in a safe and professional manner. The City and Cooperative shall have the sole responsibility for determining the suitability of any of Contractor's products for the use contemplated. After delivery of products to the City and Cooperative pursuant to this Agreement, the City and Cooperative assume all risk and liability arising out of the presence, storage, transport or use of the products.

42. REMEDIES; LIMITATION OF LIABILITY: CONTRACTOR SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES. CONTRACTOR'S SOLE LIABILITY AND THE CITY OR PARTICIPATING AGENCY'S SOLE REMEDY FOR DAMAGES RESULTING FROM PRODUCTS, DELIVERY OF NON-CONFORMING PRODUCTS, OR CONTRACTOR'S FAILURE TO DELIVER SUCH PRODUCTS, SHALL BE LIMITED TO, AT CONTRACTOR'S OPTION, THE REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE PRODUCT OR SERVICE IN QUESTION. CONTRACTOR'S LIABILITY FOR ALL OTHER DIRECT DAMAGES SHALL BE LIMITED TO, FOR THE CITY OR PARTICIPATING AGENCY CLAIMING DAMAGES, 50% OF THE AMOUNT PAID BY SUCH ENTITY TO CONTRACTOR DURING THE PRIOR 12 MONTHS, PER OCCURRENCE, AND 100% OF THE AMOUNT PAID BY SUCH ENTITY TO CONTRACTOR DURING THE PRIOR 12 MONTHS, FOR THE ENTIRE TERM. FOR NEW PARTICIPATING ENTITIES ADDED TO THIS AGREEMENT WITH NO PURCHASE HISTORY, THE DIRECT DAMAGES CAP SHALL BE CALCULATED AS, PER OCCURRENCE, 50% OF THE CONTRACTED VOLUME ESTABLISHED AT THE START OF THE ENTITY'S PARTICIPATION IN THE AGREEMENT, AND FOR THE ENTIRE TERM, 100% OF THE CONTRACTED VOLUME ESTABLISHED AT THE START OF THE ENTITY'S PARTICIPATION IN THE AGREEMENT. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, AND SHALL APPLY EVEN WHERE SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART, BY THE NEGLIGENCE, GROSS NEGLIGENCE OR ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT. THE PROVISIONS GOVERNING REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL SURVIVE EXPIRATION, TERMINATION, OR CANCELLATION OF THIS AGREEMENT.

4. Section III – Proposal; the following pricing shall be in effect for the final year of the bid duration:

1. Unit Price is \$0.225 per pound or \$450.00 per ton
2. City and Cooperative shall be charged a Restricted Access fee of \$75.00, unless Contractor is given 120 hours per week access to the delivery site, or 24 hours 7 days a week access to the delivery site.
3. City and Cooperative may elect, for a \$65.00 per month fee, to install a telemetry unit for monitoring tank levels. Use of this option shall place City or Cooperative on a forecasted schedule that will signal Contractor when tanks are down to 30% capacity. City or Cooperative must make arrangements with Contractor for installation of telemetry monitoring.
4. If City or Cooperative do not make use of the telemetry monitoring services, Contractor shall also charge a call in fee of \$75.00.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

CITY OF POMPANO BEACH

DocuSigned by:
Kervin Alfred
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KERVIN ALFRED, CITY CLERK

DocuSigned by:
Rex Hardin
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By: _____
REX HARDIN, MAYOR

DocuSigned by:
Gregory P. Harrison
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By: _____
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

DocuSigned by:
Mark E. Berman
343B0B2C81D9424...
MARK E. BERMAN, CITY ATTORNEY

(SEAL)



“CONTRACTOR”

Airgas USA, LLC

By: [Signature]
R. JAY WORLEY, CHIEF OPERATING OFFICER

Witnesses:

Jane M Woods
Jane M. Woods
(Print or Type Name)

Annausa Schmidt
(Print or Type Name)

STATE OF Pennsylvania
COUNTY OF Delaware

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 10th day of March, 2023, by R. Jay Worley as Chief Operating Officer of Airgas USA, LLC, a ~~Florida~~ Delaware limited liability company on behalf of the company. He is personally known to me or who has produced (type of identification) as identification.

[Signature]
NOTARY PUBLIC, STATE OF PENNSYLVANIA

NOTARY'S SEAL:

Commonwealth of Pennsylvania - Notary Seal
KATHLEEN R. MacMURRAY, Notary Public
Delaware County
My Commission Expires April 25, 2025
Commission Number 1133828

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

EXHIBIT A

INSURANCE REQUIREMENTS

MEMORANDUM OF UNDERSTANDING (MOU) COOP POMPANO BEACH, FL AIRGAS USA, LLC

Contractor shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the City's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/agreement.

Contractor is responsible to deliver to the City for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which include on a primary basis, the City as an additional insured on all such coverage, except Worker's Compensation and Employer's Liability. **Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.**

Throughout the term of this Agreement, City, by and through its Risk Manager, reserve the right to review, Contractor's Certificates of Insurance, including limits, coverages or endorsements. City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as City's review or acceptance of insurance maintained by Contractor, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

Throughout the term of this Agreement, Contractor and all sub-contractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements:

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Including the City of Pompano Beach as an additional insured as City’s interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor’s negligent acts or omissions in connection with Contractor’s performance under this Agreement, and to the extent of Contractor’s indemnification obligation assumed hereunder.

(2) Such Liability insurance shall include the following checked types of insurance and indicated policy limits.

Type of Insurance	Limits of Liability	
GENERAL LIABILITY:	Per Occurrence Aggregate	
* Policy to be written on a claims occurrence basis		
	\$1,000,000	\$2,000,000
XX comprehensive form	bodily injury and property damage	
XX premises - operations	bodily injury and property damage	
XX explosion & collapse hazard		
XX underground hazard		
XX products/completed operations hazard	bodily injury and property damage combined	
XX contractual insurance	bodily injury and property damage combined	
XX broad form property damage	bodily injury and property damage combined	
XX independent Contractors	personal injury	
XX personal injury		
- CG2010	ongoing operations (or its’ equivalent)	
- CG 2037	completed operations (or its’ equivalent)	
- sexual abuse/molestation	\$1,000,000 Per Occurrence and Aggregate	

AUTOMOBILE LIABILITY:	\$1,000,000 Per Occurrence and Accident. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.	
XX business comprehensive form		

C. Employer’s Liability. Contractor and all sub-contractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the Contractor, the Contractor shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the Contractor shall provide thirty (30) days written notice to the City.

F. Waiver of Subrogation. Contractor hereby waives any and all right of subrogation against the City, its officers, employees and agents for each required policy, except Workers' Compensation. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition to the policy not specifically prohibiting such an endorsement or voids coverage should Contractor enter into such an agreement on a pre-loss basis.



Florida's Warmest Welcome

**INVITATION TO BID
T-11-23**

**CARBON DIOXIDE, LIQUID, BULK DELIVERY
(COOPERATIVE BID)**

OPENING: JANUARY 26, 2023, 2:00:00 P.M.

Virtual Zoom Meeting
For access go to:

<https://www.pompanobeachfl.gov/meetings>

Issued: December 22, 2022

CITY OF POMPANO BEACH, FLORIDA

INVITATION TO BID
T-11-23

CARBON DIOXIDE, LIQUID, BULK DELIVERY
(COOPERATIVE BID)

The City of Pompano Beach (the “City”) is seeking bids from qualified companies/firms to establish annual Contracts for the purchase of liquid carbon dioxide. Sealed bids for Invitation to Bid (ITB) **T-11-23, Carbon Dioxide, Liquid, Bulk Delivery** will be received until **2:00:00 p.m. (local), January 26, 2023**. This is a cooperative ITB issued by the City of Pompano Beach Purchasing Division on behalf of the participating Southeast Florida Governmental Purchasing Cooperative (Cooperative) agencies for the purchase of each agency’s respective estimated annual requirements for liquid carbon dioxide.

Bids must be submitted electronically through the eBid System on or before the due date and time as provided herein. A list of Bidders will be read aloud in a public forum. Bid openings are open to the public. Check the City’s meetings page at <https://pompanobeachfl.gov/pages/meetings>. All Bidders and/or their representatives are invited to be present. Any bid received after the due date and time specified will not be considered. Any uncertainty regarding the time a bid is received will be resolved against the Bidder.

Bidders must be registered on the City’s eBid System in order to view the bid documents and respond to this ITB. The ITB documents can be downloaded for free from the eBid System as a pdf at: <https://pompanobeachfl.ionwave.net/CurrentSourcingEvents.aspx>. The City is not responsible for the accuracy or completeness of any documentation the Bidder receives from any source other than from the eBid System. Bidder is solely responsible for downloading all required documents.

Once opened, the bids will be tabulated, evaluated, and presented to the appropriate City officials for Contract award.

There are three (3) sections in this Invitation for Bids: Specifications/Special Conditions, General Conditions, and Line Item Pricing. Please read all sections thoroughly. Complete the ITB in accordance with the instructions. Failure to do so may result in the rejection of your bid.

If you need any additional information regarding this ITB, please contact Tammy Thompkins, Purchasing Agent, at (954) 786-4098.

SECTION I - SPECIFICATIONS/SPECIAL CONDITIONS

A. Intent

The intent of this Invitation for Bids is to establish annual, open-end Contracts for the purchase of bulk liquid carbon dioxide, delivered as and when needed. The City of Pompano Beach is acting as the lead agency for the Cooperative, and this ITB includes the requirements of both the City and the participating agencies named herein. Any reference to a single agency or location will, in fact, be understood as referring to all participating agencies referenced in the documents unless specifically noted otherwise.

B. Contract Period

Initial Contract price resulting from this ITB shall remain fixed for a period of no less than twelve (12) months from the Contract's initial effective date, commencing upon award by the appropriate City officials.

The City reserves the right to renew this Contract for two (2) additional one-year periods subject to vendor acceptance, satisfactory performance, and determination that renewal will be in the best interest of the City. Except as set forth in the Cost Adjustment section, all terms, prices and conditions shall remain firm for the initial period of the Contract, and any renewal period.

The City may require additions or deletions of participating agencies, if a Contract renewal is considered. This may entail additional agencies and locations, and/or deletion of previous participating agencies. The Contractor shall serve all required additions or deletions, as requested by the City, according to the terms and conditions of the bid.

In the event delivery/service is scheduled to end because of the expiration of this Contract, the Contractor shall continue to deliver/service upon the request of the General Services Director. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing Contract. The Contractor shall be compensated for the product/service at the rate in effect when this extension clause is invoked by the City.

C. Quantities

No warranty or guarantee is given or implied as to the total amount to be purchased as a result of this Contract. The quantities provided in this Invitation for Bids are estimates of annual usage to be used for bid comparison purposes only. Carbon Dioxide will be ordered as needed.

D. Basis of Award

Award will be made to the lowest responsive and responsible bidder based on the per ton, price.

E. Pricing

All prices bid shall be F.O.B. destination/delivered to each location, stated herein, including all delivery charges, and any applicable environmental taxes or surcharges. Prices quoted shall be firm for the contract, except for any adjustment, in accordance with the Cost Adjustment section.

F. Cost Adjustment

The cost(s) shall remain firm for the initial twelve (12) month period of the contract term. Any requested cost increase shall be subject to adjustment only if increases occur in the industry. Any requested cost increase shall be fully documented and submitted to the City at least ninety (90) days prior to the end of the initial twelve (12) month period. Any approved cost adjustments shall become effective after the initial twelve (12) month period. Cost adjustments may be requested no more frequently than every twelve (12) months and any requested cost adjustment must be submitted at least ninety (90) days prior to the beginning of any twelve (12) month period.

G. Delivery

Carbon dioxide shall be delivered as needed within forty-eight (48) hours of phone call ordering same. Deliveries not complying with these requirements may be rejected by City and in such event, City shall have the right to require contractor to redeliver the product at contractor's sole expense. The product shall be delivered with the appropriate vehicle to the designated City facility and unloaded by the vehicle operator into the designated area. The City seeks a source of supply that will provide accurate and timely delivery. The Contractor must adhere to delivery schedules. If, in the opinion of the General Services Director, the Contractor(s) fail at any time to meet the requirements herein, including the delivery requirements, then, the Contract may be cancelled upon written notice. See Section II - General Conditions, (6) "Delivery", and (10) "Default", for additional information.

Each individual participating agency shall establish delivery requirements, delivery locations, and dates with the Contractor. The Contractor shall await release by the authorized contact person at each agency for all shipments. Contractors must agree to accept "blanket" purchase orders, with verbal or fax requests for partial shipments, if required by the participating entities.

H. Addenda

The issuance of a written addendum or posting of an answer in response to a question submitted using the Questions feature in the eBid System are the only official methods whereby interpretation, clarification, or additional information can be given. If an addendum is issued to this ITB, the addendum will be issued via the eBid System. It shall be the responsibility of each Bidder, prior to submitting its bid, to check the eBid System

to determine if an addendum was issued and to make such addendum a part of its bid. An addendum will be posted to this ITB in the eBid System.

I. Questions And Communication

All questions regarding the ITB are to be submitted using the Questions feature in the eBid System. Questions must be received at least seven (7) calendar days before the scheduled ITB opening. Oral and other interpretations or clarifications will be without legal effect. Addenda will be posted to the ITB in the eBid System, and it is the Bidder's responsibility to obtain all addenda before submitting a response to the ITB.

J. Current Contracts

Government entities listed as participants in this bid solicitation may have current contracts to purchase carbon dioxide. These agencies will place orders with the awarded Contractor(s), if additional product is needed, after the expiration of their current contract(s).

K. Participating Agencies/Contact Persons/Delivery Locations/Special Requirements

The following agencies are participating in this bid solicitation and the resulting contract:

- (1) City of Pompano Beach, contact person Tammy Thompkins, Purchasing, (954) 786-4098; deliveries to City of Pompano Beach Water Treatment Plant, 301 N.E. 12th Street, Pompano Beach, FL 33060.

Size of city-owned storage tanks: Twenty-six (26) tons (two tanks this size).

Type of connections: 1" Vapor & 1-1/2" Liquid with Standard threaded brass connection.

Frequency of delivery: Every 4 to 5 months.

Estimated annual quantity to be purchased: 700 tons.

- (2) City of Boca Raton, contact person Neil Phillips, Purchasing, (561) 393-7976; deliveries to U.S. Water Treatment Plant, Building #8, 1301 Glades Road, Boca Raton, FL 33431.

Size of city-owned storage tanks: Two (2), 18 tons tanks.

Type of connections: 1" Vapor Balance w/CGA FTG & 1.5" Liquid Balance w/CGA FTG.

Frequency of delivery: Monthly.

Estimated annual quantity to be purchased: 230 tons.

- (3) City of Pembroke Pines, contact person Michael Cepeda, Water Treatment Plant Manager/Chief Operator, (754) 260-4505; deliveries to Water Treatment Plant, 7960 Johnson Street, Pembroke Pines, FL 33024

Size of city-owned storage tank: twenty-six (26) tons.

Type of connections: Carbon Dioxide, Refrigerated 2.2.

Frequency of delivery: As needed, 4 Deliveries per month.

Estimated annual quantity to be purchased: 732.6 tons.

- (4) City of Sunrise, contact person Holly Raphaelson, Contracts Administrator, (954) 572-2202; deliveries to Springtree Water Treatment Plant, 8350 Springtree Drive, Sunrise, FL 33331 and SW Water Treatment Plant 1540 Watermill Road, Davie FL, 33331.

Size of city-owned storage tank: SpringTree twenty-two (22) ton & SW five (5) ton Fill Capacity.

Type of connections: 1 1/2" Fill port

Frequency of delivery: Once per month.

Estimated annual quantity to be purchased: 260 tons.

- (5) Broward County, contact person Pedro Barrios (954) 831-4115; deliveries to Water and Wastewater Services District #1, 3701 N. State Rd. 7, Lauderdale Lakes, 33319.

Size of city-owned storage tank: Two (2) tank, 26 tons.

Type of connections: One (1) 1" vapor balance and 1 1/2" liquid fill, both standard threaded brass connections.

Frequency of delivery: Every 15-30 days.

Estimated annual quantity to be purchased: 450 tons.

Special requirements: Deliveries between 9:00 a.m. – 3:00 p.m. Monday through Friday, unless emergency delivery order is required.

- (6) Broward County, contact person Jose Otero (954) 831-4127; deliveries to Water and Wastewater Services District #2, 1390 N.E. 50th Street, Pompano Beach, FL 33064.

Size of county-owned storage tank: 2 tanks, 60 tons each.

Type of connections: One (1), 1" vapor balance and 1-1/2" liquid fill, both standard threaded brass connections.

Frequency of delivery: Every 15-30 days.

Estimated annual quantity to be purchased: 450 tons.

Special requirements: Deliveries between 9:00 a.m. – 3:00 p.m. Monday through Friday, unless emergency delivery order is required.

- (7) City of Delray Beach, contact person John Bullard, Water Treatment Manager, (561) 243-7319; deliveries to Delray Beach Water Treatment Plant, 200 S.W. 6th Street, Delray Beach, FL 33444.

Size of city-owned storage tanks: 100,000 pounds.

Frequency of delivery: Three (3) times per month.

Estimated annual quantity to be purchased: 540 tons.

Special requirements: Deliveries between 7:00 a.m. – 4:00 p.m. Monday through Friday, unless emergency delivery order is required.

Other Co-op members may participate in this contract for new usage, during the contract term, or on any contract extension term, if approved by the lead agency. New Co-op members may participate in any contract, on acceptance and approval by the lead agency.

L. Qualifications of Bidders

Bids will only be considered from manufacturers or their authorized distributors. The authorized distributors must regularly maintain a substantial stock of the chemical bid, and must be actively engaged in its sale. A representative of the City may examine such stock and facilities at any time either before bid award is made or during the term of the contract.

The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in determining a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination. Bidder should submit with Bid a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such

documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidder shall notify City immediately of notice of any citation or violation which Bidder may receive after the Bid opening date and during the time of performance of any contract awarded to Bidder.

M. MSDS

In compliance with Florida Statutes, Chapter 442, a Material Safety Data Sheet (MSDS) must accompany deliveries from a contract resulting from this bid. ALL TOXIC SUBSTANCES MUST BE LABELED FOR IDENTIFICATION, IN ACCORDANCE WITH O.S.H.A. STANDARDS.

N. Certification and Testing

Bidders should provide proof of certification that the carbon dioxide to be furnished conforms to ANSI/NSF Standard 60-1998. All additives and chemicals used in drinking water treatment must conform to ANSI/NSF Standard 60-1998, per the Florida Administrative Code 62-555.320(3)(b).

The City reserves the right during the contract period to determine by independent test if the product supplied meets the specifications herein. The cost of the test is to be paid for by the City if sample meets specifications and by the contractor if it should not meet specifications. In addition, the facilities of the Florida State Department of Agriculture testing laboratories may be used for any referee testing.

O. Cancellation of Order

If contractor cannot fulfill delivery requirements, the City retains the right to cancel the order and make such purchase on the open market. Contractor will be liable for all price differences incurred by the City if delivery failure is not a case of force majeure.

P. Cancellation of Contract

The items to be purchased from this contract are essential to the delivery of City services. It is the intention of the City to purchase material from a source of supply that will give prompt and convenient shipment and service in full compliance with the safety requirements for shipping containers, and for delivery per specifications. Any failure of the supplier to comply with the terms and/or conditions of the contract shall be considered default, and shall be reason for termination of contract.

Q. Market Conditions

If, during the contract period, the City is able to purchase a chemical specified herein on the open market at prices less than the contract price, the seller shall meet these prices or the City may negotiate/bid for a new contract on the open market.

R. Safety

1. The successful bidder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The successful bidder shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Florida Statutes Section 440.56) and with the standards set forth in the Occupational Safety and Health Act of 1970 (OSHA) and its amendments.
2. The successful bidder shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:
 - a. All employees on the work site and all other persons who may be affected thereby.
 - b. The work and all materials and equipment incorporated therein.
 - c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of work.
3. Safety Seminars: If requested by the City, the successful bidder will be required to give a minimum of two (2) on-site training presentations per year. Presentations will cover all material safety data information, safe handling procedures, and proper usage of the particular chemical in the work environment as prescribed by the controlling regulatory agency for your industry.
4. Safety Measures: Bidder shall guarantee that each delivery truck will be in a safe mechanical condition, and will be operated by a capable driver trained in the proper handling of the chemical being delivered.
5. Customer-Owned Tanks: The City/Co-op members will not pay the successful bidder for inspection of tanks. Upon award of contract, successful bidder shall promptly inspect tanks and report any safety deficiencies to the owner.

S. Detail Specifications

1. Carbon Dioxide, liquid, (CO₂), 99.5+% purity.
2. As required by per the Florida Administrative Code 62-555.320(3)(b), carbon dioxide used in drinking water treatment must conform to ANSI/NSF Standard 60-1998.
3. Type of delivery: Bulk (pumped).

4. Certified weight certificates must be furnished with all invoices indicating gross, tare and net weights, and the appropriate purchase order number. If a weight certificate is not furnished the following must be provided: (1) A delivery ticket at the time of delivery specifying quantity delivered & (2) Trailer meter calibration sheets would be made available if needed.
5. No charge shall be assessed for time spent unloading due to inexperienced drivers or mechanical failure of vendor's equipment.

T. Submittals

Bidders must submit, with their bid proposal, a typical analysis of the carbon dioxide offered listing all impurities, the applicable MSDS, and proof of certification that the product bid conforms to ANSI/NSF Standard 60-1998. These files must be uploaded to the Response Attachments tab in the eBid System.

U. Insurance

Contractor shall not commence services under the resulting Contract until certification or proof of insurance detailing terms and provisions have been received and approved in writing by the City's Risk Manager. If you are responding to this ITB and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Division of the General Services Department at (954) 786-4098. If the Contract has already been awarded, please direct any inquiries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/Contract.

Contractor is responsible to deliver to the City for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the City as an additional insured on all such coverage. Such policy or policies shall be issued by United States Treasury approved companies/firms authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.

Throughout the term of the Contract, the City, by and through its Risk Manager, reserves the right to review, modify, reject or accept any insurance policies required by this Contract, including limits, coverages or endorsements. City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as the City's review or acceptance of insurance maintained by the Contractor, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by the Contractor under the resulting Contract.

Throughout the term of the Contract, the Contractor and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements:

1. Worker’s Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company/firm (number of employees) or the state in which the work is to be performed or of the state in which the Contractor is obligated to pay compensation to employees engaged in the performance of the work. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

2. Liability Insurance.
 - (a) Naming the City of Pompano Beach as an additional insured as City’s interests may appear, on General Liability Insurance only, relative to claims which arise from the Contractor’s negligent acts or omissions in connection with the Contractor’s performance under this Contract.

 - (b) Such Liability Insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance	Limits of Liability	
	Per Occurrence	Aggregate
GENERAL LIABILITY:		
* Policy to be written on a claims occurrence basis		
	\$1,000,000	\$2,000,000
XX comprehensive form	bodily injury and property damage	
— premises - operations	bodily injury and property damage	
— explosion & collapse		
— hazard		
— underground hazard		
XX products/completed	bodily injury and property damage combined	
— operations hazard		
XX contractual insurance	bodily injury and property damage combined	
XX broad form property damage	bodily injury and property damage combined	
XX Independent Contractors	personal injury	
XX personal injury		
— CG2010	ongoing operations (or its’ equivalent)	
— CG 2037	completed operations (or its’ equivalent)	
— sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate	

AUTOMOBILE LIABILITY: Minimum \$1,000,000 Per Occurrence and Aggregate.
 Bodily injury (each person) bodily injury (each accident),
 property damage, bodily injury and property damage
 combined.

XX comprehensive form
 XX owned
 XX hired
 XX non-owned

REAL & PERSONAL PROPERTY

* Policy to be written on a claims occurrence basis

___ comprehensive form Agent must show proof it has this coverage.

EXCESS / UMBRELLA LIABILITY

* Policy to be written on a claims occurrence basis

		Per Occurrence	Aggregate
excess/umbrella	bodily injury and property damage combined	\$5,000,000	\$5,000,000

PROFESSIONAL LIABILITY

* Policy to be written on a claims made basis

		Per Occurrence	Aggregate
professional liability		\$1,000,000	\$1,000,000

(c) If Professional Liability Insurance is required, Bidder agrees the indemnification and hold harmless provisions of the Contract shall survive the termination or expiration of the Contract for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

ENVIRONMENTAL / POLLUTION LIABILITY

* Policy to be written on a claims-made basis

		Per Occurrence	Aggregate
XX environmental/pollution liability		\$1,000,000	\$1,000,000

CYBER LIABILITY

* Policy to be written on a claims occurrence basis

		Per Occurrence	Aggregate
		\$1,000,000	\$1,000,000

- ___ Network Security / Privacy Liability
 - ___ Breach Response / Notification Sublimit (minimum limit of 50% of policy aggregate)
 - ___ Technology Products E&O - \$1,000,000 (only applicable for vendors supplying technology related services and or products)
 - ___ Coverage shall be maintained in effect during the period of the Contract and for not less than four (4) years after termination/ completion of the Contract.
-

3. Employer's Liability. Contractor and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

4. Policies: Whenever, under the provisions of the Contract, insurance is required of the Contractor, the Contractor shall promptly provide the following:
- a) Certificates of Insurance evidencing the required coverage;
 - b) Names and addresses of firms providing coverage;
 - c) Effective and expiration dates of policies; and
 - d) A provision in all policies affording City thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

5. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company/firm shall provide thirty (30) days written notice to the City.

6. Waiver of Subrogation. Contractor hereby waives any and all right of subrogation against the City, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss Contract to waive subrogation without an endorsement, then, Contractor shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an Contract on a pre-loss basis.

The certification or proof of insurance must contain a provision for notification to the City ten (10) days in advance of any material change in coverage or cancellation.

The Contractor shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of Contract. Certificate(s) to be issued to City of Pompano Beach, Attention Risk Manager, 100 West Atlantic Boulevard, Pompano Beach, Florida, 33060.

SECTION II - GENERAL CONDITIONS

1. Submission and Receipt of Bids

- 1.1. Bidders must use the forms furnished by the City.
- 1.2. Bidders must submit their response via the eBid System.
- 1.3. It will be the sole responsibility of the Bidder to have its bid submitted via the eBid system before the closing hour and date shown for receipt of bids.
- 1.4. Bidder's response shall not contain any alternation to the document posted other than entering data in spaces provided or including attachments as necessary.
- 1.5. By submission of a response, Bidder affirms that a complete set of bid documents was obtained from the eBid System and no alteration of any kind has been made to the ITB.
- 1.6. Late bids will not be considered.
- 1.7. Bids transmitted by email or facsimile will not be accepted.

2. Completion of Bid Forms

Bidder is to enter information into the eBid System and upload any required attachments and forms as specified in the ITB.

3. Electronic Signature

Bidder acknowledges that the user identification, password, entry of the user's full name, and entry of the user's email address serves as its unique electronic signature for all bid responses and submissions as provided by 668.001, Fla. Stat. et. seq. Bidder further agrees that only individuals with signature authority will submit a response.

4. Prices to be Firm

Bidder certifies that prices, terms and conditions in the bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the City. Bids may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Bids may be withdrawn after ninety (90) days only upon written notification to the City.

5. Extensions

If there is an error in extensions (mathematical calculations), unit prices will prevail.

6. Delivery

- 6.1. All items are to be bid F.O.B. delivered with freight charges prepaid and included, to designated addresses as specified by the City on its purchase order(s) or in letter(s) of authorization.
- 6.2. Bidder must state specific number of calendar days required for delivery of each item bid in attribute in the eBid System for consideration of award of this bid.

- 6.3. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default. (See Section 10.)

7. Electronic Bid Considered an Offer

This electronic bid submitted via the eBid System is considered an offer on the part of the Bidder, which offer shall be considered accepted upon approval by the City Commission of the City of Pompano Beach (if required). The City of Pompano Beach will issue a purchase order or a letter of authorization to the awarded Bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein.

In the event of default on the part of the Bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

8. Quality

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest grade workmanship unless otherwise specified in this bid by the City.

9. Brand Names

Whenever proprietary names are used, (whether or not followed by the words "or approved equal"), the item(s) will be subject to acceptance and/or approval by authorized City personnel, and said personnel will deem it their prerogative to select the item(s) which are lowest bid, item by item, meeting specifications from the information furnished by the Bidder with the bid and/or sample inspection or testing of the item(s) called for herein.

10. Default Provisions

In the event of default by the Bidder, the City reserves the right to procure the item(s) bid from other sources and will hold the Bidder responsible for excess costs incurred as a result. A Contractor who defaults on a City Contract may be banned from doing business with the City for a period of 36 months from the date of default.

11. Samples

Samples, when requested, must be furnished at, or before, bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at Bidder's request, be returned within thirty (30) days of bid award at Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the southeast Florida area.

12. Acceptance of Materials

The material delivered as a result of this bid shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance

- with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.
13. **Manufacturers' Certifications**
- The City reserves the right to obtain separate manufacturer certification of all statements made in the bid.
14. **Copyrights and Patent Rights**
- Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this bid, and awarded Bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.
15. **Laws and Regulations**
- All applicable laws and regulations of the Federal government, the State of Florida, and ordinances of the City of Pompano Beach will apply to any resulting bid award.
16. **Taxes**
- The City of Pompano Beach is exempt from any taxes imposed by the State and Federal government. Exemption certificates will be provided upon request. State sales tax exemption certificate #85 8012621672C-6 and Federal exemption tax #59 74 0083K apply and appear on each purchase order.
17. **Conflict of Instructions**
- If a conflict exists between the General Conditions and instructions contained herein, and the Specific Conditions and instructions contained herein, the specific conditions shall govern.
18. **Exceptions to Specifications**
- For purposes of evaluation, Bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Bidder that are required to be signed by the City. If exceptions are not stated by the Bidder, in its bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder on an attachment included with its bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.
19. **Warranties**
- The City of Pompano Beach will not accept any disclaimer of the warranties of merchantability and fitness for a particular purpose for the product(s) offered. Proposals will clearly state any additional warranties and guarantees against defective materials and workmanship. A copy of the complete manufacturer's warranty statement is to be submitted with the bid.
20. **Retention of Records and Right to Access Clause**
- The awarded Bidder shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a period of five (5) years after termination of this Contract; or if an audit has been initiated and audit findings have not been resolved at the end of these five (5) years, the records shall be retained until resolution of audit finding.
21. **Qualifications/Inspection**
- Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The General Services Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
22. **Anti-collusion Statement**
- By submitting this bid, the Bidder affirms that its bid is without previous understanding, agreement, or connection with any person, business, or corporation submitting a bid for the same materials, supplies, or equipment, and that this bid is in all respects fair, and without collusion or fraud.
- Additionally, Bidder agrees to abide by all conditions of this bid and certifies that it has the legal authority to submit this bid on behalf of the named Bidder. In submitting a bid to the City of Pompano Beach, the Bidder offers and agrees that if the bid is accepted, the Bidder will convey, sell, assign or transfer to the City of Pompano Beach all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Pompano Beach. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Bidder.
23. **Indemnification**
- Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by Contractor during the performance of the Contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the Contractor nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.
24. **Reservation for Rejections and Award**
- The City reserves the right to accept or reject any or all bids or parts of bids, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the Contract on such items the City deems will best serve the interests of the City. The

- City further reserves the right to award the Contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified.
25. Interpretations
- Any questions concerning the conditions and specifications contained in this bid shall be submitted in writing and received by the Purchasing Division no later than seven (7) calendar days prior to the bid opening. The City of Pompano Beach shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.
26. Failure to Respond
- If you elect not to bid, please use the "No Bid" feature of the eBid System. Failure to respond, either by submitting a bid, or by submitting a "No Bid" response, may result in your name being removed from our notification list.
27. Bid Tabulations
- Tabulations are posted to the Purchasing page of the City's website. Bidders who wish to receive a copy of the bid tabulation should request it by enclosing a stamped, self-addressed envelope with their bid, or by requesting a tabulation be sent to their fax machine. Bid results will not be given out by telephone. The City does not notify unsuccessful Bidders of Contract awards.
28. Assignment
- Awarded Bidder may not assign or transfer this Contract, in whole or part, without prior written approval of the City of Pompano Beach.
29. Termination for Convenience of City
- Upon seven (7) calendar days written notice delivered by certified mail, return receipt requested, to the awarded Bidder, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the agreement is terminated for the convenience of the City, the notice of termination to the awarded Bidder must state that the Contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the Contractor shall promptly discontinue all work at the time and to the extent indicated on the notice of termination, terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the Contract and refrain from placing further orders and sub-contracts except as they may be necessary, and complete any continued portions of the work.
30. Public Entity Crimes
- In accordance with Florida State Statute 287.133 (2)(a): A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a Contract to provide any goods or services to a public entity, may not
- submit a bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
31. Governing Procedures
- This bid is governed by the applicable sections of the City's General Services Procedures Manual. A copy of the manual is available for review at the City Purchasing Division.
32. Identical Tie Bids
- In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process.
- Established procedures for processing tie bids will be followed if none of the tied vendors have a Drug-free Workplace Program. In order to have a Drug-free Workplace Program, a business shall:
- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
 - 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
 - 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
 - 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States of any State, for a violation occurring in the workplace no later than five (5) days after such conviction.
 - 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
 - 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

33. Invoicing/Payment

All invoices shall be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Bidder offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D.

34. Optional Contract Usage

As provided in Section 287.042(17), Florida Statutes, State of Florida agencies may purchase from a Contract resulting from this ITB, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the Contractor's option.

35. Non-Discrimination

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this Contract. Included as applicable activities by the Contractor under this section are the ITB for, or purchase of, goods or services, or the subcontracting of work in performance of this Contract.

36. Notice To Contractor

The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract.

37. Costs Incurred by Bidders

All expenses associated with the preparation and/or presentation and submission of bids to the City, or any work performed in connection therewith, shall be the sole responsibility of the Bidder and shall not be reimbursed by the City.

38. Public Records

1) Any material submitted in response to this ITB will become a public document pursuant to Section 119.071, Florida Statutes. This includes material which the responding Bidder/proposer might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Section 119.071, Florida Statutes.

2.1) The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

b. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City;

d. Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

e. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

2.2) The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Contract and the City shall enforce the Default in accordance with the provisions set forth herein.

SECTION III – BID LINE ITEM PRICING

BID LINE ITEM PRICING MUST BE SUBMITTED ELECTRONICALLY USING THE CITY'S EBID SYSTEM.

Estimated Annual Quantity	Description	Unit Price	Total
3,363 tons	Liquid Carbon Dioxide, delivered, as specified	\$_____/ton	\$_____

** Submit a complete history of all environmental citations and/or violations, notices and dispositions thereof, per Section K.

** Submit typical analysis of the carbon dioxide offered listing all impurities, the applicable MSDS, and proof of certification that the product bid conforms to ANSI/NSF Standard 60-1998, per Section S.

REQUESTED INFORMATION BELOW IS ON THE ATTRIBUTES TAB FOR THE BID IN THE EBID SYSTEM. PROVIDE THIS INFORMATION ELECTRONICALLY.

Minimum order _____ (must be no greater than 20 tons)

Delivery time after receipt of order _____ calendar days (not to exceed 48 hours.)

State telephone number for placement of orders: _____

State telephone number for emergency contact after regular hours: _____

VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS

Respondent Vendor Name: _____

Vendor FEIN: _____

Section 215.4725, Florida Statutes, prohibits agencies from contracting (at any dollar amount) with companies on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel. As the person authorized to sign electronically on behalf of Respondent, I hereby certify by selecting the box below that the company/firm responding to this solicitation is not listed on the Scrutinized Companies that Boycott Israel List. I also certify that the company/firm responding to this solicitation is not participating in a boycott of Israel, and is not engaged in business operations in Syria or Cuba. I understand that pursuant to sections 287.135 and 215.4725, Florida Statutes, the submission of a false certification may subject company/firm to civil penalties, attorney's fees, and/or costs.

I Certify



Conflict of Interest: For purposes of determining any possible conflict of interest, all Bidders must disclose if any City of Pompano Beach employee is also an owner, corporate officer, or employee of their business. Indicate either "Yes" (a City employee is also associated with your business), or "No". (Note: If answer is "Yes", you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313.)

Yes ____ No ____

Drug-Free Workplace: Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process. If Bidder's company/firm has a Drug-free Workplace Program as outlined in General Conditions, section 32., so certify below:

Bidder has a drug-free workplace program? Yes ____ No ____