



INVITATION TO BID #37-19 Fuel – Gasoline and Diesel

June 19, 2019

NOTICE IS HEREBY GIVEN that sealed bids will be received by the City of Clearwater (City) until **10:00 A.M., Local Time, July 18, 2019** to provide **Fuel – Gasoline and Diesel**.

Brief Description: The City of Clearwater seeks qualified fuel distributors to provide gasoline and diesel fuels.

Bids must be in accordance with the provisions, specifications and instructions set forth herein and will be received by Purchasing until the above noted time, when they will be publicly acknowledged and accepted.

Bid packets, any attachments and addenda are available for download at www.myclearwater.com/bid .

Please read the entire solicitation package and submit the bid in accordance with the instructions. This document (less this invitation and the instructions) and any required response documents, attachments, and submissions will constitute the bid.

General, Process or Technical Questions concerning this solicitation should be directed, IN WRITING, to the following Procurement Analyst:

Kelly Rogers
Procurement Analyst
Kelly.Rogers@myclearwater.com

This Invitation to Bid is issued by:

Alyce Benge, CPPO, C.P.M.
Purchasing Manager
Alyce.Benge@myclearwater.com

INSTRUCTIONS

i.1 **VENDOR QUESTIONS:** All questions regarding the contents of this solicitation, and solicitation process (including requests for ADA accommodations), shall be directed solely to the Purchasing Manager. Questions should be submitted in writing via letter, fax or email. Questions received less than seven (7) calendar days prior to the due date and time may be answered at the discretion of the City.

i.2 **ADDENDA/CLARIFICATIONS:** Any changes to the specifications will be in the form of an addendum. Addenda are posted on the City website and mailed to those who register on the City website when downloading solicitations no less than seven (7) days prior to the Due Date. **Vendors are cautioned to check the Purchasing Website for addenda and clarifications prior to submitting their bid.** The City cannot be held responsible if a vendor fails to receive any addenda issued. The City shall not be responsible for any oral changes to these specifications made by any employees or officer of the City. Failure to acknowledge receipt of an addendum may result in disqualification of a bid.

i.3 **VENDOR CONFERENCE / SITE VISIT:** ☐ Yes ☒ No
Mandatory Attendance: ☐ Yes ☒ No

i.4 **DUE DATE & TIME FOR SUBMISSION AND OPENING:**

Date: July 18, 2019

Time: 10:00 A.M. (Local Time)

The City will open all bids properly and timely submitted and will record the names and other information specified by law and rule. All bids become the property of the City and will not be returned except in the case of a late submission. Respondent names, as read at the bid opening, will be posted on the City website. Once a notice of intent to award is posted or 30 days from day of opening elapses, whichever occurs earlier, bids are available for inspection by contacting Purchasing.

i.5 **BID FIRM TIME:** 60 days from Opening

Bid shall remain firm and unaltered after opening for the number of days shown above. The City may accept the bid, subject to successful contract negotiations, at any time during this time.

i.6 **BID SECURITY:** ☐ Yes ☒ No

If so designated above, a bid security in the amount specified must be submitted with the bid. The security may be submitted in any one of the following forms: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Florida; cash; certified check, or cashier's check payable to the City of Clearwater (personal or company checks are not acceptable); certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City. Such bid security shall be forfeited to the City of Clearwater should the bidder selected fail to execute a contract when requested.

PERFORMANCE SECURITY: ☐ Yes ☒ No

If required herein, the Contractor, simultaneously with the execution of the Contract, will be required to furnish a performance security. The security may be submitted in one-year increments and in any one of the following forms: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Florida; cash; certified check, cashier's check or money order payable to the City of Clearwater (personal and company checks are not acceptable); certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City. If the Contractor fails or refuses to fully comply with the terms and conditions of the contract, the City shall have the right to use all or such part of said security as may be necessary to reimburse the City for loss sustained by reason of such breach. The balance of said security, if any, will be returned to Contractor upon the expiration or termination of the contract.

INSTRUCTIONS

- i.6 **SUBMIT BIDS TO:** Use label at the end of this solicitation package

City of Clearwater
Attn: Purchasing
100 S Myrtle Ave, 3rd Fl, Clearwater FL 33756-5520
or
PO Box 4748, Clearwater FL 33758-4748

Bids will be received at this address. Bidders may mail or hand-deliver bids. E-mail or fax submissions will not be accepted.

No responsibility will attach to the City of Clearwater, its employees or agents for premature opening of a bid that is not properly addressed and identified.

- i.7 **LATE BIDS.** The bidder assumes responsibility for having the bid delivered on time at the place specified. All bids received after the date and time specified shall not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in handling of the mail by employees of the City of Clearwater, or any private courier, regardless whether sent by mail or by means of personal delivery. You must allow adequate time to accommodate all registration and security screenings at the delivery site. A valid photo I.D. may be required. It shall not be sufficient to show that you mailed or commenced delivery before the due date and time. All times are Clearwater, Florida local times. The bidder agrees to accept the time stamp in the City Purchasing Office as the official time.
- i.8 **COMMENCEMENT OF WORK.** If bidder begins any billable work prior to the City's final approval and execution of the contract, bidder does so at its own risk.
- i.9 **RESPONSIBILITY TO READ AND UNDERSTAND.** Failure to read, examine and understand the solicitation will not excuse any failure to comply with the requirements of the solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. If a vendor suspects an error, omission or discrepancy in this solicitation, the vendor must immediately and in any case not later than seven (7) business days in advance of the due date notify the contact on page one (1). The City is not responsible for and will not pay any costs associated with the preparation and submission of the bid. Bidders are cautioned to verify their bids before submission, as amendments to or withdrawal of bids submitted after time specified for opening of bids may not be considered. The City will not be responsible for any bidder errors or omissions.
- i.10 **FORM AND CONTENT OF BIDS.** Unless otherwise instructed or allowed, bids shall be submitted on the forms provided. An original and the designated number of copies of each bid are required. Bids, including modifications, must be submitted in ink, typed, or printed form and signed by an authorized representative. Please line through and initial rather than erase changes. If the bid is not properly signed or if any changes are not initialed, it may be considered non-responsive. In the event of a disparity between the unit price and the extended price, the unit price shall prevail unless obviously in error, as determined by the City. The City may require that an electronic copy of the bid be submitted. The bid must provide all information requested and must address all points. The City does not encourage exceptions. The City is not required to grant exceptions and depending on the exception, the City may reject the bid.
- i.11 **SPECIFICATIONS.** Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. Alternates will be considered upon demonstrating the other product meets stated specifications and is equivalent to the brand product in terms of quality, performance and desired characteristics.
- Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product meets the minimum standards or is equal to the brand name, product, is on the bidder. The City reserves the right to reject bids that the City deems unacceptable.
- i.12 **MODIFICATION / WITHDRAWAL OF BID.** Written requests to modify or withdraw the bid received by the City prior to the scheduled opening time will be accepted and will be corrected after opening.

INSTRUCTIONS

No oral requests will be allowed. Requests must be addressed and labeled in the same manner as the bid and marked as a MODIFICATION or WITHDRAWAL of the bid. Requests for withdrawal after the bid opening will only be granted upon proof of undue hardship and may result in the forfeiture of any bid security. Any withdrawal after the bid opening shall be allowed solely at the City's discretion.

- i.13 **DEBARMENT DISCLOSURE.** If the vendor submitting this bid has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the bidder shall include a letter with its bid identifying the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment.
- i.14 **RESERVATIONS.** The City reserves the right to reject any or all bids or any part thereof; to rebid the solicitation; to reject non-responsive or non-responsible bids; to reject unbalanced bids; to reject bids where the terms, prices, and/or awards are conditioned upon another event; to reject individual bids for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor irregularities, defects, omissions, technicalities or form errors in any bid. The City may seek clarification of the bid from bidder at any time, and failure to respond is cause for rejection. Submission of a bid confers on bidder no right to an award or to a subsequent contract. The City is charged by its Charter to make an award that is in the best interest of the City. All decisions on compliance, evaluation, terms and conditions shall be made solely at the City's discretion and made to favor the City. No binding contract will exist between the bidder and the City until the City executes a written contract or purchase order.
- i.15 **OFFICIAL SOLICITATION DOCUMENT.** Changes to the solicitation document made by a bidder may not be acknowledged or accepted by the City. Award or execution of a contract does not constitute acceptance of a changed term, condition or specification unless specifically acknowledged and agreed to by the City. The copy maintained and published by the City shall be the official solicitation document.
- i.16 **COPYING OF BIDS.** Bidder hereby grants the City permission to copy all parts of its bid, including without limitation any documents and/or materials copyrighted by the bidder. The City's right to copy shall be for internal use in evaluating the proposal.
- i.17 **CONTRACTOR ETHICS.** It is the policy of the City to promote courtesy, fairness, impartiality, integrity, service, professionalism, economy, and government by law in the Procurement process. The responsibility for implementing this policy rests with each individual who participates in the Procurement process, including Respondents and Contractors.

To achieve the purpose of this Article, it is essential that Respondents and Contractors doing business with the City also observe the ethical standards prescribed herein. It shall be a breach of ethical standards to:

- a. Exert any effort to influence any City employee or agent to breach the standards of ethical conduct.
 - b. Intentionally invoice any amount greater than provided in Contract or to invoice for Materials or Services not provided.
 - c. Intentionally offer or provide sub-standard Materials or Services or to intentionally not comply with any term, condition, specification or other requirement of a City Contract.
- i.18 **GIFTS.** The City will accept no gifts, gratuities or advertising products from bidders or prospective bidders and affiliates. The City may request product samples from vendors for product evaluation.
 - i.19 **PROTESTS AND APPEALS.** If a Respondent believes there is a mistake, impropriety, or defect in the solicitation, believes the City improperly rejected its proposal, and/or believes the selected proposal is not in the City's best interests, the Respondent may submit a written protest. All protests and appeals are governed by the City of Clearwater Purchasing Policy and Procedures. If any

INSTRUCTIONS

discrepancy exists between this Section and the Purchasing Policy, the language of the Purchasing Policy controls.

Protests based upon alleged mistake, impropriety, or defect in a solicitation that is apparent before the bid opening must be filed with the Procurement Officer no later than five (5) business days before Bid Opening. Protests that only become apparent after the Bid Opening must be filed within ten (10) business days of the alleged violation of the applicable purchasing ordinance. The complete protest procedure can be obtained by contacting Purchasing.

ADDRESS PROTESTS TO:

Alyce Benge, CPPO, C.P.M.

Purchasing Manager

100 S Myrtle Ave, 3rd Fl

Clearwater FL 33756-5520

or

PO Box 4748

Clearwater FL 33758-4748

INSTRUCTIONS – EVALUATION

- i.20 **EVALUATION PROCESS.** Bids will be reviewed by Purchasing and representative(s) of the respective department(s). The City staff may or may not initiate discussions with bidders for clarification purposes. Clarification is not an opportunity to change the bid. Bidders shall not initiate discussions with any City employee or official.
- i.21 **PRESENTATIONS/INTERVIEWS.** The bidder must provide a formal presentation/interview upon request.
- i.22 **CRITERIA FOR EVALUATION AND AWARD.** The City evaluates three (3) categories of information: responsiveness, responsibility, and price. All bids must meet the following responsiveness and responsibility criteria to be considered further.
- a) **Responsiveness.** The City will determine whether the bid complies with the instructions for submitting bids including completeness of bid which encompasses the inclusion of all required attachments and submissions. The City must reject any bids that are submitted late. Failure to meet other requirements may result in rejection.
 - b) **Responsibility.** The City will determine whether the bidder is one with whom it can or should do business. Factors that the City may evaluate to determine "responsibility" include, but are not limited to: excessively high or low priced bids, past performance, references (including those found outside the bid), compliance with applicable laws-including tax laws, bidder's record of performance and integrity - e.g. has the bidder been delinquent or unfaithful to any contract with the City, whether the bidder is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified. A bidder must at all times have financial resources sufficient, in the opinion of the City, to ensure performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet and/or any generally available industry information. The City reserves the right to inspect and review bidder's facilities, equipment and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information, or the quality of the information, will result in rejection.
 - c) **Price.** We will then evaluate the bids that have met the requirements above.
- i.23 **COST JUSTIFICATION.** In the event only one response is received, the City may require that the bidder submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the bid price is fair and reasonable.
- i.24 **CONTRACT NEGOTIATIONS AND ACCEPTANCE.** Bidder must be prepared for the City to accept the bid as submitted. If bidder fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, or negotiations do not result in an acceptable agreement, the City may reject bid or revoke the award, and may begin negotiations with another bidder. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the bidder and the City until the City executes a written contract or purchase order.
- i.25 **NOTICE OF INTENT TO AWARD.** Notices of the City's intent to award a Contract are posted to Purchasing's website. **It is the bidder's responsibility to check the City of Clearwater's website at www.myclearwater.com/bid to view relevant bid information and notices.**
- i.26 **BID TIMELINE.** Dates are tentative and subject to change.
Release ITB: June 19, 2019
Advertise Tampa Bay Times: June 21, 2019
Bids due: July 18, 2019
Review bids: July 18-24, 2019
Award recommendation: July 25, 2019
Council authorization: August 14, 2019
Contract begins: August 2019

STANDARD TERMS AND CONDITIONS

- S.1 **DEFINITIONS.** Uses of the following terms are interchangeable as referenced: “vendor, contractor, supplier, proposer, company, parties, persons”, “purchase order, PO, contract, agreement”, “city, Clearwater, agency, requestor, parties”, “bid, proposal, response, quote”.
- S.2 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor’s employees, not City employees. Accordingly, Contractor and Contractor’s employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers’ compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
- S.3 **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
- S.4 **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City’s written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.5 **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.6 **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
- S.7 **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
- S.8 **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.9 **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties’ obligations under this Agreement.
- S.10 **COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor must procure all permits and licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City’s satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified

STANDARD TERMS AND CONDITIONS

in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under this provision, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act.
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- S.11 **SALES/USE TAX, OTHER TAXES.** Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- The City is exempt from paying state and local sales/use taxes and certain federal excise taxes and will furnish an exemption certificate upon request.
- S.12 **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

STANDARD TERMS AND CONDITIONS

- S.13 **OPENNESS OF PROCUREMENT PROCESS.** Written competitive proposals, replies, oral presentations, meetings where vendors answer questions, other submissions, correspondence, and all records made thereof, as well as negotiations or meetings where negotiation strategies are discussed, conducted pursuant to this Invitation to Bid (ITB), shall be handled in compliance with Chapters 119 and 286, Florida Statutes.

Proposals or replies received by the City pursuant to this ITB are exempt from public disclosure until such time that the City provides notice of an intended decision or until 30 days after opening the proposals, whichever is earlier. If the City rejects all proposals or replies pursuant to this ITB and provides notice of its intent to reissue the ITB, then the rejected proposals or replies remain exempt from public disclosure until such time that the City provides notice of an intended decision concerning the reissued ITB or until the City withdraws the reissued ITB. A proposal or reply shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all proposals or replies.

Oral presentations, meetings where vendors answer questions, or meetings convened by City staff to discuss negotiation strategies, if any, shall be closed to the public (and other proposers) in compliance with Chapter 286 Florida Statutes. A complete recording shall be made of such closed meeting. The recording of, and any records presented at, the exempt meeting shall be available to the public when the City provides notice of an intended decision or until 30 days after opening proposals or final replies, whichever occurs first. If the City rejects all proposals or replies pursuant to this ITB and provides notice of its intent to reissue the ITB, then the recording and any records presented at the exempt meeting remain exempt from public disclosure until such time that the City provides notice of an intended decision concerning the reissued ITB or until the City withdraws the reissued ITB. A recording and any records presented at an exempt meeting shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all proposals or replies.

In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law.

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, Rosemarie Call, phone: 727-562-4092 or Rosemarie.Call@myclearwater.com, 112 S. Osceola Ave., Clearwater, FL 33756.

The contractor's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the 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 for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the 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 public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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

STANDARD TERMS AND CONDITIONS

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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 - 1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - 2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.
- i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

- S.14 **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
- S.15 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

STANDARD TERMS AND CONDITIONS

- S.16 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
- S.17 **DEFAULT.**
- a. A party will be in default if that party: (i) is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement; (ii) is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days; (iii) conducts business in an unethical manner or in an illegal manner; or (iv) fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with the City's Purchasing Policy and Procedures Manual.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
- S.18 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
- S.19 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

STANDARD TERMS AND CONDITIONS

- S.20 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
- S.21 **TERMINATION FOR CONFLICT OF INTEREST Florida Statutes Section 112.** Pursuant to F.S. Section 112, the City may cancel this Agreement after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.22 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
- S.23 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
- S.24 **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
- S.25 **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
- S.26 **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

STANDARD TERMS AND CONDITIONS

- S.27 **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.28 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
- S.29 **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
- S.30 **USE OF NAME.** Contractor will not use the name of the City of Clearwater in any advertising or publicity without obtaining the prior written consent of the City.
- S.31 **PROHIBITED ACTS.** Pursuant to Florida Constitution Article II Section 8, a current or former public officer or employee within the last two (2) years shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion.
- S.32 **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
- S.33 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
- S.34 **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
- S.35 **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
- S.36 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.

STANDARD TERMS AND CONDITIONS

- S.37 **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
- S.38 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- S.39 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Florida government agencies, including the Tampa Bay Area Purchasing Cooperative. Under a Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Florida with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.
- Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.
- S.40 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
- S.41 **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
- S.42 **GOVERNING LAW, VENUE.** This Agreement is governed by the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Pinellas County, Florida.
- S.43 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
- S.44 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.45 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

STANDARD TERMS AND CONDITIONS

- S.46 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

DETAILED SPECIFICATIONS

1. **INTRODUCTION.** The City of Clearwater (City) is located on the West Coast of Florida in the Tampa Bay region. It is the third largest city in the region with an estimated population of 110,000 residents. The City of Clearwater is a major tourist destination – Clearwater Beach was recently rated #1 U.S. Beach by *TripAdvisor*, previously named “Florida’s Best Beach Town 2013” by USA Today, and was on the “Top Ten List of Best Beaches from Maine to Hawaii”. The City of Clearwater is home to the Philadelphia Phillies Spring Training and Clearwater Threshers Minor League Baseball and hosts several sports tournaments through the year that attract visitors from across the country. Clearwater is home for Winter the Dolphin and the Clearwater Marine Aquarium. Winter’s story has made it all the way to Hollywood in the motion pictures “Dolphin Tale” and “Dolphin Tale 2”, both filmed here in Clearwater.

2. **SCOPE OF WORK.** The awarded vendor(s) will be required to supply and deliver fuel to the City of Clearwater (City) facilities on an as-needed basis. The types of fuel included in this bid are unleaded E10 gasoline, REC-90 Non-Ethanol gasoline, Ultra-Low Sulfur diesel, and Ultra-Low Sulfur red-dyed diesel. Fuel costs shall be based on the daily average rate for the OPIS Tampa Terminal plus a firm fixed markup/discount fee per gallon. Deliveries to the Clearwater Beach Marina require the following additives:

- **ValvTect® Marine Diesel Additive with Bioguard™ Fuel Biocide (VMDA)**
- **ValvTect® Marine Gasoline Additive (VMGA)**

Alternative additives may be proposed. Bidders must provide complete documentation with specification sheets and manufacturer’s details of any alternative additives.

3. **MINIMUM QUALIFICATIONS.** The Vendor must have a storage/distribution facility located within a 35-mile radius of Clearwater city limits, with the capacity to store a minimum of 50,000 gallons of fuel at that facility.

The Vendor must have the capability to perform a single product delivery of 4,000 gallons minimum.

The Vendor shall, without additional cost to the participating agencies, be responsible for obtaining any necessary licenses and permits, and for complying with any and all Federal, State and Local Laws, Codes and Regulations in connection with the performance of the contract.

4. **SPECIFICATIONS.**

A. Fuel Requirements Vendor will provide gasoline and diesel per the following specifications:

Gasoline E10, Unleaded 87 Octane Conforming to Florida Administrative Code 5J-21.001, Florida Department of Agriculture and Consumer Services.

Gasoline Non-Ethanol, Unleaded 90 Octane Conforming to Florida Administrative Code 5J-21.001, Florida Department of Agriculture and Consumer Services.

Ultra-Low Sulfur Diesel Grade No. 2-D for use in on-road diesel engine, per A.S.T.M. specification D975, complying with Florida Department of Agriculture and Consumer Services standards 5J-21.001.

Ultra-Low Sulfur Diesel, Red Dye Grade No. 2-D for use in off-road diesel engine, per A.S.T.M. specification D975, Grade No. 2-D, S15 complying with Florida Department of Agriculture and Consumer Services standards 5J-21.001. It shall have a minimum cetane number of 40 using ASTM D613.

ValveTect VMDA and VMGA or alternative additives required in all Marina fuel deliveries.

The fuel to be furnished under these contracts shall conform to all applicable A.S.T.M. and Society of Automotive Engineers (SAE) standards and must be of a quality equal to similar products furnished to the retail market.

DETAILED SPECIFICATIONS

B. Emergency Conditions Priority

The Vendor agrees to consider the City of Clearwater's needs on a first and highest priority basis during any official emergency condition. This condition is set forth to ensure adequate functioning of the City's Emergency Services including Police, Fire, Solid Waste and Utilities.

Bidder shall include a policy statement with their bid regarding fuel deliveries preceding and immediately following an emergency (e.g. natural disaster), when rack facilities at Tampa may not be operational.

In the event of emergency, use of the generators for any or all buildings will be significantly increased, and additional deliveries may be required by the City until the emergency condition no longer exists.

C. Location of Fuel Tanks and Generators

A list of sites for the fuel tanks and generators with the approximate storage capacity are listed below. The generators are listed by size and zip code. The awarded Vendor will be provided with a detailed list of City addresses by location number.

The City of Clearwater reserves the right to add or delete service locations or products throughout the term of the contract as conditions dictate. The Vendor agrees to include any new locations at the established contract rate.

List of Fuel Tanks

Location	Fuel Tank Location(s)	Fuel Type	Capacity (Gallons) PER TANK
1	Solid Waste Facility 1701 N. Hercules Ave. Clearwater, FL 33765	Unleaded E10 Gasoline	12,000
		Ultra-Low Sulfur, no. 2 Diesel	12,000
		Ultra-Low Sulfur, Red Dye, no. 2 Diesel	12,000
2	City of Clearwater Marina 25 Causeway Blvd. Clearwater, FL 33767	Non-Ethanol, Unleaded Gasoline	10,000
		Ultra-Low Sulfur, Red Dye, no. 2 Diesel	10,000 10,000

DETAILED SPECIFICATIONS

Diesel Generators / Ultra Low Sulfur No. 2 off-road, red-dyed diesel

Zip Code	Capacity (Gallons)	Location Number	Zip Code	Capacity (Gallons)	Location Number
33755	4,000	4	33759	500	22
33755	6,000	4	33759	2,000	26
33755	100	4	33761	500	2
33755	250	12	33761	6,000	5
33755	4,000	13	33761	2,000	5
33755	500	29	33761	2,000	5
33755	580	24	33761	2,000	5
33756	125	7	33761	2,000	5
33756	100	7	33761	1,000	5
33756	275	7	33761	3,000	5
33756	100	8	33761	4,000	15
33756	5,200	8	33761	250	25
33756	125	9	33765	2,000	1
33756	193	10	33765	2,000	11
33756	500	19	33765	12,000	14
33756	1,000	20	33765	325	30
33756	1,400	21	33767	500	16
33756	225	21	33767	3,215	17
33756	500	3	33767	200	28
33765	200	27	33767	500	23
33759	2,000	6	33767	500	18
33759	2,000	6	33767	194	31

Estimated Annual Quantities

To assist bidders in the solicitation process, estimated annual historical information is provided.

Location	Fuel Type	Estimated Annual Gallons
1	Unleaded E10 Gasoline	473,192
	Ultra-Low Sulfur, no. 2 Diesel	263,000
	Ultra-Low Sulfur, Red Dye, no. 2 Diesel	32,160
2	Non-Ethanol, Unleaded Gasoline	351,068
	Ultra-Low Sulfur, Red Dye, no. 2 Diesel	485,858 (both tanks)

All quantities reflect HISTORICAL DATA ONLY from Fiscal Year 17/18. Quantities represent total usage and not ordered quantities.

DETAILED SPECIFICATIONS

D. Additional Requirements

OPIS Index Newsletter: Awarded Vendor must provide a copy of the Daily OPIS Index Newsletter during the full term of the contract resulting from this solicitation, showing the Daily OPIS Rack Average price for the Port of Tampa, Pad 1 Terminal, for the dates of fuel delivery.

All fuel to be delivered on any order shall be free of foreign matter and impurities and shall be equal to or better in quality than the kind and grade certified in the originating bid. All grades of fuel must be homogenous at time of delivery and remain so in normal storage.

The Vendor shall keep an adequate supply of gasoline and diesel fuel available to fill requirements at all times.

The City reserves the right to sample delivered fuel in any manner for quality control or testing purposes. All fuel that does not meet specifications will be rejected, and, when so ordered by the using City Department, the Vendor shall at his expense, remove all inferior product delivered, and replace with product meeting the specifications.

Vendor may not, without specific authorization of the City, substitute a fuel of either a higher or lower grade than specified in the contract.

Vendor must demonstrate certification as a ValveTect distributor or equivalent for alternative additives.

Damages to property and spillage caused by the Vendor must be corrected immediately. In the event of spillage, the damage must be corrected at the time of the occurrence. Vendor shall immediately notify the designated department specified by the agency of damage to property or spillage.

It is the intent of the City that all specifications herein are in full and complete compliance with all Federal and State of Florida laws and regulations applicable to the type and class of Commodity being provided. This includes, but is not limited to, Federal Motor Equipment Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida requirements that apply to the type and class of Commodity being provided. The Vendor must meet or exceed any such requirements of the laws and regulations.

E. Pricing

Gasoline and diesel prices are calculated using the following information:

1. Base Fuel Price, set from the OPIS Daily Rack Average for the Tampa Terminal
2. Fixed Fee Markup/Discount (+/-) Per Gallon
3. All applicable fuel taxes and / or petroleum-associated fees as permitted

1. **Base Fuel Price**: The base fuel price will be set from the Oil Price Information Services (OPIS) Daily Rack average of the motor fuel prices published in the OPIS Index Newsletter at the close of business each day for the Port of Tampa, Florida, Pad 1 Terminal.

The daily OPIS Rack average price for each fuel type will be charged on the date the fuel is delivered.

2. **Fixed Fee Markup/Discount Per Gallon, Plus (+) or Minus (-)**: Bidder must submit on the Bid Pricing Form a fixed fee markup (+) or fixed fee discount markup (-) to be applied to the daily base fuel price to arrive at the firm fixed price per gallon for each fuel type.

With the exception of the allowable taxes, the fixed fee will include any and all charges F.O.B. destination. "Markup" shall mean the Vendor's price to cover all costs associated with providing fuel to the City facilities. Markup will mean both positive and negative numbers.

DETAILED SPECIFICATIONS

The fixed fee markup (+ / -) will remain firm for the period of the contract.

With the exception of the allowable taxes, the fixed fee will include each and every item of expense connected with the furnishing and delivery of fuel to the destinations.

Bid prices shall be per gallon for the Markup (+ / -) and may be extended to four (4) decimal places.

The Vendor shall assess no other fees associated with the delivery of fuel.

3. **Taxes:** All applicable taxes will be added after the Base Fuel Price and Fixed Fee Markup per gallon is established. The current taxes not included in the posted terminal price are to be listed on the Bid Pricing Form for bid submittal, including any special or unique taxes for the marine industry.

Invoice fuel prices are not to include any State of Florida and/or Federal taxes from which the City of Clearwater is exempt. Fuel and pollutant taxes are administered in [Chapter 206](#), Florida Statutes (F.S.), and Rule Chapter [12B-5](#) of the Florida Administrative Code.

The City will not pay the Federal Excise Tax on fuel purchases. The successful bidder is responsible for applying directly for applicable F.E.T. reimbursements.

F. Invoicing

The Vendor will be responsible for keeping accurate records, delivery site verification/delivery tickets and proper billing. Invoices must include, as separate line items, the following minimum information:

- Fuel tank location
- Generator G number and site location of delivery
- The invoice price shall reflect the actual date of delivery (exception: delayed delivery)
- The designated OPIS Daily Rack Average per gallon for the day the fuel is delivered plus (or minus) the fixed fee markup per gallon
- Marina: ValveTect or alternative additive (quantity per tank delivery noted on invoice)
- Amount of taxes itemized per delivery
- Type of fuel delivered and quantities (gallons)
- Delivery ticket
- Purchase Order number
- Total amount due

DETAILED SPECIFICATIONS

5. **DELIVERY REQUIREMENTS.** Deliveries will be requested as needed, seven (7) days a week. The City of Clearwater will provide twenty-four (24) hours notification of a required delivery whenever possible.

Delivery Location	Hours of Delivery
1) Solid Waste Facility 1701 N. Hercules Ave. Clearwater, FL 33765	Monday – Friday, 6:30 a.m. to 6:00 p.m.
2) City of Clearwater Marina 25 Causeway Blvd. Clearwater, FL 33767	Monday – Sunday 5:30 a.m. to 6:30 a.m.

The Vendor shall be required to make deliveries within twenty-four (24) hours from acceptance of telephone request, email, or receipt of written request or at a mutually agreed upon scheduled timeframe for service delivery of fuel as agreed upon by the Vendor and City.

In the event that the fuel is not delivered on the date agreed upon on the purchase order/release order, price of the fuel charged will be the price that is most advantageous to the City, i.e. the date the fuel was originally scheduled to be delivered or the date fuel is actually delivered, whichever is less.

Any delays in delivery must be communicated to appropriate City designee by phone or email the day of the scheduled delivery.

Delivery Ticket: The Vendor shall be required to provide “proof of delivery”.

- A delivery ticket must be presented with each load of fuel delivered
- One (1) copy of the delivery ticket shall be forwarded by the Vendor with the invoice
- Invoices for payment, for which there is not a delivery ticket, may not be authorized for payment

4. **INSURANCE REQUIREMENTS.**

The Vendor shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor’s deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically the Vendor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$2,000,000 (two million dollars) per occurrence and \$4,000,000 (four million dollars) general aggregate.
- Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$2,000,000 (two million dollars) combined single limit.

DETAILED SPECIFICATIONS

- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, and subcontractors, if any.
- d. **Pollution Liability Insurance** coverage, which covers any and all losses caused by pollution conditions (including sudden and non-sudden pollution conditions) arising from the servicing and operations of Vendor (and any subcontractors, representatives, or agents) involved in the work/transport, in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions.

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Vendor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on all policies excluding Workers' Compensation. In addition, when requested in writing from the City, Vendor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:
City of Clearwater
Attn: Purchasing Department, ITB # 37-19
P.O. Box 4748
Clearwater, FL 33758-4748
- b. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.
- d. Vendor reserves the right to appoint legal counsel to provide for the Vendor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Vendor's design, equipment, or service. Vendor agrees that the City shall not be liable to reimburse Vendor for any legal fees or costs as a result of Vendor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and City's failure to request evidence of this insurance shall not be construed as a waiver of Vendor's (or any contractors', subcontractors', representatives' or agents') obligation to provide the insurance coverage specified.

MILESTONES

1. **BEGINNING AND END DATE OF INITIAL TERM.** August 2019 through July 2020.

If the commencement of performance is delayed because the City does not execute the contract on the start date, the City may adjust the start date, end date and milestones to reflect the delayed execution.

2. **EXTENSION.** The City reserves the right to extend the term of this contract, provided however, that the City shall give written notice of its intentions to extend this contract no later than thirty (30) days prior to the expiration date of the contract.

3. **RENEWAL.** At the end of the initial term of this contract, the City may initiate renewal(s) as provided. The decision to renew a contract rests solely with the City. The City will give written notice of its intention to renew the contract no later than thirty (30) days prior to the expiration.

Three (3), one (1) year renewals possible at the City's option.

4. **PRICES.** All pricing shall be firm for the initial term of one (1) year; except where otherwise provided by the specifications, and include all transportation, insurance and warranty costs. The City shall not be invoiced at prices higher than those stated in any contract resulting from this bid.

The Contractor certifies that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions. The Contractor further agrees that any reductions in the price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

At the end of the initial term, pricing may be adjusted for amounts other than inflation based on mutual agreement of the parties after review of appropriate documentation. Renewal prices shall be firm for at least one (1) year and may be adjusted thereafter as outlined in the previous paragraph.

No fuel surcharges will be accepted.

BID SUBMISSION

1. **BID SUBMISSION.** Submit one (1) signed original bid and one (1) electronic format on a CD or thumb drive, in a sealed container.
2. **BIDDER RESPONSE CHECKLIST.** This checklist is provided for your convenience. It is not necessary to return a copy of this solicitation's Instructions, Terms and Conditions, or Detailed Specifications with your bid response. Only submit the requested forms and any other requested or descriptive literature.
 - ☐ Original and proper number of copies with electronic format
 - ☐ Bid container properly labeled
 - ☐ Bid Pricing form(s)
 - ☐ W-9 Form to be provided by Bidder (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)
 - ☐ Exceptions/Additional Materials/Addenda form
 - ☐ Vendor Information form
 - ☐ Offer Certification form
 - ☐ Scrutinized Businesses form(s)
 - ☐ Policy statement on Emergency Conditions (as stated in Specifications, Section 4, Item B)
 - ☐ ValveTect or alternative product certified distributor certificate; alternative additives require complete documentation with specification sheets and manufacturer's details.

BID PRICING

Pursuant to the contract specifications enumerated and described in this solicitation, we agree to furnish gasoline and diesel fuel to the City of Clearwater at the price(s) stated below.

Enter the price for the Fixed Fee Markup to the OPIS Tampa Rack Base (average for the day) published price list on date of delivery. The figure shall remain in effect from the date of this bid for the duration of the contract.

<u>Item</u>	<u>Type of Fuel</u>	<u>Fixed Fee Markup (+/-)</u>
1	Gasoline E10, Unleaded 87 Octane	
2	Ultra-Low Sulfur Diesel	
3	Ultra-Low Sulfur Diesel, Red Dye, Grade No. 2-D	
4	Gasoline Non-Ethanol, Unleaded 90 Octane	
5	Marina - fuel additive (include product name if not ValveTect VMDA and VMGA)	\$ _____ / _____ (unit) Product: _____ Application rate: _____ _____

DELIVERY REQUIREMENTS

Freight Costs: Markup must include all freight and transportation charges

- Confirm which OPIS Rack will be referenced for contract pricing: _____
- Attach policy statement on Emergency Conditions requirement. Indicate other agencies/companies that you service with guaranteed "priority" consideration in any type of emergency or natural disaster situation:
- Delivery, as stated in Detailed Specifications # 5 can be met: ____ Yes ____ No
- Minimum time required to fulfill a delivery request: _____
- Can you provide delivery in under 24 hours: ____ Yes ____ No
- Any additional fee / requirement for delivery in under 24 hours: _____
- Address/location of nearest storage/distribution facility, within a 35-mile radius of Clearwater city limits: _____

PAYMENT TERMS

Select one choice of payment terms:

- ☐ Net 30, City of Clearwater's standard payment terms
- ☐ 2%15, Net 30
- ☐ ____%10, Net 30 (identify discount not less than 3%)

Vendor: _____ Date: _____

BID PRICING

Sample Worksheet for Pricing Calculation

Complete the following three (3) samples to demonstrate the OPIS Average daily price, the fixed fee markup proposed and appropriate taxes to indicate price per gallon for each type of fuel.

Include the itemized list of taxes that will be included on delivery invoices on page 27.

Sample 1

Type of Fuel: <u>Gasoline E10, Unleaded 87 Octane</u>				
Date	OPIS Daily Average (A)	Fixed Fee Markup (+/-) (B)	Taxes (C) *	Total Price Per Gallon: (A+B+C)
May 1, 2019				
May 2, 2019				
May 3, 2019				

Sample 2

Type of Fuel: <u>Ultra-Low Sulfur Diesel</u>				
Date	OPIS Daily Average (A)	Fixed Fee Markup (+/-) (B)	Taxes (C) *	Total Price Per Gallon: (A+B+C)
May 1, 2019				
May 2, 2019				
May 3, 2019				

Sample 3

Type of Fuel: <u>Ultra-Low Sulfur Diesel, Red-Dyed, Grade No. 2-D</u>				
Date	OPIS Daily Average (A)	Fixed Fee Markup (+/-) (B)	Taxes (C) *	Total Price Per Gallon: (A+B+C)
May 1, 2019				
May 2, 2019				
May 3, 2019				

Vendor Name _____

Date: _____

BID PRICING

Itemized Taxes for Pricing Calculation

Complete the following itemized taxes for the three pricing (3) samples.

Itemized list of taxes as of May 2019. Invoice Fuel prices are not to include any State of Florida and/or Federal taxes from which the City of Clearwater is exempt. Fuel and pollutant taxes are administered in [Chapter 206](#), Florida Statutes (F.S.), and Rule Chapter [12B-5](#) of the Florida Administrative Code.

Sample 1, Itemized Taxes

Gasoline E10, Unleaded 87 Octane		
* Itemized Taxes (C)	(complete appropriate fields)	notes (if necessary)
Florida SCETS		
Pollution Tax		
Inspection Fee		
9th Cent		
Local Option		
LUST Tax		
Fed. Env. Recovery Fee		
Other (Identify)		

Sample 2, Itemized Taxes

Ultra-Low Sulfur Diesel		
* Itemized Taxes (C)	(complete appropriate fields)	notes (if necessary)
Florida SCETS		
Pollution Tax		
Inspection Fee		
9th Cent		
Local Option		
LUST Tax		
Fed. Env. Recovery Fee		
Other (Identify)		

Sample 3, Itemized Taxes

Ultra-Low Sulfur Diesel, Red-Dyed, Grade No. 2-D		
* Itemized Taxes (C)	(complete appropriate fields)	notes (if necessary)
Florida SCETS		
Pollution Tax		
Inspection Fee		
9th Cent		
Local Option		
LUST Tax		
Fed. Env. Recovery Fee		
Other (Identify)		

Vendor Name _____

Date: _____

EXCEPTIONS/ADDITIONAL MATERIALS/ADDENDA

Bidders shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document. Exceptions that surface elsewhere and that do not also appear under this section shall be considered invalid and void and of no contractual significance.

Exceptions (mark one):

Note – Any material exceptions taken to the City’s Standard Terms and Conditions will render a Bid Non-responsive.

_____ No exceptions

_____ Exceptions taken (describe--attach additional pages if needed)

Additional Materials submitted (mark one):

_____ No additional materials have been included with this bid

_____ Additional Materials attached (describe--attach additional pages if needed)

Addenda

Bidders are responsible for verifying receipt of any addenda issued by checking the City’s website at <http://www.myclearwater.com/business/bid-information/> prior to the bid opening. Failure to acknowledge any addenda issued may result in a response being deemed non-responsive.

Acknowledgement of Receipt of Addenda (initial for each addenda received, if applicable):

Addenda Number	Initial to acknowledge receipt

Vendor Name: _____ Date: _____

VENDOR INFORMATION

Company Legal/Corporate Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

DUNS # _____

Remit to Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____

Order from Address (if different from above):

Address: _____

City: _____ State: _____ Zip: _____

Contact for Questions about this bid:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Day-to-Day Project Contact (if awarded):

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

_____ Certified Small Business Certifying Agency: _____

_____ Certified Minority, Woman or Disadvantaged Business Enterprise Certifying Agency: _____

OFFER CERTIFICATION FORM

By signing and submitting this Bid, the Vendor certifies that:

- a) It is under no legal prohibition on contracting with the City of Clearwater.
- b) It has read, understands, and is in compliance with the specifications, terms and conditions stated herein, as well as its attachments, and any referenced documents.
- c) It has no known, undisclosed conflicts of interest.
- d) The prices offered were independently developed without consultation or collusion with any of the other respondents or potential respondents or any other anti-competitive practices.
- e) No offer of gifts, payments or other consideration were made to any City employee, officer, elected official, or consultant who has or may have had a role in the procurement process for the services and or goods/materials covered by this contract.
- f) It understands the City of Clearwater may copy all parts of this response, including without limitation any documents and/or materials copyrighted by the respondent, for internal use in evaluating respondent's offer, or in response to a public records request under Florida's public records law (F.S. 119) or other applicable law, subpoena, or other judicial process; provided that Clearwater agrees not to change or delete any copyright or proprietary notices.
- g) Respondent hereby warrants to the City that the respondent and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees.
- h) Respondent certifies that they are not in violation of section 6(j) of the Federal Export Administration Act and not debarred by any Federal or public agency.
- i) It will provide the materials or services specified in compliance with all Federal, State, and Local Statutes and Rules if awarded by the City.
- j) It is current in all obligations due to the City.
- k) It will accept such terms and conditions in a resulting contract if awarded by the City.
- l) The signatory is an officer or duly authorized agent of the respondent with full power and authority to submit binding offers for the goods or services as specified herein.

ACCEPTED AND AGREED TO:

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SCRUTINIZED COMPANIES CERTIFICATION FORM

**SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS WITH
CUBA AND SYRIA CERTIFICATION FORM**

***IF YOUR BID/PROPOSAL IS \$1,000,000 OR MORE, THIS FORM MUST BE COMPLETED AND
SUBMITTED WITH THE BID/PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED
MAY DEEM YOUR SUBMITTAL NONRESPONSIVE.***

The affiant, by virtue of the signature below, certifies that:

1. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaging in business operations in Cuba and Syria; and
2. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria; and
3. Business Operations means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce; and
4. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria.

Authorized Signature

Printed Name

Title

Name of Entity/Corporation

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by _____ (name of person whose signature is being notarized) as the _____ (title) of _____ (name of corporation/entity), personally known to me as described herein _____, or produced a _____ (type of identification) as identification, and who did/did not take an oath.

Notary Public

Printed Name

My Commission Expires: _____

NOTARY SEAL ABOVE

SCRUTINIZED COMPANIES CERTIFICATION FORM

SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST
CERTIFICATION FORM

***THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID/PROPOSAL.
FAILURE TO SUBMIT THIS FORM AS REQUIRED MAY DEEM YOUR SUBMITTAL
NONRESPONSIVE.***

The affiant, by virtue of the signature below, certifies that:

1. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
2. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
3. "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered as evidence that a company is participating in a boycott of Israel; and
4. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel.

Authorized Signature

Printed Name

Title

Name of Entity/Corporation

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by _____ (name of person whose signature is being notarized) as the _____ (title) of _____ (name of corporation/entity), personally known to me as described herein _____, or produced a _____ (type of identification) as identification, and who did/did not take an oath.

Notary Public

Printed Name

My Commission Expires: _____

NOTARY SEAL ABOVE

MAILING LABEL

CUT ALONG THE LINE AND AFFIX TO THE FRONT OF YOUR BID CONTAINER

----- For US Mail -----

SEALED BID

Submitted by:
Company Name:
Address:
City, State, Zip:

ITB #37-19, Fuel – Gasoline and Diesel

Due Date: July 18, 2019, at 10:00 A.M.

City of Clearwater
Attn: **Purchasing**
PO Box 4748
Clearwater FL 33758-4748

----- For US Mail -----

----- For Hand Deliveries, FEDEX, UPS or Other Courier Services -----

SEALED BID

Submitted by:
Company Name:
Address:
City, State, Zip:

ITB #37-19, Fuel – Gasoline and Diesel

Due Date: July 18, 2019, at 10:00 A.M.

City of Clearwater
Attn: **Purchasing**
100 S Myrtle Ave 3rd Fl
Clearwater FL 33756-5520

----- For Hand Deliveries, FEDEX, UPS or Other Courier Services -----