

SPECIAL CONTRACT TERMS AND CONDITIONS

SECTION I GENERAL INFORMATION

I.1 CONTRACT SCOPE/OVERVIEW

This Collective No. CN00034346 (identified here and in the other documents as the "Contract") will cover the requirements of the Eastern Pennsylvania Psychiatric Institute, Philadelphia, PA for #4 Heating Oil.

I.2 TERMS AND CONDITIONS/ORDER OF PRECEDENCE:

Invitation for Bid No. CN00034346 is comprised of the following documents that are incorporated by reference and are listed in order of precedence in the event of a conflict between the documents:

1. These Special Terms and Conditions and any attachments referenced herein;
2. Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies - SAP, GSPUR-12E, (Rev 12/17/07) which can be found at http://www.dgsweb.state.pa.us/comod/CurrentForms/GSPUR12E_SAP.doc
3. General Conditions and Instructions to Bidders for Supplies for RFQ-Invitation for Bids, STD-203 (SAP), (1/17/03), which can be found at http://www.dgsweb.state.pa.us/comod/CurrentForms/STD203_SAP.doc

I.3 MODIFICATIONS TO STANDARD TERMS AND CONDITIONS:

Updated versions of the Nondiscrimination/Sexual Harassment Clauses (Paragraph 24), Contractor Integrity Provisions (Paragraph 25), and Contractor Responsibility Provisions (Paragraph 26) can be found at the locations indicated below. The updated clauses found at these links supersede the versions of these clauses found in the Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies incorporated by reference above.

Nondiscrimination/Sexual Harassment Clause (Contracts) (8/19/2010), which can be found at http://www.dgsweb.state.pa.us/comod/CurrentForms/Nondiscrimination_Contracts.doc

Contractor Integrity Provisions (7/30/2010), which can be found at <http://www.dgsweb.state.pa.us/comod/CurrentForms/ContractorIntegrityProvisions.doc>

Contractor Responsibility Provisions (4/27/2011), which can be found at <http://www.dgsweb.state.pa.us/comod/CurrentForms/ContractorResponsibilityProvisions.doc>

I.4 TERM OF CONTRACT

The Contract shall commence on the Effective Date no earlier than November 1, 2011 and expire on April 30, 2012.

I.5 BIDDING

The bid price shall be the price differential above the New York Mercantile Exchange (NYMEX) Futures Market heating oil commodity price. The bid differential shall include all transportation, delivery, handling charges, overhead, profit, and any applicable taxes, etc. The differential shall remain fixed for the entire contract period.

I.6 INCURRING COSTS

The Commonwealth is not liable for any costs or expenses incurred by the Responsive and Responsible Suppliers in preparation of their bids.

I.7 AWARD

It is the intent of the Commonwealth to award a contract to the responsive and responsible supplier on the basis of lowest bid price differential. The differential shall remain fixed for the entire contract period.

I.8 BIDDING AND AWARD OF THE OPTIONAL AMOUNT

The award of the optional amount will be made to the responsive and responsible supplier who is awarded the initial requirement of 105,000 gallons. The optional amount may not exceed 20,000 gallons.

I.9 OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE

The Department of General Services (DGS) reserves the right to purchase supplies covered under this Contract through a separate competitive bidding procedure, whenever the department deems it to be in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the supply exists or the price offered is significantly lower than the Contract price.

I.10 OPTION TO EXTEND

The Department of General Services reserves the right, upon notice to the Contractor, to extend the Contract or any part of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract

I.11 OPTION TO RENEW

The contract or any part of the contract may be renewed for an additional four - one-year terms by mutual agreement between the Commonwealth and the Contractor. If the Contract is renewed the same terms and conditions shall apply and a new performance bond or a rider supplementing the original bond will be required for the extended period.

I.12 RIGHT TO KNOW LAW (Feb 2010)

A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.

B. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

C. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

G. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

H. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth’s disclosure of Requested Information pursuant to the RTKL.

I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

I.13 INQUIRIES

Direct all questions concerning this solicitation to the appropriate buyer named herein.

Jack Banks, Commodity Specialist
Department of General Services
Bureau of Procurement
(717) 787-6586
(717) 346-3820 FAX
jbanks@state.pa.us

SECTION II SCOPE OF WORK

II.1 SPECIFICATIONS

Heating Oil #4 shall be provided in accordance with ASTM D396 or Federal Specification W-F-815C. Additionally, City of Philadelphia Air Management Regulation III requires that the fuel oil does not exceed maximum 0.3% sulfur content by weight.

II.2 PRODUCT CONFORMANCE

The Department of General Services reserves the right to require any and all bidders to:

1. Provide certified data from laboratory testing performed by the bidder, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the bidder's location or at an independent laboratory.
4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location

II.3 DELIVERIES

The fuel oil shall be delivered by truck transport with equipment, hoses, fittings, etc, required to fill the underground storage tanks safely. No other back-up fuel source is available thus delivery must be made within 48 hours after notification and /or receipt of a purchase order. All deliveries are FOB destination.

Mr. Joseph Mack, Facility Maintenance Manager, Maintenance Department, Norristown State Hospital, or his designated representative, will contact the awarded supplier to arrange mutual dates and times for scheduled deliveries. Supplier shall provide Mr. Mack or his designated representative with a copy of all delivery tickets. The driver must obtain their signature verifying the delivered amount. Computerized bills of lading, metered slips from the terminal loadings, and sealed compartment deliveries are acceptable.

The minimum truck transport delivery quantity is 5,000 gallons.

I.4 DELIVERY NOTES

Supplier is responsible for deliveries of the awarded item; however, the supplier may arrange to have another company make the actual delivery subject to the same terms and conditions of the contract.

II.5 CERTIFICATION

The contractor must provide certification for each truckload certifying that the maximum percent sulfur content by weight does not exceed 0.3%. The certificate must be signed by a responsible official of the awarded supplier. If certification is not present at time of delivery, the facility may refuse acceptance of shipment.

SECTION III PRICING AND INVOICING

III.1 PRICING STRUCTURE – INITIAL REQUIREMENT

To establish the commodity price, the New York Mercantile Exchange (NYMEX) Futures Market for Heating Oil, stated in net gallons, will be utilized on a real time basis. To arrive at a fixed commodity price, the Department of General Services (DGS) will contact the Supplier to purchase the initial requirement for the months stated on the attached Anticipated Delivery Schedule. DGS and the Supplier will then agree to the commodity price for the applicable delivery months based upon the real time NYMEX posted pricing.

The total fuel price is comprised of the applicable NYMEX commodity futures price plus the applicable awarded differential.

III.2 PRICING STRUCTURE – OPTION AMOUNT

The total fuel price for the optional amount will be calculated using the OPIS Contract Average for Heating Oil #2 for the Philadelphia Area on the date the option is exercised plus the awarded price differential. A change notice will be issued to exercise the option and set the price. The option may be exercised for the entire amount or a partial amount. The Commonwealth will provide thirty days written notice prior to exercising the option. The Contract Average will be derived from the OPIS Daily Wholesale Rack Report, Gross Prices (10:00 AM Report)

III.3 INVOICES

When invoicing, no other taxes or fees shall be added to the aforementioned total fuel prices. This action only delays invoice payment. Any applicable taxes or fee assessments shall be included in the price differential (See I.4, BIDDING).

If, as a result of legislation or any regulatory body, a new tax or fee is established subsequent to bid opening then the supplier may request that the new tax or fee be added as part of the total fuel price. As a minimum, the request shall include the name, amount, effective date, and applicability, of the new tax or fee, as well as reference to the legislation or regulation that authorized it. If the Commonwealth agrees that it is subject to the new tax or fee, then a change notice will be issued to allow for payment.

III.4 TAX EXEMPT CERTIFICATES

As noted in the Standard Contract Terms and Conditions, Contract Clause “Taxes”, the Commonwealth will not issue exemption certificates with the exception of un-dyed diesel fuel. Other exceptions are not fuel related.

**SECTION IV
REQUIRED DATA**

III.1 SOURCE

(BIDDERS COMPLETE THE FOLLOWING INFORMATION)
FAILURE TO COMPLETE MAY CAUSE BID REJECTION

1. SHOW NAME OF PRIMARY REFINERY(S) _____
2. LOCATION OF REFINERY(S) _____
(CITY AND STATE)
3. SHOW BRAND NAME _____

Note: The State of Manufacturer Chart must also be submitted.

III.2 ADDRESS OF PURCHASE ORDER

Commonwealth agencies may issue purchase orders against this Contract for supplies required by the agencies (using agencies). Please state below where the Purchase Orders should be sent (name, address, city, state, zip code).

Address: _____

Contact person: _____

Telephone Number: _____

E-mail Address: _____

III.3 EMERGENCY DELIVERY PROVISION

In the event of, and for the duration of, any state of emergency or disaster declared by the Governor, the supplier for any county in which the emergency of disaster is officially declared shall attempt to provide continuous twenty-four hour service as directed by the Commonwealth. For the purpose of maintaining necessary communications and services, the supplier has designated, in the space provided below, a primary and, if available, a secondary contact person. The supplier guarantees that the persons so designated will be available throughout the emergency.

<u>County</u>	<u>Facility Address</u>	<u>Contact Person(s)</u>	<u>Title</u>	<u>Phone Number(s)</u>

III.4 RECIPROCAL LIMITATIONS ACT

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response that State of Manufacture Chart which is contained in *Reciprocal Limitations Act Requirements* (GSPUR-89), found at <http://www.dgsweb.state.pa.us/comod/CurrentForms/GSPUR89.doc> and which is also attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted in the same sealed envelope with the bid response. If the State of Manufacture Chart is not submitted with the bid response, the Bidder shall have three (3) days from the date of notification by the Department to submit the form or their bid may be deemed to be non-responsive.