

TALLY SHEET

Solicitation Number: 8082-0/19

Summary Description: Liquid Carbon Dioxide

Solicitation Opening/ Closing Date: Wednesday, May 1 2013 2:00 PM

Prepared by: Herman Ramsey *Herman Ramsey* Date: 6-4-2013

Verified by: Abelin Rodriguez *Abeli Rodriguez* Date: 6-5-13

Note: When all prices are entered, highlight low priced vendor in yellow (and if applicable, green for secondary, blue for tertiary)

Vendor Name:	Air Liquide Industrial U.S. LP	Airgas Carbonic, Inc	Praxair, Inc	Air Liquide Industrial U.S. LP
Is the bid responsive (if no, state reason below):	Yes	*No	No Bid	NEGOTIATION
Indicate DBD certification:	No	No		
Conviction Disclosure (yes/no):	No	No		
Registered vendor (yes/ no):	Yes	Yes		
Vendors' FEIN/Suffix:	900186946/01	582298979/02		
Veteran Business Enterprise Certification (yes/no):	No	No		
Incumbent vendor (yes/no):	No	Yes		
Local Preference Affirmed (yes/no):	No	No		
Qualifying Criteria:				
Product Manufacturer:	Air Liquide Industrial U.S. LP	Airgas Carbonic, Inc		
Shipping Point:	Fort Meade, FL	Miami, FL	Air Liquide Industrial U.S. LP	
Manufacturer Authorized Letter (yes/no):	Yes	Yes	Fort Meade, FL	
Material Safety Data Sheet (yes/no):	Yes	Yes	Yes	
Certification of Analysis (yes/no):	Yes	Yes	Yes	
ANSI/NSF Standard 60 Certification (yes/no):	Yes	Yes	Yes	

Items being procured per current solicitation		Est. Five Year	Current	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended
Item no.	Description	Quantity/Measurer	Unit Price	Per Ton	Price	Per Ton	Price	Per Ton	Price	Per Ton	Price
1	Liquid Carbon Dioxide as required in paragraph 3.2	45,450 Tons	\$ 153.60	\$ 155.00	\$ 7,044,750.00	\$ 161.50	\$ 7,340,175.00	\$ -	\$ -	\$ 154.75	\$ 7,033,387.50

Total Raw Price:	\$ 7,044,750.00	\$ 7,340,175.00	\$ -	\$ 7,033,387.50
Evaluation Adjustment 10% SBE Preference:				
Evaluation Adjustment 10% Local Preference:				
Total Evaluated Price:	\$ 7,044,750.00	\$ 7,340,175.00	\$ -	\$ 7,033,387.50

Identify Non-responsive vendors and reason:

*Airgas Carbonic, Inc has been deemed non-responsive by the County Attorney Office. The firm changes the solicitation's indemnification and insurance requirements.

THIS TALLY SHEET IS AN INDICATION OF PRICES ONLY AND IS NOT A DETERMINATION OF THE LOWEST RESPONSIVE/RESPONSIBLE BIDDER(S)

To: Herman Ramsey
Procurement Contracting Officer
Internal Services Department

From: Eduardo W. Gonzalez
Assistant County Attorney

Subject: ITB No. 8082-0/19 (Liquid Carbon Dioxide)
Bidder: Airgas Carbonic, Inc.

Your have asked this office if the bid of Airgas Carbonic, Inc. ("Airgas") is non-responsive for submitting a bid conditioned on its modifications and amendments to the indemnification and insurance provisions in the solicitation. For the reasons set forth below, we conclude that Airgas' bid is non-responsive.

FACTS

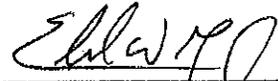
We rely on the information provided in your May 10, 2013 memorandum to Hugo Benitez and the attachments to the memorandum. The purpose of the ITB is to establish a contract to purchase and deliver liquid carbon dioxide in tanker truck loads to the County on an as-needed basis. In Section 1.3 of the solicitation bidders are advised that they "may be considered non-responsive if bids are conditioned to modifications, changes, or revisions to the terms and conditions of this solicitation." In its bid submittal form, Airgas signed the bid and next to the language in the form providing "[b]y signing this document the bidder agrees to all Terms and Conditions of this Solicitation and the resulting Contract" Airgas handwrote in the following language: "*to the extent amended or modified as reflected in the bid submittal.*"

In the bid submittal, Airgas amended the solicitation's indemnification language which required bidders to indemnify and hold harmless the County "from any and all liability, losses, or damages, including attorneys' fees and costs of defense, which the County . . . may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the *performance of this Agreement by the Bidders . . .*" to indemnifying the County for any liability, losses or damages incurring "as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the *negligent acts or omissions of the Bidders . . .*" Additionally, Airgas struck the language in the solicitation requiring bidders to submit new or renewed insurance certificates at a minimum of thirty (30) calendar days before an existing insurance policy's expiration.

DISCUSSION

Airgas' bid is nonresponsive due to Airgas conditioning the bid on its unilateral changes to the solicitation's indemnification and insurance requirements. In general, a bid may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor

material and renders the bid non-responsive. See Matter of; Metric Sys. Corp., B-256343, B-256343.2, 94-1 CPD 360, 1994 WL 269809 (Comp. Gen. June 10, 1994) (holding that protestor's exception to the solicitation's indemnification requirement changed the legal relationship between the parties as envisioned by the solicitation and rendered the protestor's bid non-responsive).



Eduardo W. Gonzalez