



CITY OF
ST. CHARLES
ILLINOIS • 1834

AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Number: *IG

Title: Recommendation to approve a Resolution to Award the Bid for Water Treatment Salt

Presenter: Tim Wilson

Meeting: City Council

Date: June 15, 2020

Proposed Cost: \$ 85,943.75

Budgeted Amount: \$ 107,350

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The Water Division uses salt as a water treatment method for radium removal. The City currently has two water treatment facilities that uses salt for this radium removal process. The City advertised and solicited bids for water softening salt. On May 4, 2020, bids were submitted via City bidding software. The City only received one (1) qualified bids for this project and the results were as follows:

	Pneumatic Delivery <u>FY (20-21)</u>	Dump Delivery <u>FY (20-21)</u>	Pneumatic Delivery <u>FY(21-22)</u>	Dump Delivery <u>FY(21-22)</u>	Estimated Annual Cost <u>FY 20 – 22</u>
<u>Bid</u>					
<u>Results</u>					
Midwest Salt	\$114.00/Ton	\$121.75/Ton	\$114.00/Ton	\$121.75/Ton	\$85,943.75/ FY

In comparison to last year, the unit costs for both delivery methods increased \$9 per ton. This spike in the cost was expected as the United States Army Corps of Engineers will be reconstructing several river lock and dams. This construction will result in additional shipping cost to by-pass these river closures. The water treatment salt for this region is shipped up the Mississippi and Illinois rivers. These river closures are projected to last two years. The bids included unit prices for a two year contract. Two delivery methods, pneumatic or dump, are utilized due to site restrictions; therefore a unit price cost was requested for each.

Salt usage is based on water production; therefore there might be a slight variation in salt usage from year to year. Currently, the City uses an average of 725 tons of water treatment salt per year, with approximately 300 tons in pneumatic deliveries and 425 tons in dump deliveries. To safe guard the City, the proposed contract allows the total annual increase or decrease to 15% without penalty.

Attachments *(please list):*

Bid Contract, Resolution

Recommendation/Suggested Action *(briefly explain):*

Recommendation to award a two-year contract to Midwest Salt for water treatment salt based on the unit prices provided in the bid.

St Charles Agreement for Services and/or Delivery of Goods WATER TREATMENT SALT Contract #4650

This agreement for services and/or delivery of goods ("**Agreement**") has been awarded on _____, 20____ by City Council and is between the City of St. Charles, an Illinois home rule municipal corporation ("**City**"), located at 2 East Main Street; St. Charles, Illinois 60174 and Midwest Salt, LLC _____ a (Inc/LLC/Co/sole proprietorship) ("**Contractor**"), located at West Chicago _____, City and Contractor are at times collectively referred to hereinafter as the "Parties."

RECITALS

Whereas, the City issued an **Invitation to Bid #4650 (Solicitation)** for services and/or delivery of goods entitled **WATER TREATMENT SALT ("Services/Good")**;

Whereas, the Contractor submitted an offer ("**Offer**") in response to the Solicitation and the Contractor represents that it is ready, willing and able to perform the services and/or deliver the goods, specified in the solicitation;

Whereas, the Offer was found to meet the City's requirements as specified in the solicitation;

Whereas, the City awarded the Contractor the Services/Goods, inclusive of options # _____ in a total amount not to exceed \$ _____; [Options not listed have not been awarded.]

Now therefore, in consideration of the foregoing and for the mutual promises hereinafter set forth and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows to the following terms and conditions:

Article 1: Contract Documents

- A. **Incorporated Documents.** The Contract consists of this Agreement and the following attached exhibits. These attachments along with this Agreement represent the entire integrated contract between the parties and supersede any and all prior negotiations, representations or agreements, written or oral.
- Services and/or delivery of goods may not begin until receipt of a City Purchase order. The Contract Name and number, and the Purchase Order Number for the applicable fiscal year, will become the identification number for all transactions during the applicable fiscal year and must be referenced on all related documents, inclusive of invoices.
 - The City's Solicitation Package, all questions and answers, and any related documents to said package, are incorporated herein by reference, and are available through the city's eProcurement website at <https://platform-us.negometrix.com/publicbuyerprofile/companypublishedtenders.aspx?companyid=2008> and are identified as **Exhibit A**
 - The City's Solicitation Package (minus the response pages and sample award documents), all addenda and any related documents is attached as **Exhibit A**
 - The Contractor's offer and all related documents is attached as **Exhibit B**
 - The City's Insurance Requirements and Sample Acord Certificate of Insurance is attached as **Exhibit C**

f. Change Order Form, which is the sole vehicle authorized to amend contract, is attached as **Exhibit D**

B. **Controlling Document.** In the event of a conflict between this Agreement and any attachment or exhibit, the provisions of this Agreement shall control.

Article 2: Services/Goods Contracted

A. **Scope of Services.** Contractor shall provide awarded Services and/or delivery of goods in accordance with the Requirements stated within the City's Solicitation [**Exhibit A**], and the Offer submitted by the Contractor [**Exhibit B**].

a. **Truthful and Accurate.** Contractor represents that such material and information furnished in connection with the Solicitation and this Contract is truthful and accurate.

b. **Necessary Documentation.** Contractor acknowledges that it has furnished exhibits, as listed previously, and will continue to furnish requested and necessary documentation, including but not limited to certifications, affidavits and other information and reports.

B. **Status of Independent Contractor.** Both City and Contractor agree that Contractor will act as an Independent Contractor in the performance of the Service and/or delivery of goods. Accordingly, the Independent Contractor shall be responsible for payment of all taxes including federal, state, and local taxes arising out of the Contractor's activities in accordance with this Contract, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Contractor further acknowledges under the terms of this Contract, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Contractor is not in any way authorized to make any contract, agreement or promise on behalf of the City, or to create any implied obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Contractor, except those specifically identified in this Contract. City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Contract.

Article 3: Term

A. **Term.** This Contract commences on May 1, 2020 and terminates on April 30, 2022. Alteration in termination may occur prior to completion of Services and/or delivery of goods in accordance with the following conditions.

B. **Termination of Contract.** The City has the right to terminate this Contract, in whole or in part at any time. Written notice of termination is to be served by the City to the Contractor's principal or Contractor's agent personally or by certified or registered mail, return receipt requested. In the event of termination, the City shall pay the Contractor for satisfactory services performed and/or delivery of goods as of the effective date of termination. The effective date of termination releases the City from any obligations under this Contract. Contractor shall deliver to the City any finished and unfinished documents, drawings, studies and reports related to the Service. All such documents, studies and reports shall become the property of the City. The City may terminate this Contract, or any portion of it, as is reasonably necessary in accordance with the following conditions:

a. **Non-performance.** Non-adherence to the terms of this Contract and its incorporated documents on the part of the Contractor is grounds for termination of the Contract. The City will notify the Contractor in writing with a 24-hour notice specifying the effective date of

termination. In the event of termination due to non-performance on the part of the Contractor, the City has the authority to contract with an alternate contractor to complete this Contract. The Contractor shall be liable to the City for all incidental and consequential expenses incurred in procuring and securing an alternate contractor, including any loss due to alternate contractor compensation. The City may deduct expenses and loss, due to breach, from payment to the Contractor for services already performed or goods already delivered. Failure to deduct expenses and losses from the City's payment to the Contractor does not relieve the contractor from the Terms of this condition nor bar the City from seeking alternative legal remedies.

- b. **Unappropriated Funds.** If sufficient funds have not been appropriated to cover the estimated requirement of this Contract, the City may terminate this Contract. The City may terminate for unappropriated funds by serving the Contractor with a fourteen (14) day written notice specifying the effective date of termination. On that specified termination date, this Contract and all contractual obligations will end. If this Contract is terminated by the City for unappropriated funds after performance by the Contractor has commenced, the termination date controls the final invoice by the Contractor for previous services/deliveries under this Contract. The termination date controls all payment obligations of the City to the Contractor. Payment by the City to the Contractor upon termination for unappropriated funds constitutes full satisfaction for services rendered and/or goods delivered.
- c. **Convenience.** Termination for convenience does not necessitate a reason. The city may terminate for convenience by serving the contractor with a seven (7) day written notice specifying the effective date of termination. On that specified termination date, this Contract and all contractual obligations will end. If this Contract is terminated by the City for convenience, the termination date controls the final invoice by the Contractor for previous services/deliveries under this Contract. The termination date controls all payment obligations of the City to the Contractor. Payment by the City to the Contractor upon termination for convenience constitutes full satisfaction for services rendered and/or goods delivered.
- d. **Force Majeure.** A party shall not be held liable for failure of or delay in performing its obligations under this Contract if failure or delay is a result of an event of outside force, including a natural disaster, "Act of God", act of war, act of terrorism, government sanction or strike that could not be foreseen or avoided by prudence. Once performance is delayed by this event of outside force, the non-performing party must make every reasonable attempt to minimize delay. Once performance has been delayed one-hundred and twenty (120) days, performance is considered impracticable due to impossibility, and either party may terminate this Contract.

- C. **Liquidated Damages.** Time is of the essence in the performance of all the terms and conditions of this Contract. Failure to meet stated terms may result in Liquidated Damages as described within.
- D. **Stop Work.** The City may, at any time by written order, require the Contractor to stop all or part of the services and/or delivery of goods as required by this contract. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all steps to minimize the occurrence of costs applicable to the services and/or delivery goods covered by the order. The City will pay for costs associated with suspension provided they are deemed reasonable by the City.

Article 4: Compensation

- A. **Price.** The City shall pay the Contractor for services and/or delivery of goods in accordance with the amounts set forth in the Offer. **[Exhibit B]** The maximum price stated on page 1 may not be increased unless the City's Project Manager is provided with supporting documentation to warrant a change, and if upon review and acceptance, a written change order is approved. All change orders shall be by written schedule on a City Change Order form **[Exhibit D]**, and shall be attached as an amendment to this Contract.
- B. **Invoicing.** Contractor shall submit an itemized invoice with all supporting documentation as required by the City. Supporting documentation may include, but is not limited to: a supporting schedule making explicit the percentage of completion of services as of the date of the invoice; packing slips for delivered goods; certified payroll; waivers of lien; work orders; and supplier's invoices to justify material mark-up.
- C. **Invoice Submittals.** All invoices must be submitted directly to AccountsPayable@stcharlesil.gov and reference Purchase Order number. Invoices submitted in any other manner will result in a delay of payment.
- D. **Payment.** The City shall make all payments in accordance with the Illinois Local Government Prompt Payment Act or Contractor's invoice, whichever is more favorable to the City.
- a. **Schedule of Payment.** The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires City Council's approval of the Expenditure Approval List which occurs at publicly scheduled meetings.
- b. **Non-Payment.** All invoices must be submitted to the City within two (2) months of the Contractor's final performance on this Contract. The City shall not pay any invoices submitted in excess of two (2) months from the date of last performed per this Contract.

Article 5: Duties

- A. **Consent and Approvals.** The City and the Contractor represent and warrant to each other that each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Contract and its contemplated undertakings.
- B. **Insurance.** The Contractor performing work shall, during the entire term of this Contract, maintain, at a minimum, the insurance minimums as specified and under the terms stipulated in **Exhibit C**.
- a. The Contractor shall not allow any subcontractor to commence work on this service until the same insurance has been obtained by the subcontractor and the contractor is in receipt of an approved Certificate of Insurance. The Contractor and their Subcontractors shall maintain all insurance for not less than one (1) year after completion of this contract.
- C. **Standard of Performance.** Contractor warrants that the service provided under the fully incorporated Contract, by the Contractor and any and all employees, subcontractors, consultants, or agents is performed by individuals who are authorized under all applicable licenses and certifications, and who have completed the requisite training as required by industry standards, professional standards, manufacturers' requirements, and statute. Performance by these parties shall be with the degree, skill, care and diligence customarily required of a professional performing service of comparable scope, purpose and magnitude and in conformance with the applicable industry standards. The Contractor

and its employees, subcontractors, consultants, or agents shall perform in strict compliance with the laws and regulations of the City, State, and federal government.

- D. **Best Efforts.** The Contractor shall use its best efforts to assure timely and satisfactory rendering and completion of services and deliveries under this Contract. The Contractor shall remain solely responsible for the professional and technical accuracy of all construction and deliverables furnished, whether such service/good is rendered by the material suppliers, fabricators, subcontractors, consultants or agents. The Contractor is not to be relieved from its duty to use best efforts, pursuant to the Contract, by the City's review, approval, acceptance, or payment for any of the agreed to construction. Any change to the character, form, quality or extent of the Service/good shall be in writing on a City Change Order form, [Exhibit D] and attached as an addendum to this Contract.
- E. **Non-disclosure.** The Contractor, its employees, subcontractors, consultants, or agents may have access to the City's confidential information during performance of this Contract. Confidential information includes, but is not limited to, methods, processes, formulas, compositions, systems, techniques, computer programs, databases, research projects, resident identification and contact information, financial data, and other data. The Contractor shall not directly or indirectly use, disclose or disseminate confidential information to any third party for any purpose other than a purpose explicitly allowed for in this Contract and its integrated documents.
- F. **No Duty.** The contractor shall not imply any authority to act as an agent of the City. The contractor's duties to the City are limited by express authorization under this Contract and by statute.
- G. **Hold Harmless and Indemnification.**
 - a. **Patents and Copyrights.** Contractor warrants that all products used or provided in the fulfillment of this Contract will not infringe on any United States or foreign patent. Contractor shall indemnify the City against any and all judgments, decrees, legal fees, costs and expenses resulting from such alleged infringement. Contractor will, upon request of the City and at the Contractor's own expense, defend any suit or action which may be brought against the City by reason of any alleged infringement of any patent or copyright in the sale or use of products provided to the City by the Contractor.
 - b. **Loss and Liability.** The Contractor shall hereby defend and indemnify the City, its directors, agents, officers, employees, and elected officials from and against any and all liabilities, losses, claims, demands, damages, costs, fines, penalties, expenses, judgments, and settlements, including, but not limited to, reasonable attorneys' fees and costs of litigation, and any and all causes of action of any kind or character, that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit arising out of or connected with, directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions of any agent, employee, subcontractor, consultant, or contractor hired to provide any goods or perform any services on behalf of the Contractor.

Article 6: Policies

- A. **Illinois Freedom of Information Act.** The Contractor acknowledges the requirements of the Illinois Freedom of Information Act (FOIA). Contractor agrees to comply with all requests made by the City for public records (as defined in FOIA § 2(c)) in the undersigned's possession and/or their subcontractors/suppliers' possession.

- a. **Timeliness.** The Contractor shall provide the requested public records to the City within two (2) business days of the City's request.
- b. **Free of Charge.** The Contractor agrees not to apply any costs or charge any fees to the City for the procurement of the requested records pursuant to a FOIA request.
- c. **Hold Harmless.** Should the Contractor deny the City's request unlawfully or request that the City utilize a lawful exemption available under FOIA, Contractor agrees to pay any and all costs connected with the defense of the Contractor's denial. All costs include reasonable attorney and witness fees, filing fees and other expenses related to the defense of a complaint. The Contractor agrees to indemnify the City against any and all claims, costs, penalties, losses and injuries arising out of or relating to its failure to provide the requested public records to the City under this Contract.

B. Suppliers and Subcontractors. The contractor may subcontract portions of the materials and work.

- a. These Material Suppliers and Subcontractors, Consultants, and Agents shall conform, in all respects, to the applicable provisions specified, inclusive but not limited to, insurance requirements and prevailing wage.
- b. Material Suppliers, Subcontractors, Consultants, and Agents may not be transferred to any other party or parties without the written consent of the City.

C. Discrimination Prohibited.

- a. **Equal Employment Opportunity.** Contractor shall comply with all rules and regulations pertaining to public contracts adopted by the State and the City. The City is an equal opportunity employer.
- b. **ADA.** Contractor shall be in compliance with current applicable regulations of the Americans with Disabilities Act.

Article 7: Changes to Contract

- A. **Changes and Alterations.** Any changes or alterations to this Service and/or delivery of goods, inclusive of but not limited to: scope, cost, terms, milestones, deadlines or other significant factors; shall be integrated in writing on a City of St. Charles Change Order form. **[Exhibit D]**
- B. **Extension or Renewal of Contract.** The City at its option may extend this Contract for an additional to be determined term if the Contractor either reduces his price, or holds firm to the proposal prices, conditions and specifications.
- C. **Assignment.** Contractor shall not assign, transfer, or subcontract this Contract, in whole or in part, without prior written consent of the City.
- D. **Notification.** All notification under this Agreement shall be made as follows:

- a. **If to the City**

City of St. Charles
 Attn: Procurement Division Manager
 2 East Main Street
 St. Charles, IL 60174
 Fax: 630.377.4487
 Email: Procurement@stcharlesil.gov
 Phone: 630.762.6936

- b. **With electronic copies to**

Procurement Division Manager: Joan M. Schouten; Procurement@stcharlesil.gov
Project Manager: TWilson@stcharlesil.gov

If to the Contractor

Article 8: Applicability

- A. **Other Entity Use.** The Contractor may, upon mutual agreement with any municipality or governmental unit, permit that unit to participate in this Contract for substantially similar project services and/or delivery of goods under the same or more favorable price, terms and conditions.
- B. **Waiver.** Any failure of either the City or the Contractor to strictly enforce any terms, rights, or conditions of this Contract, whether implied or expressed, shall not be construed as a waiver of such terms, rights, or conditions.
- C. **Severability.** If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.
- D. **Governing Jurisdiction.** The parties agree that any disputes, disagreements, or litigation arising from this Contract, between or amongst them, will be heard and resolved exclusively in the courts of the 16th Judicial Circuit, Kane County, Illinois.
- E. **Governing Law.** The parties agree that the laws of the State of Illinois govern this Contract.

THIS PAGE LEFT BLANK

Bid Submitted By:

Midwest Salt, LLC
1300 W. Washington Street
West Chicago, IL 60185
Phone: 630-513-7575
Fax: 630-513-8546

Contact Person:
Glenn Adams
Email: glenn.adams@midwestsalt.net or customerservice@midwestsalt.net

In Witness Whereof, the parties have entered into this Contract upon the latter of the date accepted and signed by the City and the date accepted and signed by the Contractor.

For: City of St. Charles

For: Professional Service Provider

By: _____
Project Manager

ATTEST _____

DATE _____

Joan M. Schouten; Procurement Division Manager



If an Individual

By: _____
Signature

Title

If a Partnership

By: _____
Signature

Title

By: _____
Partner

If a Corporation

By: Glenn A. Adams Glenn A Adams
Signature of person authorized to sign

Government Bid Manager

Title

ATTEST Carol J. Adams

If a Joint Venture

By: _____
Signature

Title

By: _____
Signature

Title

DATE _____

4650 WATER TREATMENT SALT

Midwest Salt, LLC

PRICE PROPOSAL

#	Name	Price/ton	Annual Quantity	Projected Annual Total
1	Delivery by Pneumatic Dump Truck	\$114	300	\$34,200
2	Delivery by Dump Truck	\$121.75	425	\$51,743.75
Total				\$85,943.75

Comment:

Price is cost per delivered ton. **F.O.B. Destination, Freight Pre-paid and Allowed**

All prices quoted include all fees. The city will not accept additional costs or surcharges such as, but not limited to: shipping, handling, freight, stocking, delivery, fuel sur-charge, travel or other.

**City of St. Charles, Illinois
Resolution No. _____**

A Resolution to award the Bid for Water Treatment Salt

**Presented & Passed by the
City Council on _____, 2020**

WHEREAS, the City received one bid for Water Treatment Salt on May 4, 2020;

WHEREAS, Midwest Salt was the lowest bidder.

THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that Staff award the bid for Water Treatment Salt to Midwest Salt for a two-year period beginning May 1, 2020 through April 30, 2022 based on unit prices provided in the bid.

PRESENTED to the City Council of the City of St. Charles, Illinois, this__day of June, 2020

PASSED by the City Council of the City of St. Charles, Illinois, this__day of June, 2020

APPROVED by the Mayor of the City of St. Charles, Illinois, this__day of June, 2020

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain: