

PORT ST. LUCIE CITY COUNCIL
AGENDA ITEM REQUEST

COUNCIL ITEM 7B
DATE 1/9/12

Meeting Date: **January 9, 2011**

Public Hearing Ordinance Resolution Motion

Item: **20120010 – Anhydrous Ammonia** – Purchase from Airgas Specialty Products, Inc. @ \$0.68/lb.

Recommended Action:

Waive the bidding, good cause shown, Chapter 35.04 (C), approve purchase of Anhydrous Ammonia from Airgas Specialty Products, Inc. @ \$0.68/lb. delivered, the same rate as currently supplied to the City of Cocoa through a competitive bid #B-10-16-COC. The Contract will be for twelve (12) months with the option to renew for one additional twelve (12) month period.

Exhibits: Department memo attached [X] yes [] no
Waive the Bidding Memo
Contract w/Airgas Specialty Products, Inc.
City of Cocoa Bid Tabulation

Summary Explanation/Background Information:

For the past year, the City has purchased Anhydrous Ammonia from Airgas Specialty Products, Inc. at \$0.58 /lb delivered; the same as offered to Martin County. That contract has expired. Airgas currently supplies the product to the City of Cocoa @ \$0.68/lb and has offered to supply Ammonia to the City of PSL based on that contract price. A new contract between Airgas Specialty Products, Inc. and the City of PSL would be for 12 months with an option to renew for 1 additional 12 month period without additional council action.

Purchase (X) is a replacement

Purchase (X) was budgeted

Current Year Expense: **\$ 54,588.25**

Department requests expenditure from the following:

Fund	431	Water & Sewer Operating
Cost Center	00000	
Object Code	141005	Inventory Chemicals/Water Plant
Project	00000	

Director of OMB concurs with award: 

City Manager concurs with award: 

Submitted by: **Jesus Merejo**

RECEIVED

Title: Utility Systems Director

DEC 14 2011

Date Submitted: December 14, 2011

City Manager's Office

20120010

INTEROFFICE MEMORANDUM

To: David K. Pollard, Budget Director
From: Jesus A. Merejo, Utility Director
SUBJECT: Anhydrous Ammonia Bid
DATE: December 6, 2011

The Utility Systems Department has reviewed the Airgas Specialty Products Inc. competitive bid to supply Anhydrous Ammonia for the water treatment disinfection process.

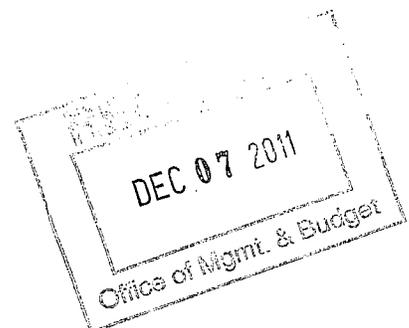
Utility staff recommends awarding the bid at a cost of \$0.68/lb.

The contract is for 12 months with 1 renewal opportunity. Funding is available in account 431-00000-141005-00000.

Your assistance in forwarding this item for the City Council's consideration will be appreciated.

PV/

Copy: Brad Macek, Assistant Utility Director
Jeanette Thompson, Budget Manager
Pierre Vignier, Plant Superintendent
Helen Quintana, Contract Specialist



MEMORANDUM

To: City Council

From: Jerry A. Bentrrott, City Manager

Date: December 6, 2011

Re: **Waive Bidding Process**

The City's Utility Department is requesting to waive the sealed bid process and authorize a contract with Airgas Specialty Products, Inc. to purchase Anhydrous Ammonia at \$0.68/lb delivered. These are the same terms contained in their contract with the City of Cocoa. Staff feels this is a fair offer and recommends approving this as conducting our own sealed bid process will not likely produce a better price.

Under chapter 35.04 (C) and by recommendation of this office, the City Council may waive the bidding process for Good Cause Shown. Please advise if any further information is needed.

JAB:dkp

CITY OF PORT SAINT LUCIE
Anhydrous Ammonia

This CONTRACT, executed this day of , 2011, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and *Airgas Specialty Products, 2530 Sever Road, Ste.300, Lawrenceville, GA 30043, Telephone No. (678) 985-7330; Fax No. (678-985-7331)*, hereinafter called "Contractor", party of the second part.

RECITALS

In consideration of the below agreements and covenants set forth herein, the parties agree as follows:

CONTRACT SUPERVISOR

As used herein the "Project Supervisor" shall mean Pierre Vignier, Utilities Department, at (772) 873-6400, or his designee.

SECTION I
DESCRIPTION OF SERVICES TO BE PROVIDED

The Contractor has agreed to furnish Anhydrous Ammonia on an as needed basis in accordance with the contractor's proposal.

The specific work that the Contractor has agreed to perform pursuant to the proposal for **Anhydrous Ammonia**, which includes all labor, materials, equipment, transportation and other resources to provide a complete product delivered to the following locations, are hereby incorporated by this reference.

- Prineville Water Treatment Plant
900 SE Ogden Lane
Port St. Lucie, Fl. 34983

- JEA Water Treatment Facility
7599 LTC Parkway
Port St. Lucie, Fl. 34984

SECTION II
TIME OF PERFORMANCE

Contract period shall commence **October 1, 2011**, and terminate **September 30, 2012**. This contract may be renewed upon the anniversary date, which shall be the commencement date of this contract, for one (1) additional twelve (12) month period.

SECTION III COMPENSATION

The total amount to be paid by the City to the Contractor is on a fixed price per unit basis at **\$0.68 per lb**, plus a one time ten-dollar (\$10.00) payment for indemnification as provided in Section V herein. Payments will be disbursed in the following manner:

The Contract Sum - The unit prices specified herein will remain firm for the period of this Agreement. Consideration of price increases at the renewal period will be given, provided such escalations are reasonable and acceptable to the City. Anhydrous Ammonia will be purchased on the basis of per unit prices "as needed".

Invoices for goods will be received once the product is delivered and payments shall be made within thirty (30) days unless Contractor has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Payments shall be made provided the submitted invoice is accompanied by adequate supporting documentation and approved by Contract Supervisor as provided in Section XII.

The Contractor shall not be paid additional compensation for any loss or damage, arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the performance of the work, or for any expenses incurred by or in consequence of the suspension or discontinuance of the work.

All invoices and correspondence relative to this Contract must contain the Purchase Order number and Contract number.

SECTION IV CONFORMANCE WITH PROPOSAL

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Contractor dated August 11, 2011.

SECTION V INDEMNIFICATION/INSURANCE

5. INSURANCE REQUIREMENTS – The Contractor shall maintain insurance coverage reflecting the minimum amounts and conditions required by the City as follows:

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Florida Statutes, Section 768.28 under its self insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

The Contractor including any and all independent contractors and subcontractors utilized must comply with the insurance requirements as outlined below. It shall be the responsibility of the Bidder to insure that all independent contractors and subcontractors comply with these requirements. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the City shall not accept claims-made policies. Specific endorsements as well as increased limits of liability may be requested depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the City as to form and types of coverage. Coverage outlined below shall apply on a primary and non-contributory basis.

5.1 Indemnification – The Bidder shall indemnify and hold harmless the City, and its Officers and their employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Bidder and all persons employed or utilized by the Bidder in the performance of the Contract. As consideration for this indemnity provision the Bidder shall be paid the sum of \$10.00 (ten dollars), which will be added, to the Contract price and paid prior to commencement of work.

5.2 Workers Compensation - The Bidder shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum. A Waiver of Subrogation endorsement (but only to the extent of Contractor’s negligence) must be provided. Coverage should apply on a primary basis. Should scope of work performed by contractor qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

5.3 Business Auto Policy - The Bidder shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for any auto, owned, non-owned and hired automobiles. In the event, the Bidder does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Bidder to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must list the City as additional insured. A waiver of subrogation (to the extent of Contractor’s negligence) must be provided. Coverage should apply on a primary basis. Coverage shall not contain any exclusion for Pollution Legal Liability as respects to transporting, loading/unloading of chemicals.

5.4 Commercial General Liability - Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage for Completed Operations should be ISO CG2026 under General Liability

policy. Pollution and Remediation Legal Liability coverage for at least \$5,000,000 limit per claim. This should provide coverage for loss remediation expense and legal defense expense for sudden and gradual pollution conditions. The City should be included as Additional Insured; their policy should contain a waiver of subrogation rights endorsement (but only to the extent of Contractor's negligence) and coverage should respond as primary. If the policy is written on a claims made basis, the retroactive date should be prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in the retroactive date, the distributor should purchase an extended reporting period rider during the life of your agreement of not less than 3 years. Coverage is to be written on an occurrence form basis and shall apply as primary. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation (to the extent of Contractor's negligence) is to be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interest's provision as provided under the standard ISO form separation of insurer's clause. There shall be no exclusion for Mold, Silica or Respirable Dust or Bodily Injury or Property Damage arising out of heat, smoke, fumes or ash from a hostile fire.

5.5 Additional Insured Requirements - Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policy shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents for Contract #20120010 for the purchase of Anhydrous Ammonia**". The policy shall be endorsed to grant the City of Port St. Lucie thirty (30) days notice of cancellation or non-renewal of coverage thereunder. Said liability insurance must be acceptable by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Bidder shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

5.6 Waiver of Subrogation - The bidder shall agree by entering into this Contract to a Waiver of Subrogation (to the extent of Contractor's negligence) for each required policy. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should bidder enter into such an agreement on a pre-loss basis.

5.7 Subcontractors - It shall be the responsibility of the Bidder to insure that all subcontractors comply with the same insurance requirements referenced above.

5.8 Deductible Amounts - All deductible amounts shall be paid for and be the responsibility of the Bidder for any and all claims under this Contract.

5.9 Certificate(s) of Insurance - Immediately following notification of the award of this Contract, Bidder shall agree to deliver to the City a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required have been obtained and are in full force and

effect. Such Certificate(s) of Insurance and policy shall unequivocally provide a minimum thirty (30) day written notice to the City prior to cancellation, non-renewal or adverse change of coverage. In the "Description of Operations . . .," Certificate shall list **Contract #20120010** for Anhydrous Ammonia.

5.10 Umbrella or Excess Liability - The Bidder may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on "Non-Follow Form," the City shall be endorsed as an "Additional Insured."

SECTION VI PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS

Subject to the laws of the State of Florida and of the United States, neither Contractor nor any Subcontractor, supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION VII WORK CHANGES

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the Contract price and time for completion. Any and all changes must be authorized by a written change order signed by the Director of OMB or his designee as representing the City. Work shall be changed and the Contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the Contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties.

SECTION VIII COMPLIANCE WITH LAWS

The Contractor shall give all notices required by and shall otherwise comply with all applicable laws, ordinances and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and work done is to comply with all local, state and federal laws and regulations. Contractor will comply with the requirements of 28 C.F.R. § 35.151.

SECTION IX CLEANING UP

Contractor shall, during the performance of this Contract, remove and properly dispose of resulting dirt and debris, and keep the work area reasonably clear. On completion of the work, Contractor shall remove all Contractors' equipment and all excess materials, and put the work area in a neat, clean and sanitary condition.

**SECTION X
NOTICE OF PERFORMANCE**

When required materials have been delivered and required work performed Contractor shall submit a request for inspection in writing to the Contract Supervisor.

**SECTION XI
DELIVERY DOCUMENTATION**

Where Contract provides in whole or in part, for the sale and purchase of materials Contractor shall prepare a delivery ticket in triplicate for each shipment of material delivered to the City. The delivery ticket shall be signed by the Contract Supervisor or his/her designee receiving the material. One copy shall be given to the Contract Supervisor or his/her designee with the material. The Contractor shall retain one copy, and one copy shall accompany the Contractor's invoice.

**SECTION XII
INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Contract Supervisor shall make inspection as soon as practicable after receipt from the Contractor of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Contract Supervisor shall approve the invoice when it is received. Thereafter the Contractor shall be entitled to payment, as described in Section III. If, on such inspection the Contract Supervisor is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Contractor shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Contract Supervisor. Such examination, inspection, or tests made by the Contract Supervisor, shall not relieve Contractor of its responsibility to remedy any deviation, deficiency, or defect.

**SECTION XIII
ADDITIONAL REQUIREMENTS**

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply. If there is a conflict between the Contract and specifications, the Contract will control.

**SECTION XIV
LICENSING**

Contractor warrants that he possesses all licenses and certificates necessary to perform required work and is not in violation of any laws. Contractor warrants that his license and certificates are current and will be maintained throughout the duration of the Contract.

**SECTION XV
SAFETY PRECAUTIONS**

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all applicable laws and building and construction codes shall be observed.

SECTION XVI ASSIGNMENT

Contractor shall not delegate, assign or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City.

SECTION XVII TERMINATION, DELAYS AND LIQUIDATED DAMAGES

A. Termination of Contract. If the Contractor refuses or fails to deliver material as required and/or prosecute the work with such diligence as will insure its completion within the time specified in this Contract, the City by written notice to the Contractor, may terminate Contractor's rights to proceed. Upon such termination, the City may take over the work and prosecute the same to completion, by Contract or otherwise, and the Contractor and his sureties shall be liable to the City for any additional cost incurred by it in its completion of the work. The City may also in event of termination obtain undelivered materials, by Contract or otherwise, and the Contractor and his sureties shall be liable to the City for any additional cost incurred for such material. Contractor and his sureties shall also be liable to the City for liquidated damages for any delay in the completion of the work as provided below. If the Contractor's right to proceed is so terminated, the City may take possession of and utilize in completing the work such materials, tools, equipment and facilities as may be on the site of the work and necessary therefore.

B. Liquidated Damages for Delays. If material is not provided or work is not completed within the time stipulated in this Contract, including any extensions of time for excusable delays as herein provided, (it being impossible to determine the actual damages occasioned by the delay) the Contractor shall provide to the City one hundred dollars (\$100.00) as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed. The Contractor and his sureties shall be jointly and severally liable to the City for the amount thereof.

C. Excusable Delays. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work or delivery of materials due to: (1) any acts of the Federal Government, including controls or restrictions or requisitioning of materials, equipment, tools or labor by reason of war, national defense or any other national emergency, (2) any adverse acts of the City, (3) causes not reasonably foreseeable by the parties at the time of the execution of the Contract that are beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of another Contractor in the performance of some other Contract with the City, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions, and (4) any delay of any Subcontractor occasioned by any of the above mentioned causes. However, the Contractor must promptly notify the City in writing within two (2) days of the cause of delay. If, on the basis of the facts and the terms of this Contract, the delay is properly excusable the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

D. the City may terminate this Contract with or without cause by giving the vendor/Contractor thirty (30) days notice in writing. Upon delivery of said notice and upon expiration of the thirty (30) day period, the vendor/Contractor shall discontinue all services in connection with the performance of this

Contract and shall proceed to cancel promptly all related existing third party Contracts. Termination of the Contract by the City pursuant to this paragraph shall terminate all of the City's obligations hereunder and no charges, penalties or other costs shall be due Contractor except for work timely completed.

**SECTION XVIII
LAW AND VENUE**

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Contract shall be in St. Lucie County, Florida.

**SECTION XIX
REIMBURSEMENT FOR INSPECTION**

The Contractor agrees to reimburse the City for any expenditures incurred by the City in the process of testing materials supplied by the Contractor against the specifications under which said materials were procured, if said materials prove to be defective, improperly applied, and/or in other manners not in compliance with specifications. Expenditures as defined herein shall include, but not be limited to, the replacement value of materials destroyed in testing, the cost paid by the City to testing laboratories and other entities utilized to provide tests, and the value of labor and materials expended by the City in the process of conducting the testing. Reimbursement of charges as specified herein shall not relieve the Contractor from other remedies provided in the Contract.

**SECTION XX
APPROPRIATION APPROVAL**

The Contractor acknowledges that the City of Port Saint Lucie's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. The Contractor agrees that, in the event such appropriation is not forthcoming, the City may terminate this Contract and that no charges, penalties or other costs shall be assessed.

**SECTION XXI
RENEWAL OPTION**

In the event Contractor offers in writing, prior to the termination of this contract, to provide the identical services required in this contract for the identical period of time in the renewal term and the City agrees that said services are required and that the cost is acceptable, then the City, without additional bidding or negotiation, may, renew this contract at the agreed upon price for additional twelve (12) month term. The contractor must exercise the option to continue the contract by submitting a written submission at least three (3) months prior to the end of the initial or current twelve (12) month period.

**SECTION XXII
ENTIRE CONTRACT**

The written terms and provisions of this Contract shall supersede all prior verbal statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or Contract documents.

IN WITNESS WHEREOF, the parties have executed this Contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: _____
City Manager

ATTEST:

By: _____
City Clerk

By: _____
Authorized Representative of Airgas Specialty Products, Inc.

State of: _____

County of: _____

Before me personally appeared: _____)
(please print)

Please check one:

Personally known _____

Produced Identification: _____
(type of identification)

Identification No. _____

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.
(he/she)

WITNESS my hand and official seal, this _____ day of _____, 2011.

Notary Signature

Notary Public-State of _____ at Large.

My Commission expires _____ (seal)

