



**State of Oklahoma  
Department of Central Services  
Central Purchasing**

**Notice of Statewide Contract  
Award**

*Official signed contract documents are on file with DCS-Central Purchasing.*

**Contract Title:** Magnesium Chloride Based Liquid Deicer/Anit-Icer and Granular Deicer/Anti-Icer

**Statewide Contract #:** SW605

**Contract Issuance Date:** 12/02/2011 for Liquid type

**Total Number of Vendors:** 1 (For details see: Vendor Information Sheet)

**Contract Period:** 12/02/2011 thru 12/01/2012

**Agreement Period:** 12/02/2011 thru 12/01/2014

**Authorized Users:** State Departments, Boards, Commissions, Agencies, Institutions, Counties, Cities, Higher Education, Political Sub-Divisions, School Districts and Municipalities that are responsible for highways, roadways, and bridges and/or have a need of using magnesium chloride-based liquid deicer/anti-icer or granular de-icer/anti-icer.

**Contract Priority:** Non-mandatory

**Type of Contract:** A firm price, indefinite delivery, indefinite quantity, and annual price adjustment contract

**DCS-CP Contact:** Gai Hunter

**Title:** Contracting Officer

**Phone:** 1 - 405 - 522 - 0399

**Fax:** 1 - 405 - 521 - 4475

**Email:** Gai\_hunter@dcs.state.ok.us



State of Oklahoma  
Department of Central Services  
Central Purchasing

Awarded Vendor Information

PAGE 1 OF 1

**Vendor Name:** Scotwood Industries, Inc.

**Vendor ID#:** 0000070826 / 0001

**Vendor Address:** Address: 12980 Metcalf Avenue, Suite 240

City: Overland Park

State: KS

Zip Code: 66213

**Contact Person Name:** Leslie Rupell

**Phone #:** 1- 913 - 851 – 3500 Ext.203

or 800-844.2022

**Title:** Liquid Division Manager

**Fax #:** 1- 913 - 851 - 3553

**Email:** [lrupell@scotwoodindustries.com](mailto:lrupell@scotwoodindustries.com)

**Website:** Scotwoodindustries.com

**Authorized Location:** ☐ Locations list attached as *(attachment title)*

☐ Address:

City:

State:

Zip Code:

**Contract ID #:** 0-3108

**Delivery:** 3-5 days delivery ARO

**Minimum Order:** 4,300 gallons

**P/Card Accepted:** ☒ Yes

☐ No

**Other:**



**State of Oklahoma  
Department of Central Services  
Central Purchasing**

**Contract Requirements**

**Contract #:** SW605 – Magnesium Chloride-Based Granular and Liquid Deicer / Anti-Icer.

**Note:** Only liquid deicer / anit-icer is awarded at this time as of 12/02/2011. The award of granular deicer will be completed later.

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**State of Oklahoma  
Department of Central Services  
Central Purchasing**

**Contract Requirements**

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NOTE: All term and requirements related to granular type are void and not awarded. the award only is for liquid type.

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## **A. GENERAL PROVISIONS**

### **A.1. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a response to this contract:

- A.1.1.** The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
  - A.1.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
  - A.1.1.2.** Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - A.1.1.3.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph of this certification;
  - A.1.1.4.** Have not within a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default.
- A.1.2.** Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its contract response.

### **A.2. Legal Contract**

- A.2.1.** The Contract will consist of the following documents in order of preference: Contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statement, affidavit, and change orders; the solicitation including any amendments; and the successful bid to the extent that the bid does not conflict with the requirements of the Contract award documents or contract or applicable law. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the solicitation, and both the Contract award documents and the solicitation shall prevail over the successful bid.

### **A.3. Contract Modification**

- A.3.1.** The Contract is issued under the authority of the State Purchasing Director who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the State Purchasing Director.
- A.3.2.** Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing, or made unilaterally by the contractor, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

### **A.4. Delivery, Inspection and Acceptance**

- A.4.1.** Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The offeror(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the contractor until accepted by the receiving agency. The offeror(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.4.2.** Offeror(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

### **A.5. Invoicing and Payment**

- A.5.1.** Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.5.2.** Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §41.4a and 62 O.S. §41.4b.

## **A.6. Tax Exemption**

Purchases by the State of Oklahoma are exempt from Oklahoma sales or use taxes and Federal excise tax. The Central Purchasing Division shall furnish tax exemption certificates upon written request.

## **A.7. Audit and Records Clause**

- A.7.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.7.2.** The successful bidder(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved, or until the end of the three year retention period, whichever is later.

## **A.8. Non-Appropriation Clause**

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the contract, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding.

## **A.9. Choice of Law**

Any claims, disputes, or litigation relating to the contract, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

## **A.10. Choice of Venue**

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

## **A.11. Termination for Cause**

- A.11.1.** The contractor may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the contractor.
- A.11.2.** The State may terminate the Contract immediately, without a 30-day written notice to the contractor, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance. A
- A.11.3.** If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

## **A.12. Termination for Convenience**

- A.12.1.** The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.12.2.** If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

## **A.13. Insurance**

The successful bidder(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The offeror awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals.

## **A.14. Employment Relationship**

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not

employees of the State of Oklahoma or the procuring agency. The contractor's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

**A.15. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a bid for services, the contractor certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

**A.16. Compliance with Applicable Laws**

The products and services supplied under the Contract shall comply with all applicable federal, state and local laws, and the contractor shall maintain all applicable licenses and permit requirements.

**A.17. Special Provisions Special**

Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

## **B. SPECIAL PROVISIONS**

This section applies to all segments under this contract except specified otherwise.

### **B.1. Definitions**

- B.1.1.** Addendum – A written change, addition, alteration, correction, or revision to a statewide contract issued by Central Purchasing Division.
- B.1.2.** Amendment – A written change, addition, alteration, correction, or revision to a solicitation issued by Central Purchasing Division.
- B.1.3.** Contracting Officer – The State representative designated by the State Purchasing Director, who is responsible for the Contract, determining scope issues, and assuring quality of performance of successful offeror(s). The State reserves the right to change the Contracting Officer at any time.
- B.1.4.** CP – State of Oklahoma, Department of Central Services, Central Purchasing Division.
- B.1.5.** DAC – Designated Agency contact is a using entity's authorized employee who is responsible for managing the project under this contract.
- B.1.6.** DCS – State of Oklahoma Department of Central Services.
- B.1.7.** F.O.B destination – Designates that the successful offeror will pay shipping costs, and remain responsible for the goods until the using entity takes possession of goods. The successful offeror is also responsible for paying costs of loading goods to the location nominated by the using entity.
- B.1.8.** Local Government Entity – Any unit of local government including, but not limited to, any school district, county, municipality, Higher Education, or Political Sub-Division.
- B.1.9.** Mandatory –Obligatory, required by order, a provision that may not be waived.
- B.1.10.** May – Denotes that which is permissible, not mandatory.
- B.1.11.** ODOT – Oklahoma Department of Transportation
- B.1.12.** Offeror – For the purpose of this contract, means a business entity or manufacturer submitting a response in response to this RFP. It is used interchangeably with "bidder", or "supplier".
- B.1.13.** Participating entity or Participants –Entities include all Oklahoma State Departments, Boards, Commissions, Agencies, Institutions, Counties, Cities, Higher Education, School Districts, Political Sub-Divisions and Municipalities.
- B.1.14.** Release – Purchase order issued against the specified contract.
- B.1.15.** Response – It is a document submitted by an offeror in response to the solicitation. It is used interchangeably with "solicitation response" or "RFP response".
- B.1.16.** Request for proposal (RFP) – A type of solicitation a state agency or the State Purchasing Director sends to offerors for submission of bids for acquisitions. Request for Proposal, bid and solicitation are synonymous under this contract.
- B.1.17.** Shall or Must – Denotes that which is a mandatory requirement.
- B.1.18.** Should – Denotes that which is recommended, not mandatory.
- B.1.19.** Solicitation – For the purpose of this contract, it will be used interchangeably with a "Request for proposal" (RFP)
- B.1.20.** State – State of Oklahoma.
- B.1.21.** State Agency – A State government agency, department, division, bureau, board, or commission. Grand River Dam Authority and Oklahoma Housing Finance Authority are a state agency but exempted from Central Purchasing Act.
- B.1.22.** Successful Offeror - The offeror that is awarded a contract. Throughout this solicitation, when the word "successful offeror" is used, it refers to successful offeror, its sub contractors, partners and affiliates. It is also used interchangeably with "Contractor", "Successful bidder", or "Successful supplier".
- B.1.23.** Using entity – A state agency or local government entity requesting a service from successful offeror under this contract. It is used interchangeably with "requesting entity".

### **B.2. AUTHORIZED USERS**

Solicitation responses shall cover requirements during the specified periods for all State Departments, Boards, Commissions, Agencies, Institutions, Counties, Cities, Higher Education, Political Sub-Divisions, School Districts and Municipalities that are responsible for highways, roadways, and bridges and/or have a need of using magnesium chloride-based liquid or granular de-icer and anti-icer.



### B.3. NOTICE OF AWARD

Notice of award letter resulting from this solicitation will be furnished to the successful Offeror and shall result in a binding contract without further action by either party. It shall be the successful offeror's responsibility to reproduce and distribute copies to all authorized partners listed in their response, if any. No additions, deletions or changes of any kind shall be made to this contract without prior approval of Central Purchasing.

### B.4. EXTENSION OF CONTRACT

The State may extend the term of this contract up to 120 days if mutually agreed upon by both parties in writing.

### B.5. CONTRACT PERIOD AND RENEWALS

- B.5.1.** Contract Period: This contract shall not become effective until approved by the State Purchasing Director, Central Purchasing Division, Department of Central Services. The contract is for a **12 month** period, commencing **date of award**. The contract may be **renewed** at the same terms and conditions for up to **two (2) one-year option** periods unless canceled by either party.
- B.5.2.** Renewal Periods: If the options for renewal are exercised by the State, the successful offeror shall agree that the prices for the renewal periods will base on either of the following:
- B.5.2.1.** If renewal prices are not provided by successful offeror, the prices during renewal periods shall be the same as during the original contract period.
- B.5.2.2.** If renewal prices are provided by successful offeror, price adjustment including supporting documentation in section **B.9** will apply.

### B.6. CONTRACT PRIORITY, TYPE AND PRICE

This contract is non-mandatory to State agencies, boards, commissions and departments. Local governments (Cities, Counties, School Districts, Higher Ed, Municipalities, and Political Sub-divisions) are permitted to utilize this contract. Conditions included in this contract shall be the same for local governments. The State has no responsibility for payments owed by local governments. Successful offeror must deal directly with the local governments.

This is a firm price, indefinite delivery, indefinite quantity, and price adjustment contract (seasonal price adjustment allowed when there are dramatic changes of market condition).

This statewide contract is awarded by Central Purchasing Division to take advantage of volume discount pricing for goods and/or services that have a recurring demand from one or more entities. However, if a requesting state agency locates a vendor that can provide the **identical item** at a **lower price**, a waiver to "buy off state contract" may be granted by Central Purchasing Division.

### B.7. POST AWARD MODIFICATIONS

Following contract award, during the term of the contract, including any optional renewal periods, or prior to renewal of the contract, the State may make changes or revisions within the scope of work of the contract resulting from this solicitation. The State Purchasing Director or designee and the successful offeror may negotiate in good faith adjustments to terms, conditions, prices or other matters of mutual concern and interest. Such negotiations will be conducted in accordance with the Central Purchasing rules and result in an addendum or modification to the contract resulting from this solicitation.

### B.8. PRICE TERM

- B.8.1.** Pricing as submitted on the price schedule shall contain all direct and indirect costs associated with unit price, e.g., insurance, fees, taxes, profit, overhead, general, administrative expenses and contract management fee.
- B.8.2.** Each item required by the RFP must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

### B.9. PRICE ADJUSTMENT

- B.9.1.** When requested by successful offeror and after each 12-month contract period ends, the State will review a **complete documented** request for a price increase. The complete documents comprise of a letter with company letterhead requesting price adjustment with a detail justification, an index used for a prices change that shows the past 12 month period of items requesting the price increase, and a list of items needing the price increase with their new prices. In special circumstances, i.e., dramatic change of market condition, price adjustments may be requested prior to the expiration of each contract period.
- B.9.2.** Escalation of a portion of the base price: The base price refers to a per-unit price on product portion for each line item as of date of award. Such changes shall be based on changes in actual costs incurred to the products specified in this contract. When changes occur to the products, only product portion of each line item can be escalated. When changes occur to the delivery portion, see section **B.11** for fuel price adjustment.
- B.9.3.** Index used: For a basis of price changes for products in this contract, Central Purchasing Division will utilize the latest version of the Producer Price Index (PPI) Industry Data, Industry: (325180) Other basic inorganic chemical manufacturing, Product: (325180325180) Other basic inorganic chemical manufacturing, which is published by

U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov>) or other comparable index proposed by successful offeror at a time of RFP submission, which the State will review and may or may not accept. For acceptance of alternative index, the State will select, at the State's discretion, only one single index among several proposed indexes to be used for all price adjustments for products under this contract.

In the event that the original PPI index or index proposed by successful offeror is temporarily or permanently discontinued, the contracting parties are to renegotiate a successor index comparable to the original index.

Central Purchasing Division also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request.

- B.9.4.** Price changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract periods unless further revised at the end of the next period or special circumstances.
- B.9.5.** Requests for price changes shall be **RECEIVED IN WRITING AT LEAST FIFTEEN (15) DAYS PRIOR TO THEIR EFFECTIVE DATE**, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the contract may be cancelled subject to cancellation clauses. The successful offeror remains responsible for performing according to the contract terms at the contract price for all orders received before price revisions are approved or before the contract is cancelled.
- B.9.6.** Price adjustments using the PPI involve changing the base price by the percent change in the level of the PPI between the reference period and the price adjustment request time period. The reference period shall be based on the percent change of the preceding 12 months (or less, if data is not available) from the price adjustment request time period.

**B.9.6.1.** Example #1: illustrates the computation of percent change for a hypothetical August 2011 price adjustment request calculation:

**Step 1:** Identify table from PPI Database > PPI-Industry Data, Other basic inorganic chemical manufacturing

EXAMPLE #1

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2010												100.0	
2011	99.8	103.1	105.3	103.8	104.0(P)	105.6(P)	106.0(P)	106.4(P)					

**Step 2:** Previous 12 months (reference period) starts from August 2010. Since data is not available; use the preceding 9 months; December 2010.

**Step 3:** Compute Net Change with the following methodology:

Index at time of calculation: August 2011	106.4
Divided by index at time base price was set	100.0

Equals index point change	1.064
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**Step 4:** Index point change will be multiplied by the base price to get the next contract year's adjusted price.

Base price, line #1 (product portion 85% of \$1.80)	\$1.53
Multiplied by	1.064
Equal adjusted price	\$1.63

**B.9.6.2.** Example #2: illustrates the computation of percent change when index point change is a decrease.

Index at time of calculation:	98.8
Divided by index at time base price was set	100.0
Equals index point change	0.988

Base price, line #1 (product portion 85% of \$1.80)	\$1.53
Multiplied by	0.988
Equal adjusted price	\$1.51

## B.10. PRICE REDUCTION ADJUSTMENT

A price reduction adjustment may be offered at any time by either party during the term of a contract and shall become effective upon notice.

## B.11. FUEL PRICE ADJUSTMENT

The following is a definition of the provisions being established to allow for a fuel price adjustment.

- B.11.1.** The successful offeror(s) will be allowed to implement a recovery fee if the price per gallon of diesel fuel increases more than or equal to fifteen (15) percent from the fuel prices posted by U.S. Energy Information Administration on the day the solicitation is due. The successful offeror(s) shall use index pricing from the weekly Retail Gasoline and Diesel prices for Midwest region as posted each Monday by the U.S. Energy Information Administration at [http://tonto.eia.doe.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_r20\\_w.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_r20_w.htm). After the 15% has occurred, the delivery surcharge will be structured as 4% for every \$.10/gallon. The percentage will be applied to the delivery portion of total item cost.

For example, diesel price on the day the solicitation is due is \$3.668, and the diesel fuel increased by 15% to \$4.218. Assuming that successful offeror proposes base price of \$1.80, which 15% or \$0.27 of it is for delivery. Then the delivery surcharge and the adjusted price will be:

National Average Diesel Price for Midwest region	Delivery Surcharge	Adjusted base price for delivery
\$4.218	4%	$\$0.27 + 4\% = \$0.2808$
\$4.318	8%	$\$0.27 + 8\% = \$0.2916$
\$4.418	12%	$\$0.27 + 12\% = \$0.3024$
\$4.518	16%	$\$0.27 + 16\% = \$0.3132$
\$4.618	20%	$\$0.27 + 20\% = \$0.324$
\$4.718	24%	$\$0.27 + 24\% = \$0.3348$
\$4.818	28%	$\$0.27 + 28\% = \$0.3456$
each \$.10 additional	add 4%	Same formula as above

- B.11.2.** Once the fuel price returns less than fifteen (15) percent of the fuel price on the day the solicitation is due, delivery surcharges are no longer applied.

- B.11.3.** Once the fuel price decreases less than or equal to fifteen (15) percent from the fuel price on the day the solicitation is due, the successful offeror shall offer the fuel price deduction to the State as structured as -4% for every \$.10/gallon. The percentage will be applied to the delivery portion of the item cost.

For example, diesel price on the day that solicitation is due is \$3.668, and the diesel fuel decreased by 15% to \$3.1178. Assuming that successful offeror proposes base price of \$1.80, which 15% or \$0.27 of it is for delivery. Then the delivery surcharge and the adjusted price will be:

National Average Diesel Price for Midwest region	Delivery Surcharge	Adjusted base price for delivery
\$3.1178	-4%	$\$0.27 - 4\% = \$0.2592$
\$3.0178	-8%	$\$0.27 - 8\% = \$0.2484$
\$2.9178	-12%	$\$0.27 - 12\% = \$0.2376$
\$2.8178	-16%	$\$0.27 - 16\% = \$0.2268$
\$2.7178	-20%	$\$0.27 - 20\% = \$0.2160$
\$2.6178	-24%	$\$0.27 - 24\% = \$0.2052$
\$2.5178	-28%	$\$0.27 - 28\% = \$0.1944$
each \$.10 additional	deduct 4%	Same formula as above

- B.11.4.** The delivery surcharge and deduction shall be applied at the day the products are delivered.

## B.12. CONTRACT ADMINISTRATION

This Contract is issued by the Oklahoma Department of Central Services, Central Purchasing Division on behalf of the State of Oklahoma (collectively, including all other relevant State of Oklahoma authorized entities, the "State"). Central Purchasing Division is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Central Purchasing Division is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.

### B.13. CONTRACT MANAGEMENT FEE AND QUARTERLY USAGE REPORTING

#### B.13.1. Contract Management Fee:

Pursuant to Oklahoma State Statute Title 74, Chapter 4, Section 85.33A The State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department of Central Services.

Pursuant to this statute, the State Purchasing Director hereby imposes a contract management fee on this Statewide Contract, as defined below:

MANAGEMENT FEE	
Contract Management Fee Percentage:	One Percent (1%)

The parties agree that the contract management fee identified in the table above has been included in new contract pricing, which new contract pricing has been approved by The State Purchasing Director and will become effective upon the Effective Date ([date of award](#)). The Contract Management fee (hereinafter, "the Fee") will be collected by successful offeror on all sales pursuant to this Statewide Contract placed on or after the "Effective Date" defined above. The Fee shall be remitted by successful offeror to The State Purchasing Director as further described below.

#### B.13.2. Quarterly Payment and Usage Reporting Requirements:

The parties agree that the collected Fees and the corresponding Quarterly Sales Report, which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by successful offeror to the Central Purchasing Director. The total sales reported in the Quarterly Sales Report should be limited to sales in which the successful offeror has received payment from the requesting entities. In the event that payment for a project is not received or received partially within the same reported quarter, the successful offeror must identify the amount received in the quarterly report and the contract management fee will be calculated based on the portion of payment received. The remaining balance will be carried over to the next reported quarter and contract management fee for such portion will be calculated and remitted to the State. The Fees and the Quarterly Sales Report must be received by the State Purchasing Director on or before the successful offeror's Payment Due Date as defined in the table below:

Fiscal Quarters	Months	Successful Offeror's Payment Due Date and Quarterly Sales Report Due Date
Quarter 1	January 1 <sup>st</sup> – March 31 <sup>st</sup>	<u>April 30<sup>th</sup></u>
Quarter 2	April 1 <sup>st</sup> – June 30 <sup>th</sup>	<u>July 31<sup>th</sup></u>
Quarter 3	July 1 <sup>st</sup> – September 30 <sup>th</sup>	<u>October 31<sup>th</sup></u>
Quarter 4	October 1 <sup>st</sup> – December 31 <sup>st</sup>	<u>January 31<sup>th</sup></u>
-----	-----	<u>30 calendar days following the termination of this Statewide Contract for any reason</u>

The Quarterly Usage Report must be in Excel spreadsheet format provided in attachment #2 and submitted via email to the Contracting Officer name herein in item #8, page #1 of the solicitation package within 30 calendar days after the preceding quarter. In the event that the Contracting Officer for this contract is changed, the successful offeror will be notified of the new Contracting Officer's email address. Successful offeror must use this excel spreadsheet to report without altering descriptions, and headings. Additional explanation or information is allowed to be added or inserted to this excel spreadsheet, if needed.

At the end of each quarter as defined above, successful offeror shall prepare the Quarterly Sales Report. In the event no sales have occurred, the successful offeror must submit the Quarterly Usage Report, indicating no sales have occurred. No later than the date identified above as the "Successful offeror's Payment Due Date" for each quarter, successful offeror shall remit a check payable to the Oklahoma Department of Central Services, Central Purchasing Division for the Fees, which check shall include the note "Contract Management Fee", for what quarter period, and the contract number to the following address.

- (U.S. POSTAL SERVICE)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
Attn: Gai Hunter / SW605 – Magnesium chloride-based liquid/granular deicer/anti-icer  
P.O. Box 528803  
Oklahoma City, OK 73152
- (COMMON CARRIER)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
Attn: Gai Hunter / SW605 – Magnesium chloride-based liquid/granular deicer/anti-icer  
2401 N. Lincoln, Ste 116  
Oklahoma City, OK 73105

**B.13.3. Auditing and Contract Close Out:**

**B.13.3.1.** All usage reports and Fee payments shall be subject to audit by the State. Successful offeror shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the Statewide Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Successful offeror shall permit the Auditor of the State of Oklahoma or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the successful offeror relating to orders, invoices or payments or any other documentation or materials pertaining to this Statewide Contract, wherever such records may be located during normal business hours. Successful offeror shall not impose a charge for audit or examination of the successful offeror's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the successful offeror for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall successful offeror retain any amount of money in excess of the compensation to which successful offeror is entitled and all Fees owed the Oklahoma Department of Central Services, Central Purchasing Division shall be paid within thirty (30) calendar days of termination of this Statewide Contract for any reason.

**B.13.3.2.** Modifying or Canceling the Fee: The State Purchasing Director reserves the right to modify and/or cancel the Fee at any time. Successful offeror shall immediately amend the Statewide Contract pricing to reflect any modification or cancellation of the Fee by The State Purchasing Director. In addition, The State Purchasing Director reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

**B.13.3.3.** Late Payment Fee: In the event The State Purchasing Director does not receive the successful offeror's payment of the Fees on or before the successful offeror's Payment Due Date, the Purchasing Director may request late payment charges. The parties agree the successful offeror will pay the interest on the overdue Fees at a rate provided by the State Treasurer based on the average interest rate for 30 day time deposits of State funds during the last calendar quarter of the last preceding fiscal year. (Titles 62, § 41.4a & 4b and 74, § 840.14. and OSF Prompt Payment Rules/Regulations).

**B.13.3.4.** Default: The parties agree the successful offeror's responsibility to collect and remit the contract management fee on behalf of the State Purchasing Director is a serious responsibility as the successful offeror is handling state funds. Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring successful offeror in default and may result in suspension or cancellation or other legal remedy.

**B.14. PURCHASING CARD**

The State currently has a contract with Bank of America to enable selected State employees to purchase needed goods and services using a State of Oklahoma purchasing card. This card functions as any consumer or commercial VISA Card. The State requires the awarded Offeror to accept the State of Oklahoma's Purchasing Card and local government's Purchasing Card as a form of payment. There shall be no additional cost to a using entity for use of purchasing cards as a payment method. All purchase card transactions must be included and reported in the quarterly usage reports.

## **B.15. ESTIMATED USAGES**

This solicitation shall be for Magnesium chloride based De-icer/Anti-icer on an as needed basis as requested by the using entity. This solicitation references quantities as a general indication of the needs of the State. The State anticipates considerable activity resulting from contracts that will be awarded as a result of this solicitation; however, the quantities shown are estimates only and the State reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities and each potential successful offeror should take that fact into consideration.

## **B.16. PAYMENT**

- B.16.1.** The State of Oklahoma agrees to pay, and the successful offeror agrees to accept, in full compensation for the performance of the successful offeror's obligations, compensation based on the successful offeror's offer for the various pay items.
- B.16.2.** The accepted quantities of de-icer/anti-icer material, measured as provided under "Measurement", will be paid for at the unit price. This price shall be full compensation for furnishing all materials, labor, certification, samples, testing, equipment and hauling involved in producing and delivering the specified product to the designated location(s).
- B.16.3.** NO reimbursable travel is contemplated under the terms of this contract.
- B.16.4.** Payment shall be made only for material that has been inspected and meets the approval of the State of Oklahoma.

## **B.17. PAYMENT TO SUBCONTRACTOR**

Successful offeror shall promptly pay each Subcontractor out of the amount paid to the successful offeror on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. Payments to subcontractors shall not rely upon receiving payments from the State. The successful offeror is required to have substantially financial stability to support their business operations.

## **B.18. NOTICES**

All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to the contract shall be in writing and shall be deemed to have been properly given or sent by electronic mail, first class mail or facsimile. If the sender prefers, by registered or certified mail, return receipt requested with postage prepaid.

## **B.19. SEVERABILITY**

If any provision, clause, or paragraph of this contract or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this contract which are not affected by the determination. The provisions, clauses, or paragraphs and any documents incorporated by reference are declared severable.

## **B.20. MEDIA RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the solicitation and contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the solicitation and contract are to be released without prior written approval of the State and then only to persons designated.

## **B.21. BREACH OF CONTRACT**

Failure to perform any and all of the terms and conditions of this contract shall be deemed a substantial breach thereof and give the State cause to cancel this contract on seven (7) days written notice to the Successful offeror. The State then reserves the right to re-award the contract to the next best offer. In the event of cancellation of this contract, the Successful offeror shall not be entitled to damages and agrees not to sue the State for damages thereof. After notice of cancellation, the Successful offeror agrees to perform the terms and conditions of this contract up to and including date of cancellation, as though no cancellation had been made and notwithstanding other legal remedies which may be available to the State because of the cancellation, agrees to indemnify the State for its costs in procuring the services of a new Successful offeror.

## **B.22. HEADINGS**

Article headings used in the contract are inserted for convenience of reference only and shall not be deemed a part of this contract for any purpose.

## **B.23. PRIOR UNDERSTANDINGS**

This contract incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the parties.

## **B.24. PERMITS AND INSURANCE**

Successful offeror must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, and all necessary insurance coverage to perform under this contract.

## C. CONTRACT SPECIFICATIONS

**NOTE: ALL TERM AND REQUIREMENTS RELATED TO GRANULAR TYPE ARE VOID AND NOT AWARDED. THE AWARD ONLY IS FOR LIQUID TYPE.**

### C.1. PURPOSE

The Department of Central Services, Central Purchasing Division on behalf of the State of Oklahoma is seeking a successful offeror(s) that is a manufacturer or authorized retailer to provide and deliver an approved Magnesium chloride based liquid and granular de-icer(s)/anti-icer(s) to the State using entities on an as needed basis. The material provided must comply with all requirements of this specification.

### C.2. BACKGROUND

This Contract is for Magnesium chloride based De-icer/Anti-icer for the State of Oklahoma. Exact quantities to be purchased are unknown, however the successful offeror will be required to furnish all such materials and services as may be ordered during the contract agreement period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the successful offeror by various State using entities on the order contract release form such as purchase orders or other order type forms.

### C.3. LOCATION

Magnesium chloride based De-icer/Anti-icer for use statewide by State of Oklahoma direct forces and authorized local units of government that are in needs of magnesium chloride-based liquid or granular de-icer or anti-icer.

The locations will be mainly on State highways within the State of Oklahoma. Exact locations will be forthcoming at the time work orders are issued by requesting entities.

### C.4. MATERIAL PRE-QUALIFICATION

Successful offeror must be on the pre-approved de-icer/anti-icer products list. An approved list of all qualified manufactures / offerors is maintained by Oklahoma Department of Transportation. Contact Oklahoma Department of Transportation (ODOT) at 405-521-2557 for further detail.

### C.5. MATERIAL PROPERTIES

Magnesium Chloride-based, corrosion-inhibiting material shall conform to the following specifications:

Chemical Properties	
Magnesium Chloride Concentration	26 to 30A% (Liquids)
	18 to 21%A (Solids)
Total Phosphates, "Standard Methods for the examination of Water and Waste Water",	25 ppm max.
APHA-AWWA-WPCF.	
Cyanide	0.20 ppm max.
Chromium	0.5 ppm max.
Cadmium	0.15 ppm max
Sulfate	0.5 % max
*Except a 1% solution will be used. To prepare a 1% solution place 10 ml of sample into 500 ml distilled or DI water contained in a 1 L volumetric flask to which 2.5 ml 1 + 1 sulfuric acid has been added. Swirl the contents and make up to 1000 ml with distilled water.	
Physical Properties	
pH, ASTM E 70-90*	7-9
Specific Gravity	1.24 to 1.28 (Liquids)
Corrosive Property, Test Method Tex-624-J	65% less corrosive than Na C1
Settleable Solids and Solidification	No accumulation
Test Method Tex-625-J (Proposed)	
*Except a dilution must be made of 1 part de-icer to 4 parts distilled/de-ionized water before reading.	

*The materials supplied shall have no constituents which would cause residual waste to meet the definition of a hazardous waste as found in 40 CFR 261.*

## **C.6. RANDOM SAMPLING AND LABELING**

Samples of the Magnesium Chloride will be directed by the Engineer. Samples may be taken at the point of manufacture, from intermediate storage, from the truck at delivery, or from the Department's receiving tank, if it was empty before delivery.

If a sample fails to comply with the requirements stated herein, all deliveries shall cease until such time as the State of Oklahoma determines that the required specifications are being met and that adequate quality control has been re-established.

## **C.7. MATERIAL DOCUMENTATION**

The material supplied shall include the following documentation and must be clearly labeled as to what it is:

- C.7.1.** A current, clearly legible Material Safety Data Sheet (MSDS).
- C.7.2.** Clear documentation of its percentage of concentration of Magnesium Chloride.
- C.7.3.** An application rate table that clearly states the successful offeror's recommended rate for the various conditions of use at the place of delivery.
- C.7.4.** Information on how low temperatures will affect storage of liquid material.
- C.7.5.** Clear documentation on proper storage.
- C.7.6.** A type C certification (refer to Oklahoma D.O.T. standard specifications section 106.12) with each batch and/or lot number.

## **C.8. MATERIAL EFFECTIVENESS**

The material shall be active at an ambient temperature of at least -15°C (5°F). An active de-icer/anti-icer, if active at this temperature, shall melt ice on roadways and bridges. Manufacturer/successful offeror shall certify that the material supplied meets test methods SHRP-H-205.2 for effectiveness.

## **C.9. DELIVERY AND EQUIPMENT**

- C.9.1.** Delivery Term: All prices proposed must be F.O.B. Destination, with transportation charges prepaid on all orders.
- C.9.2.** Delivery Time Frame: All orders are to be delivered within 15 calendar days after receipt of order by successful offeror.
- C.9.3.** Successful offeror shall assure delivery and complete transfer of the material through properly calibrated metered pumps for liquids or certified scales for solids.
- C.9.4.** Successful offeror shall be responsible for all necessary equipment to transfer the material to existing storage facilities or locations specified by requesting entities

## **C.10. MINIMUM ORDER**

If successful offeror requires a minimum order, successful offeror shall specify the minimum quantity with their response. If the using entity orders less than quantity specified by successful offeror, the additional flat fee will be paid and added to invoice as a separate item. Instances where successful offeror makes a partial shipment of orders meeting minimum requirement, shipments shall be made F.O.B. Destination with no transportation charges and no additional flat fee added.

## **C.11. PACKAGING / LABELING**

Packaging shall permit safe dispensing under a variety of storage and weather conditions. A bill of lading shall accompany each shipment, and shall contain the following information:

- C.11.1.** Name of product
- C.11.2.** Supplier and manufacturer of product.
- C.11.3.** Destination of product.
- C.11.4.** Unit of measurement and number of units being delivered.
- C.11.5.** Total weight of delivery (certified scale ticket).
- C.11.6.** Lot number of products being delivered. This number must enable the using entity to track a delivered product back to its manufacture point, date of manufacture, and specific batch.
- C.11.7.** Shipper information, including the name of the shipping company, tank, trailer, or rail car number, point and date origin.

## **C.12. MEASUREMENT**

The de-icer/anti-icer shall be measured and delivered to the designated locations as directed on the work orders.