

Addendum No. 1

Bulk Carbon Dioxide Purchase Bid

Bid # 1011-117
September 8, 2010

The following information, clarifications, changes and modifications are by reference incorporated into the bid documents for the above referenced project. Any work item or contract provision not changed or modified will remain in full force and effect. The bid date and time remain the same.

The answers to the questions we received are in bold after each question as provided for below:

1. Who is your current Supplier? **TMWA purchases from Airgas who supplies a Linde product.**
2. Are they NSF60 certified? **No**
3. What is your current price for product?

Carbon Dioxide bulk/lb	\$0.1650
Carbon Dioxide Energy surcharge	\$0.0049
Carbon Dioxide Fuel surcharge	\$0.0026
Bulk Liquid Delivery Charge	\$25.00
Hazmat Bulk Gas Delivery	\$5.00

Any surcharges including: energy, fuel, bulk liquid delivery or Hazmat Bulk charges shall be included in Bid item #1 or #2.

4. Are you using the CO2 for pH control? **Yes**

5. Will we be deemed non-responsive if we take exceptions and provide alternate language concerning items such as indemnification, warranty, and contingency? Do you need to see that language up front in this question and answer period or can we provide with our bid response? **Yes, we must have questions or changes to the bid document in advance so that all bidders can bid on the same project Language must be provided up front for request approval/denial from TMWA and provided to all bidders. See question section of the first page of the advertisement and bid document and also provided below:**

“QUESTIONS will be accepted until 8am on September 8, 2010. Exceptions to the bid document are not reviewed or approved at bid submission. All exception requests must be submitted through this question review period so that an addendum may be issued and all bidders will have access to bid on the same information on the project. All questions must be submitted in writing, and will receive a written response posted on the web page as an Addendum.,,”

6. Do the General T&Cs on your website apply this bid? It appears those T&Cs are for construction jobs and are not applicable to the supply of liquid carbon dioxide. It also appears that those T&Cs that would be applicable have been already been incorporated into your current bid specification. Is this a correct observation? **Yes, they do not apply only what is provided in the bid document applies. They are not incorporated into the bid document by any reference.**

7. Page 11 - 24.3.4 Professional Liability/Errors & Omissions Insurance. Not Required for Bidder Construction Contracts. Bidder shall procure and maintain, during the term of this Agreement, professional liability/errors and omissions insurance in the amount of not less than One Million Dollars (\$1,000,000) per claim. The policy shall have a retroactive date prior to commencement of the performance of this Agreement and a discovery period at least three (3) years after the later of termination or the date of substantial completion of the project. This section is not applicable to the supply of liquid carbon dioxide and we would request that it be removed from the insurance section. Is this acceptable? **This insurance is not required for this contract.**

8. Page 13 - 1. Delivery Information/ Requirements, iv. Chemical analysis sheet must be provided to TMWA upon request. Do you require a certificate of analysis (COA) for each truck delivered to your facility or can we provide you with a one time COA indicating what specifications we will be supplying? **COA is not required for each delivery but must be available within thirty days if requested. NSF 60 is not required but equivalent certifications must be approved by TMWA. A copy of all Certification for the carbon dioxide to be supplied shall be submitted by the low bidder within seven days of the bid opening and shall contain the following information:**

	SPECIFICATIONS	VALUE or RANGE
1	Carbon dioxide purity, minimum 99.5%	
2	Water content (vol/vol) (vapor) <20 ppm	
3	Dew point, -55 degrees Celsius	
4	Total hydrocarbons (as methane) less than 50 ppm	
5	Oxygen less than 50 ppm	
6	Carbon monoxide less than 10 ppm (vapor)	
7	Hydrogen sulfide less than 0.5 ppm	
8	Nitric oxide less than 5 ppm	
9	Sulfur dioxide less than 5 ppm	
10	Carbonyl sulfide less than 0.5 ppm	
11	Nonvolatile residues shall be less than 10 ppm	
12	Acetaldehyde less than 0.5 ppm	
13	Total sulfides shall not exceed 0.5 ppm as hydrogen sulfide	

9. Is there really an option to extend for fourteen additional one year periods? **Yes**

10. Page 8 - 13.1 INDEMNIFICATION:

13.1. Awardee(s) shall be required to indemnify and hold TMWA, including its joiners, officers, employees, and its agent's harmless from any liability with respect to, but not limited to, claims for damages as a result of bodily injury, sickness, disease, death, or property damage arising or resulting from the bidder fulfilling his responsibilities according to the bid documents and subsequent contract.

We would request that this section be deleted in its entirety. We would offer up the alternative language below with respect to indemnification. This is a cross indemnification that is provided. Please note that if this indemnification language as contained in this Section is not acceptable, upon mutual agreement the contract could be silent as to liability and indemnity.

HEALTH, SAFETY AND LIABILITY. Buyer acknowledges that there are hazards associated with Product, including the storage, use and handling thereof, and Buyer agrees that its employees, agents, contractors, and others concerned with Product are aware of such hazards. Buyer assumes all responsibility for the suitability and the results of using Product alone or in combination with other articles or substances and in any manufacturing, medical, or other process or procedures. Buyer will notify Seller of any hazards and safety procedures at Buyer's Location(s) and Buyer will notify Seller in advance of any anticipated construction, renovation, or change in operations in the area of any Product Storage System site so that any hazards associated with same can be minimized. Buyer will be responsible for complying with all relevant reporting obligations under all applicable laws, including the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)), that result from the presence at Buyer's Location(s) of Product supplied under this Agreement. Buyer will warn and protect its employees, contractors and others exposed to the hazards posed by Buyer's storage, use and handling of Product. Seller will provide documents to Buyer containing Seller's safety and health information pertaining to Product, including Seller's Material Safety Data Sheet(s), and Buyer will incorporate such information into Buyer's safety program. Buyer hereby waives any right of subrogation that Buyer, any insurer of Buyer or any third party making a claim through Buyer, may have under this

Agreement. Seller will not be liable to Buyer for any incidental, consequential, indirect, special or exemplary damages (including lost profits, sales or other similar damages) arising in connection with this Agreement without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability, equity or any other theory of law) on which such damages are based. Each party will indemnify and hold harmless the other party from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising from the injury, illness or death of the indemnifying party's employees in any way related to any activities performed in connection with or Product supplied by Seller under this Agreement, whether or not such injury, illness, or death is claimed to have been caused by, resulted from, or was in any way connected with the negligence of the party to be indemnified.

Is the alternative language acceptable? **No**. If not, is it acceptable to be silent on liability and indemnity? **No**. **TMWA is agreeable to clarifying 13.1, as shown below, and adding a new section 13.2.**

13.1. Awardee(s) shall be required to indemnify and hold TMWA, including its joiners, officers, employees, and its agent's harmless from any liability with respect to, but not limited to, claims for damages as a result of bodily injury, sickness, disease, death, or property damage arising or resulting from the breach of the contract or negligent acts or omissions of awardee or its employees in performing obligations under the contract.

13.2 HEALTH, SAFETY AND LIABILITY. TMWA acknowledges that there are hazards associated with Product, including the storage, use and handling thereof, and TMWA agrees that its employees, agents, contractors, and others concerned with Product are aware of such hazards. TMWA assumes all responsibility for the suitability and the results of using Product alone or in combination with other articles or substances and in any manufacturing, medical, or other process or procedures. Awardee will provide documents to TMWA containing Awardee's safety and health information pertaining to Product, including Awardee's Material Safety Data Sheet(s).

11. Page 8 - 16. WARRANTY AND GUARANTEES:

16.1. The successful bidder agrees that any warranty or guarantee provided for herein or in the specifications shall not be considered as the exclusive remedy of TMWA, or its joiners, for any default in any respect by the bidder, but such warranty or guarantee shall be considered to be in addition to any right or remedy hereunder or otherwise allowed by law, equity, or statute.

We would request that this section be deleted in its entirety. We would offer up the alternative language below with respect to remedy and warranty.

SPECIFICATIONS. Product delivered hereunder will meet the Specifications. Buyer may reject any Product which does not meet the Specifications and no charge will be made for Product so rejected. Since Buyer may obtain devices which have the capability of testing whether Product meets the Specifications, no claim of any kind with respect to the conformance of Product to the foregoing Specifications, whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the price of the quantity of nonconforming Product in respect to which such claim is made. The foregoing constitutes Buyer's exclusive remedy and Seller's sole obligation with respect to any such claim. **THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS ARTICLE 2. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING, WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Is this acceptable? No, the warranty language provided in the bid document under paragraph 16.1 remains as originally provided.**

12. Page 8 - 18.1. Price Reductions:

If, during the term of the contract, the successful bidder reduces any or all prices charged to any customer other than TMWA, or its joiners, for the same equipment of the equivalent quantity, quality, delivery, performance and warranty, as said equipment specified herein, the bidders shall make an equivalent reduction for TMWA, and its joiners, in corresponding prices. and

18.5. Escalation: 18.5.1. Adjustments increasing the "Base Price" may be concurrent with the Bidder's price from his Manufacturer(s), provided the Bidder can substantiate the necessity for such an adjustment, and that it is consistent with market conditions. Should the Bidder have legal access to more than one

Manufacturer, he shall be aggressive in his endeavor to obtain the lowest responsive and responsible Manufacturer capable of providing products that meet or exceed the requirements of the contract

We would request that these sections be deleted in their entirety. We would offer up the alternative language below with respect to pricing. We would honor firm pricing for the first year. Each year the price will adjusted and mutually agreed upon per the below language.

During the first year following the delivery of product to the Product Storage System, the Prices shall remain firm. At anytime following the first twelve (12) months following the first delivery of Product, Seller will have the right to revise such Prices by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such revision, provided that during any calendar year following the first twelve (12) months following first delivery, Prices shall not be increased by more than X (x%) in any calendar year.

Replace paragraph 18.1 with the following: (paragraph 18.5 remains the same)

During the first year following the delivery of product to the Product Storage System, the Prices shall remain firm. At anytime following the first twelve (12) months following the first delivery of Product, Seller will have the right to revise such Prices in accordance with Section 18.5.

Essentially, if the Awardee receives a price decrease TMWA will benefit from that decrease. If the Awardee has a price increase TMWA will pay the increased cost to the Awardee based on actual increased or decreased costs associated with producing or delivering the product.

13. Page 10 - 20. DEFAULT OF CONTRACT

20.1. In case of default by the Bidder (successful bidder), TMWA may procure the product(s) or service(s) from other sources and hold the Bidder responsible for any excess cost occasioned thereby.

20.2. Default by the bidder, in any manner, including failure or refusal to furnish any product(s) and or service(s) at the price and/or within the time specified in the bid, may be considered cause to commence with proceedings against the manufacturer, assess a penalty equal to five percent (5%) of the total bid price.

We would request that this section be deleted in its entirety. We would offer up the alternative language below with respect to inability to supply.

CONTINGENCIES. Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to act of God, accident, fire, flood, storm, riot, war, act of terrorism, sabotage, explosion, strike, concerted acts of workers, national defense requirements, governmental law, ordinance, rule or regulation, whether valid or invalid, extraordinary failure of equipment or apparatus, inability to obtain electricity or other type of energy, feedstock, raw or finished material from normal sources of supply, labor, equipment or transportation, or any similar or different contingency beyond its reasonable control which would prevent or delay performance or make performance commercially impracticable whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive; provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of this Article 3. In the event any such contingency affects only a part of Seller's capability to produce and/or deliver Product, Seller will allocate production and/or deliveries among the requirements of all its affected customers and Seller's own requirements in a fair and reasonable manner. Buyer will pay or reimburse Seller for any additional costs incurred relating to the delivery of any Product to Buyer during a contingency. In the event that a contingency event prevents Seller from delivering Product or requires Buyer to pay any additional costs for Product then Buyer shall be allowed to seek Product from alternative sources during the period of the contingency.

We would request that this section be deleted in its entirety. We would offer up the alternative language below with respect to inability to supply.

Is this acceptable? **Paragraph 20.1 will remain as provided in the bid document. Paragraph 20.2 is deleted and replaced with the revised paragraph 20.2 below:**

20.2 CONTINGENCIES. Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to act of God, fire, flood, storm, riot, war, act of terrorism, sabotage, explosion, strike, national defense requirements,

governmental law, ordinance, rule or regulation, whether valid or invalid, , or any similar contingency beyond its reasonable control which prevents or delays performance or make performance commercially impracticable whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive; provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of this section. In the event any such contingency affects only a part of Seller's capability to produce and/or deliver Product, Seller will allocate production and/or deliveries among the requirements of all its affected customers and Seller's own requirements in a fair and reasonable manner. In the event that a contingency event prevents Seller from delivering Product then Buyer shall be allowed to seek Product from alternative sources during the period of the contingency.

14. Page 10 - 21. LIQUIDATED DAMAGES:

21.1. Availability or payment of liquidated damages shall not preclude TMWA, or any of its joiners, from claiming and collecting damages on account of delay, price changes, loss of other contracts, loss of income, inability of TMWA, or its joiners, to fulfill other damages direct or consequential arising out of the failure of the bidder to perform under the terms, conditions and requirements of the bid documents.

We would request that this section be deleted in its entirety. Is this acceptable? Paragraph 21.1 is revised as follows:
21.1. Availability or payment of liquidated damages shall not preclude TMWA, or any of its joiners, from claiming and collecting damages on account of delay, price changes, loss of other contracts, loss of income, inability of TMWA, or its joiners, to fulfill other damages direct or consequential arising out of the failure of the bidder to perform under the terms, conditions and requirements of the bid documents, to the extent permitted by law.

15. Supply of product to a customer owned supply system is contingent upon initial safety (pre-delivery) and annual inspections. Procedures are in place to prohibit delivery to unsafe customer owned storage systems. If deficiencies are found, delivery will not be allowed until remedied. Is this acceptable?

Awardee is permitted to inspect TMWA's facilities to ensure that the site is acceptable to the Awardee prior to delivery of product. Awardee shall have the ability to inspect TMWA facilities at their own expense. TMWA has an annual service contract to inspect and provide preventative maintenance on the Product Storage System. TMWA will provide annual reports regarding these inspections to the Awardee. See attached sample reports from 2008.

16. In addition to the bid specifications, we would request the following sections be incorporated into our agreement. Will this be allowed:

BUYER'S STORAGE SYSTEM: Buyer, at its expense, will maintain such Product Storage System ("Product Storage System") and the site on which such Product Storage System is located. Seller will have the right, without any liability hereunder, to refuse to deliver Product into such Product Storage System if Seller reasonably determines that such Product Storage System or Product Storage System site is unfit for the storage or delivery of Product or the site on which such Product Storage System is located is not safe as determined by Seller for the delivery of Product. Buyer will indemnify and hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising out of Buyer's failure to properly install, maintain or operate such Product Storage System or the Product Storage System site.

Is this acceptable? **The following section is added to the bid document**

TMWA'S STORAGE SYSTEM: TMWA, at its expense, will maintain a Product Storage System ("Product Storage System") and the site on which such Product Storage System is located. Prior to entering any contract with TMWA, Awardee shall reasonably determine whether such Product Storage System or Product Storage System site is unfit for the storage or delivery of Product Subject to and without waiving any liability limitations available under Nevada law, including without limitation those set forth in NRS Chapter 41, Buyer will indemnify and hold harmless Awardee from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising out of TMWA's failure to properly install, maintain or operate such Product Storage System or the Product Storage System site.

End of Addendum No. 1