



# CITY OF RAPID CITY

## Purchasing Documentation

### SOLE SOURCE PURCHASE\*

STAFF NAME: Dan Roth DATE: 5/28/2024

DEPARTMENT: Public Works DIVISION: Solid Waste

PURCHASE DESCRIPTION: Posi-Shell Alternative Daily Cover

VENDOR: LSC Environmental Products LLC

INVOICE NUMBER: \_\_\_\_\_ CONTRACT AMOUNT: \$36,422.00

*\*Cannot be used for construction services or construction equipment*

#### CHECK ALL THAT APPLY:

- Item must match existing equipment
- Item is repair part for existing equipment
- Item is to be attached to existing equipment
- Technical characteristics of requested item are essential to our needs
- Other manufacturers of this type of product do not meet our minimum requirements
- No other manufacturer of this type of product exists
- The supplies/services are unique
- Sole vendor/provider for this supply or service at the location required
- Other (PLEASE SPECIFY) \_\_\_\_\_

**DESCRIBE HOW THE SUPPLIES/SERVICES ARE OF SUCH A UNIQUE NATURE THAT THE CONTRACTOR IS CLEARLY AND JUSTIFIABLY THE ONLY PRACTICABLE SOURCE TO PROVIDE THE SUPPLIES/SERVICES, BASED ON THE UNIQUENESS OF THE SUPPLIES/SERVICES OR THE SOLE AVAILABILITY AT THE LOCATION REQUIRED:**

This is a product we have been using for years and has met our needs well. The vendor has provided a sole source certification which indicates that their product is patented and they are the sole provider of it.

**EXPLAIN THE NEGOTIATION PROCESS YOU USED TO CHOOSE THE REQUESTED ITEM OR SERVICE AT THE MOST ADVANTAGEOUS PRICE:**

N/A

**PLACE THIS COMPLETED FORM IN THE BID FILE AND RETAIN, pursuant to SDCL 5-18A-8.**

**PLEASE PROVIDE THIS DOCUMENTATION TO THE FINANCE OFFICE TO MAINTAIN THE RECORD LISTING OF ALL SOLE SOURCE PURCHASES PURSUANT TO SDCL 5-18A-10.**



## **POSI-SHELL® ENVIRONMENTAL COATINGS SOLE SOURCE CERTIFICATION**

This is to certify that The United States Patent Office has issued Patent Number 7,544,243 and Patent Number 8,029.616-B2 which cover the formulation of ingredients and methods unique to Posi-Shell® Environmental Coatings. No other vendors may infringe on these mixtures, including the use of pozzolanic mineral binders in landfill cover formulations, and therefore LSC Environmental Products, LLC is the sole source supplier of these methods and materials.



**ENVIRONMENTAL  
PRODUCTS, LLC™**

2183 Pennsylvania Ave., Apalachin, NY 13732 · 800-800-7671  
[www.LSCenv.com](http://www.LSCenv.com)



2183 Pennsylvania Ave  
Apalachin NY 13732  
United States  
Phone (607) 625-3050  
Fax (607) 625-2689

# Quote

#QUO0002153

05/24/2024

**Bill To**  
City Of Rapid City  
300 Sixth Street  
Rapid City SD 57701  
United States

**Ship To**  
City Of Rapid City  
300 Sixth Street  
Rapid City SD 57701  
United States

**TOTAL**

**\$36,422.00**

**Expires: 06/23/2024**

<b>Exp. Close</b> 05/24/2024	<b>Terms</b> Net 30 45	<b>Sales Rep</b> 093 Manchester, James	<b>Shipping Terms</b> FOB ORIGIN
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Quantity	Item	Price	Extended Price
900	<b>POSI-50-BR Posi-Shell Brown Base Mix - 50lb Bag</b> Posi-Shell Brown Base Mix - 50lb Bag	\$38.50	\$34,650.00
15	<b>520014-PSC Pallet Surcharge</b> Pallet Surcharge	\$5.00	\$75.00
1	<b>520014 Product Shipping Charge</b> Product Shipping Charge	\$1,697.00	\$1,697.00

**Note:**

Your order is accepted subject to the Terms and Conditions of Sale set forth on both sides hereof and on any continuation sheets. Acceptance is expressly conditional on your assent to the Terms and Conditions of Sale. Applicable sales tax will be added to the final invoice.

<b>Subtotal</b>	\$36,422.00
<b>Sales Tax (%)</b>	\$0.00
<b>Total</b>	\$36,422.00

*Thank you for your interest.  
Shipping quotes are estimates only.*



# TERMS AND CONDITIONS OF SALE

## 1. ACCEPTANCE

By accepting the order of Products (as defined below), Customer is deemed to have agreed to all of these Terms and Conditions of Sale (the "Terms"). The Terms, together with the Sales Order or Quote on the reverse side hereof, shall constitute the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof (the "Agreement"). All stenographic or clerical errors or omissions, however, are subject to correction.

## 2. PRICE AND TRADE TERMS

All prices listed by LSC Environmental Products, LLC (herein called "LSC") on the reverse side hereof (sometimes called "hereon") for the products listed hereon ("Products") are in U.S. dollars. All transportation, insurance, and other charges for delivery of the Products from LSC's Apalachin, NY facility or such other facility to the Customer listed hereon represent estimated charges in effect on the date of the reverse side hereof. Notwithstanding the trade terms quoted hereon, the following charges are (unless otherwise specified hereon) not included in the trade term prices and charges listed hereon and LSC reserves the right to separately charge Customer for them: (a) certain taxes, customs and export and import duties; (b) all miscellaneous charges, such as weighing and inspection charges, and charges for consular invoices and certificates of origin; and (c) charges in effect at the time or times of shipment which are not in effect on the date of the reverse side hereof or which LSC could not reasonably know were in effect on such date.

## 3. TERMS OF PAYMENT

Unless otherwise specified hereon, the Customer shall pay the full price and other charges, fees and taxes on the reverse side hereof within ~~thirty (30)~~ <sup>forty five (45)</sup> days after the date hereof. If, in LSC's sole judgment, the financial condition of the Customer does not justify continuation of production or shipment on the terms specified herein, LSC may cancel any unfilled orders from the Customer or parts thereof and/or may require immediate payment for all Products delivered and/or full or partial payment in advance for all Products not delivered or a letter of credit therefor, at LSC's sole option. A charge of the lower of 1% per month or the per-month highest legal rate will apply to all amounts due beyond the terms stated hereon. Customer shall pay legal fees and other costs incurred by LSC in connection with enforcement (including collection of past due amounts) of this Agreement.

## 4. SHIPMENTS

Unless complete and specific shipping instructions are received from the Customer substantially before the shipment date, LSC reserves the right to use its best judgment in selecting the appropriate means of shipment. All Products shipped will be F.O.B. Apalachin, NY or such other place as designated by LSC. LSC reserves the right to make partial shipments and to invoice Customer therefor. Risk of loss and, unless otherwise specified, title to the Products shall pass to Customer upon delivery of the Products by LSC to the carrier and LSC's responsibility for loss or damage shall cease.

## 5. PACKAGING

LSC shall package each shipment in conformance with good commercial practice and in a manner reasonably sufficient to protect the Products, all written and electronic material related to the Products provided by LSC to Customer, including, but not limited to, specification sheets, instructions, user and service manuals, and installation guides (all such material, collectively, "Documentation"), and any components or parts, incorporated into the Products (collectively, "Parts"), from loss or damage.

## 6. DELIVERY

Delivery dates and times are approximate only. Customer shall not refuse to take delivery of Products on account of any reasonable delay. Quantities shipped shall be subject to standard industry shipping tolerances.

## 7. TERMINATION, CANCELLATION, MODIFICATION OR AMENDMENT

The Agreement is not subject to termination, cancellation, modification or amendment in any respect by the Customer except upon written request accepted in writing by LSC, and then only upon payment by the Customer of all reasonable termination, cancellation, modification or amendment charges determined by LSC. LSC will not accept cancellations for custom Products. In the event of any modification or amendment LSC may, at its option, revise its price and delivery schedule hereunder to provide for such modification or amendment. LSC reserves the sole right to terminate the Agreement without charge: (a) at the convenience of LSC for any reason upon thirty (30) days written notice of termination, (b) in the event LSC does not receive all of the following within a reasonable time, not exceeding thirty (30) days, after the acceptance hereof: (i) all export and import licenses, and (ii) other documents and authorizations deemed necessary or desirable by LSC; (c) immediately upon written notice of termination, if Customer breaches any provision of Section 10 hereof; (d) except as provided in subpart (c) of this Section 7, if Customer breaches any material provision hereof or thereof and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach; or (e) the Customer: (i) becomes insolvent, (ii) makes an assignment for the benefit of creditors, (iii) files or has filed against it a petition in bankruptcy or seeking reorganization, (iv) has a receiver appointed, (v) institutes any proceedings for the liquidation or winding up; provided, however, that, in the case any of the foregoing is involuntary, Customer shall only be in breach if such petition or proceeding has not been dismissed within 90 days; or (vi) is convicted of a felonious act under the laws of the United States or any other law. LSC reserves the right to cancel the Agreement or any part thereof, or to suspend delivery of any or all Products hereunder, without liability on its part, if its ability to manufacture, or have manufactured, or deliver Products is prevented, impaired or delayed by any force majeure event as contemplated in Section 14 hereof.

## 8. CLAIMS AND RETURNS

All claims for shortages, discrepancies, or obvious defects in the Products shipped must be made in writing within fifteen (15) days of delivery of shipment. No Products will be accepted for credit by LSC if shipment has been made in accordance with the Customer's purchase order. NO PRODUCTS MAY BE RETURNED TO LSC FOR ANY REASON WITHOUT SECURING A RETURN AUTHORIZATION FROM LSC'S SALES DEPARTMENT PRIOR TO SHIPMENT. Any return shipment, when authorized, will only be allowed in conformity with the return authorization. Transportation charges with respect to any returns must be prepaid by Customer. Custom Products are not returnable. Restocking charges of 25% will be applied to all returned Products. All returned Products must be unused and undamaged. Only full pallet Product may be returned.

## 9. PROPRIETARY RIGHTS

a. LSC IP and License. All rights, including, without limitation, Intellectual Property Rights (defined below), title, and interest in and to intellectual property contained in or associated with all materials, equipment, technology, and custom features, including but

not limited to Post-Shell Environmental Coatings, formulas, flares, (including but not limited to any modifications, and improvements to any of the foregoing by or authorized by LSC, Customer, or any third party) ("LSC IP"), belongs to and shall remain the sole property of LSC. LSC grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable license to use LSC IP provided to Customer pursuant to the Agreement only in connection with Customer's business, solely for Customer's business purposes, and solely in connection with the intended purposes, for the Term set forth in this Section 9. Except as expressly set forth herein, Customer shall have no rights in LSC IP. "Intellectual Property Rights" means all intellectual property rights and industrial property rights (throughout the universe, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including, without limitation, all (a) patents, reissues of and reexamined patents, and patent applications, whenever filed and wherever issued, including, without limitation, continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications; (b) rights associated with works of authorship, including, without limitation, copyrights, moral rights, copyright applications, copyright registrations; (c) rights associated with trademarks, service marks, trade names, logos, trade dress, and the applications for registration and registrations thereof; (d) rights analogous to those set forth in this definition and any and all other proprietary rights relating to intangible property; and (e) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued, or acquired.

b. Restrictions. Except as expressly permitted by LSC, Customer shall not do, nor shall it affirmatively give permission to any third party to do, any of the following: (a) use, disclose, distribute, market, promote, sell or access any Product, Part, Documentation or LSC IP (defined in Section 9(a) above) for any purpose or in any manner not specifically and expressly authorized hereunder; (b) modify, adapt, translate or create derivative works based upon any LSC IP, without the prior written consent of LSC; (c) re-engineer, reverse engineer, decompile, or disassemble the Products or any LSC IP obtained or licensed hereunder; and (d) refer to or otherwise use any LSC IP as part of any effort to develop products, software or services having any functional attributes, content, visual expressions or other features similar to those of the Products or to compete with LSC. Any and all rights in and to the Documentation, LSC IP and otherwise, not explicitly granted to Customer hereunder, are expressly reserved by and to LSC, and Customer shall not exercise any rights in or to the LSC IP or otherwise, except to the extent explicitly stated herein. Customer shall issue appropriate instructions to all of its employees authorized to have access to the LSC IP concerning the restrictions described in the Agreement, in the Documentation, and such other instructions and restrictions provided by LSC.

c. Term and Termination of the License to LSC IP. The term of this LSC IP license shall commence as of the date of the acceptance hereof and shall continue until the earlier of Customer's cessation of use of the Products, Documentation, Parts, and LSC IP, the termination of the Agreement or the date the Agreement is terminated by LSC. Upon termination pursuant to this Section 9(c), all rights of Customer in and to the LSC IP shall cease immediately and Customer shall return any LSC Confidential Information (defined below) at LSC's request.

## 10. CONFIDENTIALITY

a. Maintenance of Confidentiality. Customer shall keep secret and maintain in strict confidence the terms of the Agreement and all confidential and proprietary information and data of LSC disclosed to it in connection with the performance of either party's obligations under the Agreement (together with the definition below, the "Confidential Information") and shall use its employees, officers, directors, partners, members, managers, attorneys, accountants, consultants, agents, and advisors ("Agents") to keep secret and maintain in strict confidence the Confidential Information. Customer shall not, and shall cause its Agents not to, disclose or make available any or all Confidential Information to any person other than those who need to know such Confidential Information in order to perform their obligations under the Agreement. Customer further agrees that it shall not use, disclose, reproduce, or make available the Confidential Information for any purpose other than determining and performing its obligations under the Agreement. Customer shall take all measures necessary to prevent any unauthorized disclosure, reproduction, or use of the Confidential Information by it or any of its Agents, but in no event less than the measures taken by Customer to protect its own highly confidential information and in no event less than reasonable care. Confidential Information represents trade secrets and proprietary property of LSC and has great commercial value to LSC. "Confidential Information" includes, but is not limited to, technical and non-technical information and data of or related to LSC or its Affiliates, including, but not limited to, patent, copyright, trade secret, and proprietary information, techniques, formulas, inventions, know-how, processes, research, development, financial information, key personnel, suppliers, customers, prospective customers, internal policies and operational methods, plans for future developments, business forecasts, sales and merchandising information, and marketing plans and information, in whatever form disclosed or made available.

b. Permitted Disclosures. Nothing herein shall prevent Customer or its Agents from disclosing Confidential Information it receives and which, subject to Customer's compliance with Section 10(c) below, is required to be produced by order of a court of competent jurisdiction or other similar requirement of a governmental agency, provided that such Confidential Information to the extent covered by a protective order or its equivalent shall otherwise continue to be Confidential Information required to be held confidential for purpose of this Agreement. "Confidential Information" shall not include any information which (a) has been published or is in the public domain, or which subsequently comes into the public domain, through no fault of Customer or its Agents; (b) prior to receipt hereunder was property within the legitimate possession of Customer or, subsequent to receipt hereunder is lawfully received by Customer from a third party having rights therein without restriction of the third party's right to disseminate the Confidential Information and without notice of any restriction against its further disclosure; or (c) is independently developed by Customer through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information.

c. Procedures. In the event that Customer (a) must disclose Confidential Information in order to comply with applicable law or (b) becomes legally compelled to disclose any Confidential Information, Customer shall provide LSC with prompt prior written notice of any such disclosure and Customer shall limit the disclosure to the greatest extent possible.



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#### 11. DISCLAIMER OF WARRANTY

EXCEPT AS OTHERWISE PROVIDED IN WRITING BY LSC OR IN A WRITTEN CONTRACT TO WHICH THE CUSTOMER AND LSC ARE SIGNATORY PARTIES, THE PRODUCTS, THE PARTS, THE DOCUMENTATION, AND ANY AND ALL SERVICES AND OTHER PRODUCTS PROVIDED BY LSC ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." LSC MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, SYSTEMS INTEGRATION, AND GENERAL FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. LSC SHALL NOT BE LIABLE FOR ANY CLAIM BY ANY THIRD PARTY BASED ON A WARRANTY OR REPRESENTATION OF CUSTOMER WHICH IS INCONSISTENT WITH OR IN ADDITION TO LSC'S WARRANTIES, AND CUSTOMER SHALL, AT ITS OWN EXPENSE, INDEMNIFY AND HOLD LSC HARMLESS FROM ANY CLAIM BY ANY THIRD PARTY TO THE EXTENT IT IS BASED UPON ANY SUCH INCONSISTENT OR ADDITIONAL WARRANTY OR REPRESENTATION IN ACCORDANCE WITH THIS SECTION.

#### 12. INDEMNIFICATION

Customer agrees to indemnify, defend, and hold harmless LSC and its members, managers and affiliates, and its and their directors, managers, members, officers and employees, from and against any and all third party claims (including, without limitation, claims for damages, injuries or death to persons and/or property) and losses, damages, costs and expenses (including, without limitation, attorneys' fees and costs of investigation) and liabilities (including, without limitation, amounts paid in settlement) arising from third party claims ("Losses"), directly or indirectly arising out of, resulting from, or relating to: (a) any breach or violation of any agreement of Customer or provision contained herein; (b) any modification of the Products by Customer other than as contemplated by the Documentation; (c) the combination, operation, or use of the Products by Customer with any product, equipment, formula or apparatus not provided or directed in writing by LSC other than as contemplated by the Documentation; or (d) Customer's fraud, willful misconduct, negligence or noncompliance with law.

#### 13. LIMITATION OF LIABILITY

LSC SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF PROFITS EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. LSC'S CUMULATIVE LIABILITY TO CUSTOMER FOR ANY CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT.

#### 14. FORCE MAJEURE

LSC may cancel this Agreement or any part thereof, or suspend performance of its obligations under the Agreement, all without liability on its part, if LSC's ability to perform is prevented, impaired, delayed, or made commercially impractical by any cause beyond its control, including but not limited to acts of God or the public enemy, government acts, work stoppages or interruption, fire, flood, epidemics, quarantines, war, riot, default by a common carrier, shortages of or price increases in raw materials, freight embargo, sabotage, or unusually severe weather. In that event, LSC may allocate available Products among its customers as it deems equitable.

#### 15. GENERAL CONDITIONS

(a) No modification, amendment, recession, discharge, abandonment or waiver of these terms and conditions of sale shall be binding upon LSC unless set forth in writing and signed by LSC. (b) No modification or amendment of the order appearing hereon shall be binding upon LSC unless set forth in writing and signed by a member of LSC's sales department. (c) No delay or failure on the part of LSC in exercising any right or remedy under the Agreement, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or any other right or remedy. (d) If any term of the Agreement or the application thereof shall be determined by a court to be illegal, such illegality shall not affect any other term or condition thereof, and such other terms and conditions shall continue in full force and effect. (e) Headings are inserted for convenience only and do not form a part of the Terms or the Agreement. (f) The Terms and the Agreement, and all rights and obligations hereunder and thereunder, may not be assigned by Customer without the prior written consent of LSC. (g) LSC does not intend, nor shall any clause be interpreted, to create hereunder any obligations of LSC in favor of, benefits to, or rights in, any third party. (h) LSC and Customer are each independent contractors and neither party shall be, nor represent itself to be, the franchiser, partner, broker, employee, servant, agent, or legal representative of the other party for any purpose whatsoever. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other party, or to bind the other party in any manner or thing whatsoever. The parties do not intend to form a partnership or joint venture as a result of the Agreement. (i) Except as otherwise provided hereunder, all remedies available to any party for breach hereof or thereof are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. (j) The terms hereof shall be enforceable notwithstanding the existence of any claim or cause of action any party may have against the other party. (k) The terms and provisions hereof shall be binding upon and inure to the benefit of permitted successors in interest and assigns of either party, subject to the provisions above. (l) Notices and other communications required or permitted under the Agreement shall be sent by a commercially reasonable overnight courier, to the other party, and shall be deemed delivered upon receipt.

#### 16. GOVERNING LAW AND JURISDICTION

The Terms and the Agreement and the performance of the parties hereunder, shall be construed in accordance with and be governed by the laws of the State of New York, and the Agreement shall be deemed to be made in such State. Customer consents to the exclusive jurisdiction of the Courts of the State of New York and the United States District Courts of the Eastern District of New York in any and all actions, disputes, or controversies relating to the Terms or the Agreement. Customer waives the right to jury trial and irrevocably consents to service of process by certified or registered mail, return receipt requested, mailed to Customer's address set forth herein.

#### 17. SALES TERMS TO GOVERN

Acceptance of the Customer's order is expressly made conditional on assent by the Customer to all the terms and conditions contained herein and hereon, and no other, whether these terms and conditions be additional to, different from, or conflicting with the terms and conditions of any purchase order or any other communication received from the Customer. The receipt of the Agreement by the Customer shall be deemed a notification of objection to all other terms and conditions contained in the Customer's purchase order or other communication. Neither the failure by LSC to object to a purchase order or any other communication from the Customer, nor any research on, development, manufacture, shipment or otherwise of, the Products described hereon shall be deemed an acceptance of any terms and conditions which are additional to, different from, or conflicting with the terms and conditions contained herein and hereon. The terms of this Section 17 shall not apply to the extent of any conflict between the terms of this Agreement and a written contract (for the avoidance of doubt, a "written contract" shall exclude any quote, purchase order, sales order, purchase acknowledgement, sales acknowledgement or similar communication or writing for purposes of this Agreement) to which Customer and LSC are signatory parties regarding the subject matter hereof.



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