



PRINTED NAME OF BIDDER

16' ALUMINUM BOAT, MOTOR & TRAILER

Invitation to Bid No. 121600 Issued: April 1, 2013

PURCHASING BUREAU CONTACT: Tymothi Howard, Purchaser, 585-428-7219

BID OPENING: Tuesday, April 16, 2013 at 11:00 a.m.

Sealed bids are to be returned to the Office of the Purchasing Agent, City Hall Room 105A, Rochester, NY 14614, prior to bid opening, at which time and place all bids will be opened, read, and recorded.

The bidder's attention is directed to the General Conditions and Instructions to Bidders which appears immediately following this title page and is incorporated into the bidding document and contract by reference.

CONTRACT CHARACTERISTICS
(For definitions or explanations, see General Conditions)

Type of Contract: TERM CONTRACT WITH OPTION TO EXTEND

Bid Deposit Requirement: NONE

Performance Security Requirement: NONE

Insurance Requirement: NONE

Samples Requirement: NONE

Descriptive Literature/Technical Data Requirement: UPON REQUEST

BIDDERS: Please note that prices, company identification and authorized signature are to be entered on the Proposal which appears at the end of the specifications.



1. GENERAL INTENT OF SPECIFICATIONS

- 1.1 The following specifications are intended to meet the requirements of the City of Rochester to make a One Time Purchase of a 16' V-hull aluminum boat with a 25 hp Mercury ELHPT EFI4S motor and Shorlandr trailer, and to establish a term contract with the successful bidder to purchase Parts and Repairs for the boat, motor and trailer. The purchase of parts and repairs under this agreement shall not exceed a period of three (3) years.
- 1.2 Wherever in these specifications a particular make or model number is indicated, it is done solely to establish the level of quality desired. This should not be interpreted to mean that the make or model specified is the only one acceptable.
- 1.3 However, if the bidder submits a bid on a make or model other than specified, he must present with his bid a detailed specification describing the items he proposes to furnish.
- 1.4 The bidder shall point out in detail wherein the item(s) he proposes to furnish differs from the items called for in these specifications. The Purchasing Agent of the City of Rochester reserves the right to consider whether in his judgment, a substitute meets the requirements of this specification, and the Purchasing Agent's judgment shall be considered final.
- 1.5 Where any part or parts of the equipment are not specified or specifically mentioned, it shall be understood that what is usually provided as the manufacturer's stock model shall be furnished together with full appurtenances complete and ready for operation.

2. PREPARATION OF PROPOSAL

- 2.1 The proposal is contained in these contract documents and MUST NOT BE DETACHED HEREFROM by any bidder when submitting a proposal.
- 2.2 All blank spaces on the proposal page of this specification must be correctly filled in. Either a unit price or a lump sum price, as the case may be, must be stated for each and every item, either typed in or written in ink, in figures, and if requested in words.

3. BASE BID

Attention of the Bidder is called to the fact that the Proposal and Bid Form requires, under Base Bid, the Net Delivered Price covering the item(s) specified. Any deductions for freight allowance, cash discount, or quantity rebate should be included in the total net price, as given on the bidding sheet, and should not be listed as separate items.

4. CONTRACT PERIOD

- 4.1 The successful bidder agrees to enter into a contract with the City to sell items listed in the Purchase Contract Proposal for a period of one-hundred twenty (120) days after the award of the Purchase Contract. The Purchase Contract may be extended past 120 days upon mutual agreement in writing of both parties.
- 4.2 The successful bidder agrees to enter into a three (3) year Service Term Contract with the City to provide parts and/or repairs to the City at prices stated in the Service Term Contract.

- 4.3 The City reserves the right to extend the Service Term Contract for up to two (2) additional terms of one (1) year or less, upon mutual agreement between the City and the successful bidder.

5. PRICES

- 5.1 Price stated on the Purchase Contract Proposal shall be valid during the term of the Purchase Contract (Section 4.1).
- 5.2 Prices for parts during the Service Term Contract shall be determined by applying the bidder's stated discount to the manufacturer's price list specified herein, and subsequent revisions thereof by the manufacturer.
- 5.3 Contractor shall notify the Purchasing Agent in writing a minimum of two weeks prior to revision of price list and shall submit two copies of revised prices. New manufacturer's price lists may be submitted by the contractor not more often than at 90 day intervals.
- 5.4 Bidder shall quote single percentage discount only. Bids containing multiple discounts are subject to rejection.
- 5.5 If bid is based upon a price list other than that specified herein, the bid must be accompanied with a copy of such list, cross referenced to the part numbers of the manufacturer's price lists stipulated herein.
- 5.6 Prices for labor for service during the Service Term Contract shall be stated in the Service Term Contract Proposal.
- 5.7 The City is exempt from State Sales and Federal Excise Taxes. This should be considered when quoting discount.
- 5.8 All orders shall be priced F.O.B. destination, including unloading at storeroom door of agency. Exceptions to this provision are not acceptable.
- 5.9 For emergency orders, agency may request shipment by other than normal method. The difference in transportation charges will be borne by the ordering agency. Such charges should be shown separately, on the invoice.

6. QUANTITY

- 6.1 The quantity listed in the proposal is estimated.
- 6.2 No specific quantities can be given and no guarantee given as to contract value. The contract shall be for the quantities actually ordered during the contract period contingent upon budgetary considerations. Unit price(s) shall be extended for the actual number of units purchased during the contract period.
- 6.3 The City will issue a Purchase Order for the actual number of units to be purchased after the contract has been awarded.

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6.4 It is the intention of the City to buy one (1) boat, trailer and motor.

7. INSTRUCTIONS TO BIDDERS

7.1 Proposals will be received by the Purchasing Agent of the City of Rochester in accordance with Contract Documents set forth herein.

7.2 Bid shall be made only on the form(s) provided with this specification.

8. COMPLIANCE WITH LAWS

The bidder shall at all times observe and comply with all laws, ordinances, and regulations of the Federal, State, Local and City Government which may in any manner affect the preparation of proposals or the performance of this contract.

9. TAX

The City of Rochester is exempt from paying Manufacturer's Excise, Floor or Sales Tax and for that reason, the Bid Price shall not include any tax on the item(s) specified. The City of Rochester will furnish a signed exemption form covering the tax, if any, applying to the item or items covered by these specifications, as may be required by law.

10. DELIVERY DATE

10.1 The City of Rochester requires delivery of the Equipment as soon as possible, but not later than sixty (60) calendar days from date of receipt of Purchase Order. The unit(s) shall remain the property of the bidder until accepted by the City of Rochester. Upon delivery, the unit(s) shall be thoroughly tested in operation in the presence of an authorized representative of the City to check on the performance of the equipment and operation of the unit as a whole. The successful bidder shall make, at his own expense, any adjustments or alterations that may be required by the City as a result of the operation test.

10.2 Each bidder is required to list on the Proposal and Bid Form the latest date he expects delivery to be made at destination as defined in the "DELIVERY" section. FAILURE TO INCLUDE A SPECIFIC DATE MAY BE SUFFICIENT GROUNDS FOR REJECTION OF BID.

11. DELIVERY

The equipment and components to be furnished under this contract shall be delivered to the City of Rochester, F.O.B. the ordering agency's facility in Rochester, New York, as described on the Purchase Order(s). The City reserves the right to pick up the boat and trailer if it so desires.

12. QUALIFICATIONS OF BIDDER

12.1 The City reserves the right to disqualify any bidder unless the firm submitting the bid can meet the following conditions:

12.1.1 That the manufacturer(s) or bidder(s) has in operation a factory adequate for and actively engaged in the manufacture of the equipment which he proposes to furnish.

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12.1.2 That there are at least fifty (50) units similar to the type bid upon which have been in satisfactory operation for a period of at least two (2) years. This shall not be construed as prohibiting the manufacturer from having altered or improved the design or construction of its machinery as evidenced by engineering changes incorporated in the manufacturing blueprints. Manufacturer shall furnish evidence upon request of the Purchasing Agent, that the equipment being furnished has been commercially available through him to the trade for a period of not less than two (2) years and has been fully field tested. The City of Rochester shall verify to its satisfaction that the model to be furnished has met such field tests.

12.1.3 That it has or will have in operation in or reasonably near the City of Rochester, a service station adequately equipped and carrying in stock sufficient parts and service, and regularly employs qualified personnel to render prompt and efficient service on the equipment bid upon.

12.2 No proposal will be accepted from or contract awarded to any person, firm or corporation that has failed to perform faithfully any previous contract with the City.

13. REJECTION OF BIDS

13.1 The City of Rochester reserves the right to reject any and all bids or proposals if the best interest of the City of Rochester will be served by such action.

13.2 The Purchasing Agent reserves the right to reject any bid that is unrealistic or where a disproportionate unit cost is proposed.

13.3 The Purchasing Agent reserves the right to reject any bidder who proposes an unacceptable product or cannot prove to the satisfaction of the City its ability to execute the terms and conditions of this contract.

14. INFORMALITIES

The City of Rochester reserves the right to consider informal a bid not prepared and submitted in accordance with the provisions of these specifications. It furthers reserves the right to waive any minor informality in form, but not in substance.

15. AWARD OF CONTRACT

15.1 This bid will be awarded to the lowest responsive and responsible bidder per Total Bid Price.

15.2 The City may extend the initial three (3) year Service Term Contract under the same terms and conditions for a two (2) year period or less from date of expiration, provided such extension is mutually agreeable to both the City and the contractor.

15.3 The City reserves the right to make an award based on in the lowest cost to the City after factoring in percentage discount for parts and labor rates offered in the Service Term Contract Proposal.

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- 15.4 The City reserves the right to reject any bid that is unrealistic or where a disproportionate unit cost is proposed.
- 15.5 The City of Rochester reserves the right to consider informal a bid not prepared and submitted in accordance with the provisions of the bid.

16. INTERCHANGEABILITY

- 16.1 All assemblies, sub-assemblies and component parts, etc., of the items supplied under these specifications shall be interchangeable throughout the quantity of units supplied.
- 16.2 The items furnished under these specifications shall be new and shall be the manufacturer's current production model.

17. INFORMATION TO BE FURNISHED WITH BID

- 17.1 The bidder shall submit with his bid DETAILED SPECIFICATIONS AND DRAWINGS, along with complete description including pictures and catalogs, and all other pertinent data on the equipment he proposes to furnish.
- 17.2 Bids offered without said data may be declared "INFORMAL".
- 17.3 The City, however, reserves the right to request additional information deemed necessary for proper evaluation of bids.

18. SERVICING

All equipment shall be completely serviced. Service shall include not less than the following: lubrication, wash, wiring and lighting check, body conditioning, and all other checks and adjustments required for proper complete servicing of a new unit. It shall be the contractor's responsibility to insure at that time that all components and accessories have been properly installed.

19. INSPECTION OF WORK

- 19.1 Representative and/or agents of the City of Rochester, as designated by the Purchasing Agent of the City of Rochester, shall, for the purpose of inspection, have free and safe access at any and all reasonable times to the buildings and shops of the Contractor, his subcontractors and material men, wherever any items for this Contract are being prepared or manufactured.
- 19.2 If, during the final inspection of item or items to be furnished under this contract, any are found to be defective, or fail in any way to meet the terms of the contract, or fail to meet any of the specifications, the item or items will be rejected by the Purchasing Agent of the City of Rochester. Any rejected item or items shall be altered or replaced to comply with the specifications at the expense of the Contractor.
- 19.3 If the item or items called for in the specifications are delivered and fail to meet specifications in any respect, the bidder will be notified and he will arrange for their removal from the City of Rochester property at no expense to the City of Rochester. If

the successful bidder fails to remove the items which, in the opinion of the Purchasing Agent of the City of Rochester, do not meet

specifications, the City will arrange to have such items removed and any expense connected therewith will be the responsibility of the Contractor.

20. PAYMENT OR ACCEPTANCE NOT CONCLUSIVE

20.1 No payment made under the contract shall be conclusive evidence of the performance of the contract, either wholly or in part. No payment made for the delivery of the items in whole or in part shall be construed as an acceptance of defective work or improper materials, nor relieve the Contractor from making good the defects.

20.2 The final acceptance shall not be binding nor conclusive upon the City of Rochester, should it subsequently develop that the Contractor has furnished inferior items or has departed from the specifications and/or the terms of the Contract. Should such a condition become evident, the Purchasing Agent of the City of Rochester shall have the right, notwithstanding final acceptance and payment, to cause the items or item to be properly furnished in accordance with the specifications (and drawings, if any) at the cost and expense of the Contractor, or his Surety, if any.

21. GUARANTEES AND WARRANTIES

21.1 The Contractor shall guarantee all equipment furnished for a period of one (1) year from date of in-service if such equipment is not included in the manufacturer's standard warranty.

21.2 The Contractor hereby warrants and guarantees for a period of one (1) year from date of in-service that he will, at his own expense and without any cost to the City, replace all defective parts and make any repairs that may be required or made necessary by reason of defective design, material, or workmanship, or by reason of non-compliance with these specifications. Any warranty offered by the manufacturer, over and above this one (1) year minimum warranty, shall be deemed to be part and parcel of these specifications.

21.3 Contractor shall also furnish a copy of the standard factory warranty.

21.4 All guarantees and warranties shall be furnished by the Contractor and shall be delivered to the using agency before final contractor invoice on the contract is issued.

21.5 SPECIAL NOTE

If the Contractor is local, i.e., within ten (10) road miles of the Hemlock Water Filtration Plant at 7412 Rix Hill Drive, Hemlock, NY 14466, the City will deliver the equipment to the Contractor's garage for work to be performed under warranty and pick up the vehicle(s) when work is completed.

21.5.1 IF THE CONTRACTOR IS NOT LOCAL, THE CONTRACTOR WILL ASSUME AT HIS/HER EXPENSE, ALL TRANSPORTATION COSTS IN MOVING THE EQUIPMENT SUPPLIED UNDER THIS CONTRACT, TO AND FROM THE CONTRACTOR'S SHOP WHERE WARRANTY AND/OR REPAIR IS TO BE PERFORMED.

- 21.6 In order to ensure rapid repair of vehicles and equipment to maintain response times, the City of Rochester's Equipment Services Division must be approved by the factory/manufacturer to perform in-house warranty repairs with all the books and forms required for reimbursement. The reimbursement rate will be the reimbursement rate shown on the Purchase Contract Proposal Page. Parts will be reimbursed at the prices shown on the Service Term Contract Proposal Page.

Warranty reimbursement is to be made in check form, not credit. This is not an attempt to replace the dealer as a warranty repair facility, but to reduce costs to the City and return vehicles to service as soon as possible.

- 21.6.1 Bidders must certify on the Purchase Contract Proposal and Service Term Contract Proposal that the manufacturer will approve the City to perform in-house warranty work.

21.6.1.1 Note: Failure to approve and certify the City of Rochester's Equipment Services Division as a factory/manufacturer warranty repair facility will classify the bid as informal and subject to rejection.

- 21.6.2 When operational restraints do not permit the Equipment Services Division to repair and/or replace defective parts or subassemblies, the City will require the contractor to perform warranty repairs.

- 21.6.3 The contractor will be required to supply to the City all dollar amounts for each warranty claim performed by that contractor.

22. PAYMENT

- 22.1 Payment will be made by the City to the Contractor upon execution of invoice from the Contractor in the form used by the City of Rochester within thirty (30) days after the equipment has been delivered, inspected and accepted, and approved by the Purchasing Agent in conjunction with the using agency's representative for equipment purchases.

- 22.2 When the equipment is delivered by the Contractor, the City may process the Contractor invoice for the full amount of the Contract price if, in the Purchasing Agent's opinion, the unit(s) is in compliance with the specifications. However, if poor workmanship or deviations from specifications exist, the City may process up to 80% of the contract price upon delivery and delay payment of the balance until contractor has made all necessary corrections.

- 22.3 The invoice(s) shall be forwarded to the using agency.

- 22.4 The invoice(s) shall include not less than the following:

22.4.1 City Contract Number

22.4.2 Year, Make and Model of Vehicles

22.4.3 Delivery Date

22.4.4 Location of Delivery

23. CERTIFICATES, MANUALS AND WARRANTIES

23.1 When the units are delivered, the Contractor shall deliver to the using agency:

23.1.1 Warranty and Guarantee Certificates

23.1.2 Certification specified in the Contract

23.1.3 Manuals specified in the Contract

24. SPECIAL NOTICE TO BIDDERS

24.1 The successful bidder may have to furnish to the Purchasing Agent of the City of Rochester a copy of the factory order and number covering the equipment bid upon five (5) days after the date of the receipt of Purchase Order.

24.2 The Purchasing Agent of the City of Rochester may require the successful bidder to furnish copies of all letters, correspondence, or purchase orders placed with manufacturers or suppliers for materials, supplies, and equipment being bid upon for which a contract has been awarded, as proof that the contract is being fulfilled as expeditiously as possible. Failure to furnish these documents within five (5) working days after receipt of a written request, or failure to submit documents which clearly demonstrate that the contract will be fulfilled by the required delivery date, may be deemed sufficient grounds for cancellation of the contract. The City of Rochester Purchasing Agent's decision in these matters shall be accepted as final.

25. DEFAULT

25.1 The City may, by written notice of default to the Contractor, subject to the provisions of paragraph 25.3, terminate the whole or any part of this contract in any one of the following circumstances:

25.1.1 If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extensions thereof; or

25.1.2 If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such other period as the Purchasing Agent may authorize in writing) after receipt of notice from the Purchasing Agent specifying such failure.

25.2 In the event the Purchasing Agent of the City terminates this contract in whole or in part as provided in paragraph 25.1 of this section, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or service; PROVIDED, that the contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

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25.3 The Contractor may be liable for any excess of costs unless he or she can prove to the Purchasing Agent that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Contractor.

26. DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of shall be decided after a hearing by the Purchasing Agent, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Purchasing Agent shall be final and binding.

27. SPECIFICATIONS

The detailed design specifications prescribed herein are intended to describe units which have been determined to meet performance parameters and characteristics required by the City of Rochester. Bidders having units which fully meet the intent of the specifications, but may vary in a non-substantial manner from the specified design characteristics, may offer such equipment as they can demonstrate meets the intended performance requirements. In such case the bidder shall be required to submit with his bid a detailed listing of design variances and a full explanation as to how the units offered will meet the desired performance characteristics. The City may also require on-site demonstration of the unit (s) offered to determine functional and structural equivalency such demonstration shall be made at no cost to the City. A decision as to equivalency shall be made by the Purchasing Agent, whose decision shall be final.

SPECIFICATIONS ARE AS FOLLOWS:

28. BOAT

- 28.1 Overall length: 16' 2"
- 28.2 Beam: 73.5"
- 28.3 Boat weight: 520 lb.
- 28.4 Weight capacity: 1200#
- 28.4 Max. HP: 40
- 28.6 Person capacity: 5
- 28.7 Aluminum alloy marine grade
- 28.9 Beam Width 73.5"
- 28.10 Stern Width 64.75"
- 28.11 Transom Height 20"
- 28.12 Bow Depth 35.5"

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- 28.13 Midship Depth 30.5"
- 28.14 Freeboard Thickness .063
- 28.15 Bottom Thickness .08 minimum
- 28.16 Seating for 3 w/pedestal fold down high back chairs, removable flush with deck.
- 28.17 Vinyl flooring
- 28.18 2 fuel tanks, portable: 6 gal. each, mounted, with built in storage and appropriate fuel line
- 28.19 Fire extinguisher and caddy
- 28.20 3 adult life vests and all coast guard required safety gear.
- 28.21 Navigational lighting
- 28.22 Courtesy lighting
- 28.23 Console with windshield, steering wheel, horn, key start, switch controls for lighting
- 28.24 Storage compartment
- 28.25 Snap on canvas boat cover
- 28.26 Humminbird 587 ci HD GPS/Fishfinder combo installed on or near the console.
- 28.27 Color - aluminum
- 28.28 NMMA certified

29. MOTOR

- 29.1 25 HP, Mercury ELHPT EFI 4S compatible with boat
- 29.2 Power trim and tilt
- 29.3 Electric starting system with battery holder
- 29.4 C.A.R.B. Rating (California Air Resources Board): 3 star
- 29.5 With appropriate propeller

30. TRAILER

- 30.1 Shoreland'r or City approved equal
- 30.2 Heavy duty single axle - 2000# capacity with rollers

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- 30.3 Ball type hitch compatible with the GVWR rating
- 30.4 Tongue jack, crank type with foot pad at ground, and safety chains
- 30.5 1500# brake winch and cable
- 30.6 Trailer shall be compatible with boat/motor
- 30.7 With lights and quick connect lighting connection per NYS DOT
- 30.8 Transom tie-down straps and trailer frame brackets for hold downs
- 30.9 Full size spare tire and rim mounted to trailer
- 30.10 Load guides
- 30.11 Front step at tire
- 30.12 Registered in NYS

31. MANUALS

- 31.1 The successful bidder shall supply two (2) factory parts, maintenance and operating manuals for the boat, motor and trailer.
- 31.2 This data is to be supplied at the time of delivery of the equipment to the City of Rochester.

32. SPECIAL NOTE

The Contractor shall also furnish any and all bulletins, modification notices, service letters and related addenda throughout the life of the equipment being furnished under this Contract.

33. DATA PLATE

Identification plates listing data specifically applicable to the equipment shall be permanently and inconspicuously installed on the appropriate piece of equipment. Plates shall include at least the model and serial number.

34. ADVERTISING

Except for inconspicuous identification plates, serial number plates, precautionary instruction plates, etc., no name, trademark, decal or other identification, other than that of the manufacturer, shall be applied to the vehicle. IDENTIFICATION OF CHASSIS AND EQUIPMENT DEALERS AND INSTALLERS SHALL NOT BE ATTACHED TO THE VEHICLE. IN ANY INSTANCE OF VIOLATION OF THESE RESTRICTIONS, THE COST TO THE CITY OF REMOVAL OF SUCH ADVERTISING WILL BE DEDUCTED FROM CONTRACTOR'S OUTSTANDING INVOICE.

35. POLITICAL SUBDIVISIONS

Bidders should note that other political subdivisions may participate in the contract resulting from this bid award as authorized by General Municipal Law. Use of this contract by any other political subdivision must be coordinated between that subdivision and the contractor. The City will have no responsibility for any such purchases and will have no other role than to provide other political subdivisions a copy of this contract if requested.

36. NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- 36.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- 36.2 Unless otherwise required by law, the prices which have been quoted in this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed prior to the bid opening, directly or indirectly, to any other bidder or to any competitor;
- 36.3 No attempt has been or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

PROPOSAL

SERVICE TERM CONTRACT PROPOSAL

PERCENTAGE DISCOUNT OFF PARTS FOR 16' V-HULL ALUMINUM BOAT WITH 25HP MERCURY ELHPT EFI4S MOTOR AND SHORLANDR TRAILER:

PART I.

PARTS DISCOUNT FROM CURRENT PRICE LIST FOR DELIVERY TO THE CITY: _____%
OFF LIST PRICE

PRICE LIST NUMBER: _____

DATE OF PRICE LIST QUOTED: _____

PART II.

LABOR RATE PER HOUR FOR CONTRACTOR'S IN-HOUSE SHOP REPAIRS: \$ _____ / HOUR

PART III.

PARTS DISCOUNT FROM CURRENT PRICE LIST FOR ITEMS USED BY THE CONTRACTOR FOR
IN-HOUSE REPAIRS: _____%

PRICE LIST NO. _____

PRICE COLUMN USED _____

DATE _____

GUARANTEED DELIVERY A.R.O. _____

**BIDDER CERTIFIES THAT THE CITY OF ROCHESTER WILL BE APPROVED TO PROVIDE
IN-HOUSE WARRANTY REPAIRS (CHECK BOX): _____ YES _____ NO**

Authorized Signature

Typed Name and Title of Authorized Signer

Typed Name of Company
(Continued through Page 16)

PROPOSAL

PRINT OR TYPE THE FOLLOWING INFORMATION:

Name of Firm or Corporation

Street Address

City State Zip Code

Telephone / Fax No. / Cell No. E-Mail Address

Federal Employer I.D. Number Date

ACCEPTED ON BEHALF OF THE CITY OF ROCHESTER FOR:

Contract No. _____ Contract Term: _____

Purchasing Agent

Date: _____



City of Rochester

Bureau of Purchasing

Department of Finance

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal invitation to bid, purchase order or other award issued by the City Purchasing Agent, unless otherwise specified. Bidders or their authorized representative are expected to fully inform themselves as to the conditions, requirements and specifications before submitting bids. Failure to do so will be at the bidder's own risk and he cannot secure relief on the plea of error.)

Subject to applicable Federal, State and Local laws, ordinances, rules, regulations and limitations, bids on all advertisements and invitations issued by the Department of Finance, Purchasing Bureau will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the Invitation to Bid.

CONDITIONS OF BIDDING

1. **Proposal Forms:** Bids shall be submitted only on the forms provided by the City. The bidder shall retain one copy for his files and submit two (2) copies signed and sealed in the envelope provided by the City for that purpose. When using an envelope other than the one provided by the City, the following required information must be entered in the lower left corner on the face of the envelope: Bid Number, Bid Title, Bid Open Date and Time, and Submitted By. The envelope must be mailed or hand delivered to the Office of the Purchasing Agent, City Hall, Room 105A, 30 Church St., Rochester, NY 14614.
2. **Late Bids:** Formal bids, amendments thereto, or requests for withdrawal of bids received by the City after time specified for bid opening will not be considered.
3. **Withdrawal of Bids:** A written request for the withdrawal of a bid or any part thereof may be granted if the request is received by the City prior to the specified time of opening.
4. **Mailing of Bids:** Bids which are to be publicly opened will have attached a special mailing envelope which must be used by bidders in presenting such bids. In the event that the bid contains bulky subject material, the special mailing envelope must be firmly affixed to any other wrapper being used. Bids not received in the actual office of the Purchasing Agent at the time established for bid opening will not be considered, even if mailed earlier.
5. **Completeness:** All information required by Invitation to Bid must be supplied to constitute a proper bid.
6. **Bids Binding 45 Days:** Unless otherwise specified, all formal bids submitted shall be binding for forty-five (45) days following bid opening date unless the bidder(s), upon request of the Purchasing Agent, agrees to an extension.

7. **Conditional Bids:** Qualified bids are subject to rejection in whole or in part.

NON-OFFICIAL SPEC
DO NOT USE TO BID

8. **Payment Terms:** Prompt payment discounts allowing less than thirty (30) days for discount to apply shall not be considered as a cost factor in the evaluation of bids. In connection with any prompt payment discount offered, time will be computed from the date of receipt of correct invoice or receipt and acceptance of shipment, whichever is later.
9. **Bids for All or Part:** Unless otherwise specified by the City or by the bidder, the Purchasing Agent reserves the right to make award on all items, or on any of the items according to the best interests of the City. The Purchasing Agent shall further have the right to award separate items or groups to different vendors. Bidder may restrict his bid to consideration in the aggregate by so stating, but should name a unit price on each item bid upon; any bid in which the bidder names a total price of all the articles without quoting a price on each and every separate item may be rejected at the option of the City.
10. **Errors in Bids:** When an error is made in extending total prices, the unit bid price will govern. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Erasures or changes in bids should be initialed.
11. **Questions Re: Specifications:** Except for Public Works, any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids.

DO NOT MAKE INQUIRES BY PHONE OR IN PERSON.

No inquiries, if received within five (5) days of the date set for the opening of bids, will be given any consideration. Any interpretation made to prospective bidders will be expressed in the form of an addendum to the specifications which, if issued, will be sent by ordinary or certified mail, at the City's option, to all prospective bidders no later than three (3) days before the date set for opening of bids. Oral answers will not be binding on the City.

12. **Response to Invitations:** In the event you cannot submit a bid on our requirements, as set forth in the "Invitation, Bid, and Agreement" attached hereto, please return the Invitation, Bid and Contract form with an explanation as to why you are unable to bid on these requirements. (Because of the large number of firms listed on the City's qualified lists of Bidders, it is necessary to delete from these lists the names of those persons, firms or corporation who fail to respond after having been invited to bid on a commodity or commodities for three successive bid openings). City reserves the right to delete.
13. **Multiple Bids:** No bidder will be allowed to offer more than one price on each item even though he may feel that he has two or more types or styles that will meet specifications. Bidders must determine for themselves which to offer. IF THE BIDDER SHOULD SUBMIT MORE THAN ONE PRICE ON ANY ITEM, ALL PRICES FOR THAT ITEM MAY BE REJECTED AT THE DISCRETION OF THE CITY PURCHASING AGENT.
14. **Taxes:** The City of Rochester is exempt from State and Local sales and use taxes under Certificate No. AC 946 and is exempt from paying Federal excise taxes.

15. **Catalogs:** Each bidder shall submit in duplicate where necessary or when requested by the Purchasing Agent, catalogs, descriptive literature, and detailed drawings, fully detailing features, designs, construction, finishes and the like necessary to fully describe the material or work he proposes to furnish.

NON-OFFICIAL SPEC
DO NOT USE TO BID

16. **Competency of Bidder:** No proposal will be accepted from or contract awarded to any person, firm or corporation that is in arrears or is in default to the City upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said City or had failed to perform faithfully within the prior three (3) years of any contract with the City. The bidder must present within 48 hours of a request evidence satisfactory to the Purchasing Agent of performance ability and possession of necessary facilities, pecuniary resources and adequate insurance to comply with the terms of these specifications and contract documents.

BID DEPOSIT

17. **Bid Bond, Cash, Certified or Cashier's Check:** When required, each bid shall be accompanied by a bid bond signed by a surety company authorized to do business in the State of New York, or by a cashier's check, certified business check, Treasurer's check or other direct obligation drawn on a responsible bank doing business in the United States, and shall be made payable to the City of Rochester, unless the bidder has on file with the Purchasing Agent an annual bid bond approved by the City with an uncommitted balance equal to the certified check requirements. When computing amount of Bid for Certified Check purposes, do NOT deduct for trade-ins. U.S. Postal Money Orders are acceptable in lieu of certified checks.

18. **Annual Bid Bonds:** Bidders who regularly do business with the City shall be permitted to file with the Purchasing Bureau an annual bid bond in the amount specified below. Such annual bonds shall be acceptable as surety in lieu of the furnishing of surety with each individual transaction.

Annual bid bonds shall be in an amount as determined by the bidder, of no less than Three Thousand Five Hundred Dollars (\$3,500.00). If at any time, the requirements of a specific bid invitation exceed the amount of the annual bid bond, or should the aggregate amount of the bid security requirements on all unresolved bids submitted by your firm exceed the amount of the annual bid bond, additional surety will be required in the appropriate sum.

19. **Performance Bond:** The successful bidder or bidders on this bid must furnish a performance bond as indicated on the bid cover, made out to the City of Rochester, prepared on an approved form or on a form supplied by an approved surety, as security for the faithful performance of his contract, within ten (10) days of his notification that his bid has been accepted. The surety thereon must be such surety company or companies as are authorized and licensed to transact business in the State of New York. Attorneys in fact who sign bid bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

The successful bidder or bidders, upon failure or refusal to furnish within ten (10) days after his notification the required performance bond, shall forfeit to the City of Rochester as liquidated damages their bid deposit. At its option, the City shall have the right to accept cash, certified checks, letters of credit or such other security as the City deems appropriate in satisfaction of the foregoing bond requirements.

20. **Samples:** The samples submitted by bidders on items which they have received an award may be retained by the City until the delivery of contracted items is completed and accepted. Bidders whose samples are retained may remove them after delivery is accepted. Bidders who

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are not awarded a bid must remove their samples as soon as possible after award has been made on the item or items for which the samples had been submitted. The City will not be responsible for such samples if not removed by the bidder within thirty (30) days after the award has been made.

NON-OFFICIAL SPEC
DO NOT USE TO BID

Bidders shall make all arrangements for delivery of samples to place designated by the City as well as the removal of samples. Cost of delivery and removal of samples shall be borne by the bidder. All samples packages should be marked "Samples for Purchasing Bureau" and each sample should bear the name of the bidder, item number, bid number, and shall be carefully tagged or marked in a substantial manner. Failure of the bidder to clearly identify samples as indicated may be considered sufficient reason for rejection of bid, and in such cases the City will not be liable for the loss of samples.

SPECIFICATIONS

21. **Trade Names:** In cases where an item is identified by a manufacturer's name, trade name, catalog number or reference, it is understood that the bidder proposes to furnish the item so identified and does not propose to furnish an "equal" unless the proposed "equal" is definitely indicated therein by the bidder.

The reference to a name brand is intended to be descriptive but not restrictive and only to indicate to the prospective bidder articles that will be satisfactory. Bids on other makes and catalogs will be considered, provided each bidder clearly states on the face of his proposal exactly what he proposes to furnish, and forwards with his bid, a cut, illustration, or other descriptive matter which will clearly indicate the character of the article covered by the bid.

The Purchasing Agent hereby reserves the right to approve as an equal, or to reject as not being equal, any article the bidder proposes to furnish which contains major or minor variations from specification requirements but may comply substantially therewith.

If no particular brand, model, or make is specified, and if no data are required to be submitted with the bid, the successful contractor, after award and before manufacture or shipment, may be required to submit working drawings or detailed descriptive data sufficient to enable the Purchasing Agent to judge if each requirement of the specifications is being complied with.

22. **Formal Specifications:** The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever herein mention is made of any article, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. standards, or similar expressions, the requirements of these laws, ordinances, etc. shall be construed as the minimum requirements of these specifications.

AWARD

23. **Award or Rejection of Bids:** The contract will be awarded to the lowest responsible and responsive bidder complying with the provisions of the Invitation, provided the bid price is reasonable and it is to the interest of the City to accept it. The Purchasing Agent reserves the right to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the City. The Purchasing Agent also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time

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contracts of a similar nature, or a bid of a bidder where investigation shows the bidder is not in a position to perform the contract.

In determining responsibility, the following other qualifications, in addition to price, will be considered by the Purchasing Agent:

- a) The ability, capacity and skill of the bidder to perform the service required within the specified time.
- b) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- c) The quality of performance of previous contracts or services.
- d) The previous and existing compliance by the bidder with laws and ordinances relating to previous contracts with the City and to the bidder's employment practices.
- e) The sufficiency of the final resources and ability of the bidder to perform the contract or provide services.
- f) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- g) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- h) Whether the bidder is in arrears to the City, in debt on contract, is a defaulter on surety to the City, or whether the bidder's taxes or assessments are delinquent.
- l) Such other information as may be secured by the Purchasing Agent having a bearing on the decision to make the award.

In determining a bidder's responsiveness, the Purchasing Agent shall consider material deviations from the advertised specifications which materially affect price, quantity, quality or limit the bidder's liability.

- 24. **Notice of Acceptance:** A written award (or Acceptance of Bid) mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the Invitation to Bid shall be deemed to result in a binding contract without further action by either party.
- 25. **Tie Bids:** If two or more bidders submit identical bids and are equally qualified, the decision of the City to make award to one or more of such bidders shall be final. Selection may be made by drawing lots.
- 26. **Resident Bidders - Preference:** Price and other factors being equal, preference may be given first to resident bidders of the City, except when in the judgment of the City such purchases would operate to the disadvantage of the City, and selection by drawing lots shall not apply where the tie bids are between a resident and non-resident bidder.

27. **Specific Bid Quantities:** Where quantities are specifically stated, acceptance will bind the City to order quantities specified and to pay for at contract prices all such supplies or services delivered that meet specifications and conditions of the contract. However, the City will not be required to accept delivery of any unordered balances as of the contract expiration date unless the contractor furnishes the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
28. **Requirements Bid Quantities:** On "Requirements" bids, acceptance will bind the City to pay for, at unit bid prices, only quantities ordered and delivered.
29. **Availability of Funds:** The City shall be obligated to pay for goods and services received only to the extent that money has been appropriated and encumbered for such purpose. The contractor in turn shall be obligated to perform only so long as money is available to pay for the goods and services it supplies. If this contract extends through one fiscal year of the City into the next year, the City's obligations hereunder shall be specifically limited to and shall be conditioned upon the appropriations for such following year.
30. **Contract Alterations:** The contractual terms, conditions and provisions of this contract, including all general conditions and instructions to bidders, shall not be modified by the bidder. The Purchasing Agent shall have the right, at his option, to treat any bid submitted with additional or differing contract provisions as informal or to ignore such additional provisions and to award as if such additional provisions had not been submitted by the bidder. This section shall not apply if the request for bids or the specifications specifically invite the bidder to submit additional or modifying provisions, but only to the extent that such additional or modifying provisions are requested by and are acceptable to the Purchasing Agent. Where the bidder submits a bid for goods or services which vary from the City's specifications, the decision of the Purchasing Agent of whether such goods or services are functionally equivalent to the goods or services requested by the City shall be final. Alterations or changes in the specifications of the goods or services furnished under this contract can only be made upon the written authorization signed by the Purchasing Agent, and any other alteration or modification that is not signed by the Purchasing Agent or his designated representative shall be void. Alterations in contract language shall further require the approval of the City Department of Law.
31. **Term of Contract:** This contract shall remain in force for the period specified unless extended by mutual consent of both parties or terminated as provided herein.
32. **Termination of Contracts:** Contracts shall remain in force for full periods specified and until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a) terminated prior to expiration date by satisfactory deliveries of entire contract requirements.
 - b) extended upon written authorization of the Purchasing Agent and accepted by contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

33. **Subletting of Contract:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his contract or his right, title or interest therein, or his power to execute such contract, to any other person, firm or corporation without the previous written consent of the City Purchasing Agent, but in no case shall such consent relieve the Contractor from his obligations, or change the terms of the contract.
34. **Default:** The contract may be cancelled or annulled by the Purchasing Agent in whole or in part by written notice of default to the Contractor upon non-performance or violation of contract terms. An award may be made to next low bidder, or, articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs to the City in excess of the defaulted contract prices. Provided, that the contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the contractor to deliver materials or services within the time stipulated on his bid, unless extended in writing by the Purchasing Agent, shall constitute contract default.
35. **Delivery Failures:** Failure of a Contractor to deliver within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements of rejected articles when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles of comparable grade to replace the articles rejected or not delivered. On all such purchases, the Contractor shall reimburse the City within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices or the City shall have the right to deduct such amount from monies owed the defaulting Contractor. Such purchases shall be deducted from contract quantities. Should public necessity demand it, the City reserves the right to use or consume articles delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
36. **Non-Liability:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, is beyond the control of the contractor. Under such circumstances, however, the Purchasing Agent may at his discretion, cancel the contract.
37. **New Goods, Fresh Stock:** All contracts, unless otherwise specifically stated, shall produce new commodities, fresh stock, latest model, design or pack.
38. **Equal Employment Opportunities:**
- a) The City of Rochester, New York reaffirms its policy of Equal Opportunity in its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV, Contract Compliance. The City does not discriminate on the basis of handicap status as defined in 31 CFR Part 51, in admission, access to, or treatment or employment in its programs and activities. The City is including this policy statement in all bidding documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal

Opportunity laws and regulations and Federal regulations 31 CFR Part 51 and shall submit documentation regarding Equal Employment Opportunity upon the City's request.

b) Definitions:

1. Good Faith Effort - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.
2. Minority Group Persons - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

c) Compliance: The Contractor shall comply with all of the following provisions of the Equal Employment Opportunity Requirement:

1) The Contractor agrees that he will not discriminate against any employee for employment because of race, color, religion, sex, age, or of employees for performance of work under this Agreement or any subcontract hereunder, the Contractor and its subcontractors, if any, shall not, by reason of race, creed, color, sex, age or national origin, discriminate against any person who is qualified and available to perform the work to which the employment relates. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin.

2) If the Contractor is found guilty of discrimination in employment on the grounds of race, color, sex, religion, age or national origin by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Employment Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Contractor shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Contractor can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

3. The Contractor shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

39. Purchase of Products from Companies Doing Business in Northern Ireland Supporting Fair Employment:

1. The vendor understands that the City has adopted a policy prohibiting contracting for goods or services with a person, firm, or corporation doing business in Northern Ireland, who does not support fair employment without religious discrimination and does not cooperate with agencies monitoring equal opportunity employment.

2. If, because of applicable law, a contract is awarded to a contractor who does not support equal opportunity employment without religious discrimination, the contractor must submit a statement to the Director of Finance detailing the reasons for such nonsupport of fair employment.

40. Guarantee: Unless otherwise specified, the Contractor shall unconditionally guarantee the materials and workmanship of all equipment furnished by him for a period of one year from date of acceptance of the items delivered and installed, unless otherwise specified herein. If, within the guarantee period, any defects or signs of deterioration are noted, which, in the opinion of the City are due to faulty design and installation, workmanship, or materials, the Contractor, at his expense, shall repair or adjust the equipment or parts to correct the condition, or he shall replace the part or entire unit to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of City business.

41. Placing of Orders: Orders against contracts will be placed with the Contractor on either a Purchase Order or Blanket Purchase Order executed and released by the Purchasing Agent. Telephone orders placed directly with the contractor by the ordering Agency may be authorized by the Purchasing Agent only after execution of a Blanket Purchase Order.

42. Provisions for Other Agencies: Unless otherwise stipulated by the bidder, the bidder agrees when submitting his bid that he will make available to all City agencies and departments and the City School District the bid prices he submits in accordance with the bid terms and conditions, should any said department or agency wish to buy under this bid proposal.

DELIVERY PROVISIONS

43. **Responsibility for Materials Shipped and Risk of Loss:** The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered to the designated point and received, properly installed if necessary, and accepted by the City and the Contractor shall bear all risk on rejected materials or supplies. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. Upon failure to do so within ten (10) days after notification, the City may return the rejected materials or supplies to the contractor at his risk and expense, or dispose of them as its own property.

44. **Inspections:** Inspection and acceptance of materials or supplies will be made after delivery. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the City for such materials or supplies as are not in accordance with the specifications. All delivered materials shall be accepted subject to inspection and physical count.

45. **Time of delivery:** Deliveries will be accepted between 9:00 A.M. and 4:00 P.M. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or Holidays.

46. **Packing Slips or Delivery Tickets:** All shipments or deliveries shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

The Purchase Order Number

The Name of the Article and Stock Number (Supplier's)

The Quantity Ordered

The Quantity Shipped

The Quantity Back Ordered

The Name of the Contractor

Bidders are cautioned that failure to comply with these conditions SHALL BE CONSIDERED SUFFICIENT REASON FOR REFUSAL TO ACCEPT THE GOODS.

47. **FOB Destination Delivery:** Unless otherwise specifically stated in the City's request for bids, all goods, equipment and materials shall be delivered to the location designated by the City. The bidder shall include in his bid price all reasonable and necessary transportation, shipping, handling and delivery charges. Delivery shall not be complete until the goods, etc. are placed in the building, room, or other location specified by the City, either in the bid documents or in the Purchase Order.

48. **General Guaranty:** Contractor agrees to:

a) save the City, its agents and employees harmless from liability of any nature or kind for the use of copyrighted or non-copyrighted composition, secret process, patented or non-patented invention, article or appliance furnished or used in the performance of the contract which the contractor is not the patentee, assignee, licensee or owner.

b) protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

c) furnish adequate protection against damage to all work and to repair damages of any kind, to the building or equipment, to his own work or to the work of other contractors for which he or his workmen are responsible.

d) pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the City and the State of New York.

49. **Indemnity:** Contractor shall indemnify, keep and save harmless the City, its agents, officials and employees, against all injuries, death, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anyway accrue against the City in consequence of the granting of this contract or which may in anyway result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Contractor or his employees, of the subcontractor or his employees, if any, and the Contractor shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City in any such action, the Contractor shall at his own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.

50. **Collusive Bidding:** The Bidder certifies that his bid is made without any previous understanding, agreement or connection with any person, firm or corporation making a bid for the same project without prior knowledge of competitive prices, and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

51. **Identical Bidding:** Executive Order No. 10946: All identical bids submitted to the City as a result of advertised procurement for materials, supplies, equipment or services exceeding \$1,000.00 in total amount may at the discretion of the City, be reported to the Attorney General of the United States in accordance with Form DJ-1510 and the Presidential Order dated April 24, 1961 for possible violation and enforcement of antitrust laws.

52. **Employees Not To Benefit:** As a prerequisite for the payment pursuant to the terms of this contract, there shall be furnished to the City a statement under oath that no employee or officer of the City, or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on

account of the acts of awarding and/or executing the contract. Upon request by the City, as a prerequisite to payment pursuant to the terms of this contract, there will be furnished to the requester, under oath, answers to any interrogatories related to a possible conflict of interest as herein embodied. Any contract made or entered into where it is discovered that violation of the intent of this provision exists shall be declared null and void and all monies received by the Contractor shall be returned to the City.

Any person executing a false statement or violating the provisions of this section shall be subject to possible prosecution.

53. **Child Labor:** Pursuant to Resolution No. 37-38 of the City of Rochester, the bidder certifies to the best of his/her knowledge that Child Labor has not been employed in the manufacture of the materials, supplies, the containers thereof, or services represented hereon.
54. **Prevailing Wages:** Bidder hereby certifies that to the extent applicable to this contract the wage rates to be paid to employees on this contract shall be in conformity with the wage rates established by the Comptroller pursuant to and in conformity with Section 220 of the New York State Labor Law. To the extent that prevailing wages are not applicable to the contract, the bidder hereby certifies that he/she shall pay employees working hereunder the minimum wages established by law.
55. **Testimony Concerning Contracts:** The refusal of the vendor, or any of its officers, directors, partners, members or agents, when called before a Grand Jury, to testify concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any public department, agency or official of the State of New York or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, shall disqualify the vendor and such officer, director, member or agent thereof from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation in the State of New York or any public department, agency or official thereof, for goods, works or services, for a period of five (5) years after such refusal and any or all contracts made with any municipal corporation or a public department, agency or official thereof, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer, may be cancelled or terminated by the municipal corporation without any liability on the part of the municipal corporation or any penalty or damages on account of such cancellation or termination.
56. **Status As Independent Contractor:** The Contractor, in accordance with his status as an independent contractor, covenants and agrees that he shall conduct himself in a manner consistent with such status, that he will neither hold himself nor his employees out as, nor claim to be an officer or employee of the City by reason hereof, and that he and his employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.
57. **Audit:** The Contractor agrees to permit on-site inspection and auditing of all records, books, papers, and documents associated with this Agreement by authorized representatives of the City,

and further agrees to provide necessary staff support for the performance of such audit. The Contractor agrees to maintain for a period of three (3) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this agreement; however, this period shall be extended beyond three years for any and all records and information pertaining to unresolved questions, which have been brought to the Contractor's attention by written notice by the City.

58. **Compliance With All Laws:** The Contractor agrees that, during the performance of the work required pursuant to this Agreement, the Contractor, and all employees working under his direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.
59. **Extent of Agreement:** This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements, and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by its authorized agent.
60. **Law and Forum:** This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that the Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.
61. **No Waiver:** In the event that the terms and conditions of this agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.
62. **Severability:** If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

NOTICE TO BIDDERS

Effective October 1, 1984, Section 38, Part a) of the General Conditions and Instructions to Bidders incorporated in this document has been amended to read:

38. Equal Opportunities:

- a) The City of Rochester, New York reaffirms its policy of equal opportunity in its commitment to require all contractors, lessors, vendors, and suppliers doing business with the City to follow a policy of equal opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV, Contract Compliance. The City does not discriminate on the basis of handicap status as defined in 31 CFR Part 51, in admission, access to, or treatment or employment in its programs or activities. The City is including these policy statements in all bidding documents, contracts, and leases. Contractors, lessors, vendors, and suppliers shall agree to comply with State and Federal equal opportunity laws and regulations and Federal regulation 31 CFR Part 51 and shall submit documentation regarding equal opportunity upon the City's request.

Effective June 15, 1989, the General Condition and Instructions to Bidders incorporated in this document has been amended by the insertion of the following new section:

38(A). Purchase of Products from Companies Doing Business in Northern Ireland Supporting Fair Employment

- 1) The vendor understands that the City has adopted a policy prohibiting contracting for goods or services with a person, firm, or corporation doing business in Northern Ireland, who does not support fair employment without religious discrimination and does not cooperate with agencies monitoring equal opportunity employment.
- 2) If, because of applicable law, a contract is awarded to a contractor who does not support equal opportunity employment without religious discrimination, the contractor must submit a statement to the Director of Finance detailing the reason for such nonsupport of fair employment.