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**PRINTED NAME OF BIDDER**

**SNOW PLOWING CITY PARKING GARAGES AND LOT, 2013-2014 SEASON – REBID**

Invitation to Bid No. 400945

Issued: November 18, 2013

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

BID OPENING: Tuesday, December 3, 2013 at 11:00 AM

**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, ONE YEAR WITH OPTION TO EXTEND

Bid Deposit Requirement: \$1,000. PER FACILITY TIMES MAXIMUM NUMBER OF FACILITIES, PER SECTION 1 OF PROPOSAL PAGE

Performance Security Requirement: \$1,000 PER FACILITY

Insurance Requirement: YES, SEE SECTION 16.

Samples Requirement: NONE

Descriptive Literature/Technical Data Requirement: NONE

**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. SCOPE

- 1.1 It is the intention of the City of Rochester to enter into a contract with a competent and responsive contractor for plowing and removing snow from the City of Rochester Parking Lots and Garage Roofs. This will include de-icing the parking lots and garage roofs. NO SALT CAN BE USED IN GARAGES. The only acceptable product is Mr. Magic Ice Melt.
- 1.2 The successful contractor will only apply City-issued Mr. Magic Ice Melt to de-ice surfaces. The City of Rochester will provide the Mr. Magic Ice Melt to apply to surfaces.
- 1.3 The contractor must supply well-maintained snow removal equipment (e.g. 4X4 with a plow, de-ice spreader) to adequately plow and de-ice parking lots and garage rooftops.
- 1.4 All Equipment intended for use under this contract may be subject to passing a City-administered inspection.

2. TERM OF CONTRACT

- 2.1 The term of the initial contract shall be from the date of contract award through June 30, 2014 or return or expiration of the performance security, whichever comes earlier. Each contract extension will run from the date of extension through June 30 of the following year, or return or expiration of the performance security, whichever comes earlier.
- 2.2 The Purchasing Agent reserves the right to extend the contract for two (2) additional one (1) year periods, or less upon mutual agreement. The extension will be confirmed in writing and will be subject to all the terms of this agreement.

3. BASIS OF AWARD

- 3.1 The City intends to award the contract to a single responsive and responsible bidders based upon the lowest Total Bid Price. Therefore bidders are required to bid on all locations. .
- 3.2 The price bid per location shall include the bidder's total price to plow, de-ice, load and haul snow per trip from each facility.
- 3.3 The City reserves the right to reject any individual bid by facility or in total, if the price bid is deemed excessive.
- 3.4 At the discretion of the Purchasing Agent, the City reserves the right to reject any or all bids, or to reject any or all bids for any facility.

4. REJECTION OF PROPOSALS

The contractor and the City acknowledge that proper snowplowing is important to the public safety and welfare. Therefore, the bidder acknowledges that in order for the City to be reasonably sure of obtaining responsible quality service under this contract, the Purchasing Agent may reject any contractor at his sole discretion. It is further acknowledged that the burden of proof rests with the bidder to demonstrate that he/she can meet all contract requirements.

4.1 The City may reject bids from any contractor who:

- A. Has an officer, partner, principal, employee or any person with a history of failing to provide timely, quality and complete service on snowplowing services or other contracts of a similar nature.
- B. Proposes the use of equipment with a history of failing to meet the City's requests for services or is determined to be inadequate to perform the services specified hereunder.

5. DISQUALIFICATION FROM REBID

A bidder who fails to make submittals as required by these specifications shall not be eligible to bid on other Snowplowing bid offerings for this season.

6. RESPONSIBILITIES OF THE CONTRACTOR

6.1 In order to fulfill the requirements of this contract, the contractor must provide equipment and operators as specified herein in a timely manner to properly plow. In order to help insure that a contractor will be able to carry out this responsibility, the City sets forth the following specific responsibilities which the contractor accepts as conditions of this contract. The list provided below is not intended to be all-inclusive of the items required to perform this contract properly, but to emphasize certain requirements which the City expects will be met.

6.2 RESPONSIBILITIES DURING BID/AWARD PROCESS

The contractor accepts responsibility to do the following in accordance with instructions from the Purchasing Agent:

- 6.2.1 Become completely familiar with the bidding document
- 6.2.2 Submit a properly completed bid, which includes submitting telephone numbers to be used during the contract. Submitting a bid obligates a bidder to provide enough equipment to adequately service this Contract.

6.2.3 Prior to award, submit evidence satisfactory to the Purchasing Agent and/or the department representative that the contractor can fulfill the requirements of this contract. Such evidence may include, but not be limited to:

- A. Size and condition of contractor's facilities, including all relevant equipment.
- B. Satisfactory completion of contracts similar in size and nature. Performance must, upon request of the City, be attested to by at least three (3) references.
- C. Any evidence required must be submitted within three (3) days of request or the City may reject the bid.

6.2.4 Submit at least one (1) but no more than three (3) telephone numbers with the bid.

6.3 RESPONSIBILITIES FOR VEHICLE INSPECTIONS

6.3.1 The contractor accepts full responsibility to provide an adequate number of snow removal vehicles with rubber-tipped plow and automatic tripping blade to protect manholes, expansion joints and other protrusions above the pavement surface.

A. The contractor must indicate on his/her bid proposal the last date the he/she certifies that he/she will have had all his/her vehicles inspected and approved by the City prior to the start of the contract. The contractor must assume all responsibility for arranging an inspection by the City no later than that date. Failure by the contractor to have his/her vehicles inspected by that date may lead to forfeiture of the performance bond and default of the contract. Inspection may be scheduled at any time after contract award.

B. Prior to having a vehicle inspected, the following must be supplied to the City of Rochester Parking Administration, 80 Commercial Street. It is entirely the contractor's responsibility to provide the documents necessary.

1. A Certificate of Title
2. A Current NY State Registration for a full year or seasonal use. A NY State Registration which is not in effect on the date specified in the Notice of Award will not be considered a valid proof of ownership. It will not be accepted in lieu of Certificate of Title. Vehicles used as seasonal snow vehicles must be registered for the current snow plow season by the date specified in the Notice of Award.

3. If the plow vehicle is being leased, a lease contract on a form acceptable to the City with a starting date no later than the date specified in the Notice of Award and ending no earlier than July 31.
4. If applicable, submit certificates showing Worker's Compensation Insurance, Disability Insurance, Contractor's General Liability Insurance, and Motor Vehicle Insurance for each vehicle in the amounts stated in Section 13 in this contract.

6.4 RESPONSIBILITIES DURING SNOW SEASON

- 6.4.1 It is the contractor's responsibility to meet with the departmental representative upon award and obtain specific instructions as to plowing. The name(s) of department representative(s) shall be supplied to the contractor upon contract award, if not specified herein.
- 6.4.2 Be prepared to start plowing the lot(s) and garage(s) at the time designated by the department representative. Failure to start at the specified time may result in the contractor being penalized. Penalties include but are not limited to a \$100 fine and loss of payment for that run. Penalties are further described in Section 11.
- 6.4.3 Notify the City if any equipment is out of service. If the City has been so notified prior to a call for a snow run, such notice shall relieve the contractor of the \$100 penalty for failure to start the run on time. This relief may not apply after the first missed run. The contractor must notify the City when the equipment is returned to service. Equipment must be returned to service as soon as possible, The City will make alternate plans to have the snow plowed until the contractor notifies the department representative that the equipment is back in service.

6.5 RESPONSIBILITIES DURING A SEVERE SNOW EMERGENCY

The Contractor must guarantee that during a severe snow emergency, as determined by the City or delegated representative, that the contractor will make equipment and drivers available around the clock, if need be, to do the plowing of this contract. The contractor must guarantee that the work in this contract will have priority over other work of the contractor, because this contract affects public safety and welfare.

6.6 RESPONSIBILITIES TO RECEIVE PAYMENT

- 6.6.1 The per-trip price shall include plowing all exits and entries and de-icing lots.
- 6.6.2 The price per trip shall be the cost of plowing all areas in the group once. If only some of the facilities are plowed in one run due to variability in snow conditions, the contractor shall be paid a pro-rated payment for that run as agreed to by the contractor and the ordering department. The City reserves the right to increase or decrease the total area of the facilities to be plowed by up to five percent (5%) while still paying the price bid. If one or more lots are added or subtracted from the total, the contract price can be modified upon agreement between the City and the contractors of notification.

6.7 RESPONSIBILITIES FOR DAMAGES

- 6.7.1 Damages to property, automobiles and auto accidents must be reported immediately to the Director of Parking or designee. The contractor will be responsible for repairing all damages for which (s)he is responsible. After the completion of a final repair, the contractor shall have the property owner sign a Property Owner Release for damages. The contractor shall submit this release of liability to the City's Parking Director or show adequate proof, acceptable to the City that said damages have been repaired. The release or proof of repair must be submitted by the time indicated within 30 days. For automobile repairs, the contractor must supply the City with written proof that the claims have been addressed by the contractor.
- 6.7.2 If repairs are not completed in a satisfactory and timely manner, the City will have the right to cause repairs to be made and proceed against the performance security to recover its costs, and otherwise retain amounts from the last trip owed the contractor to cover the City's costs.
- 6.7.3 To insure that all damages are repaired by the contractor, the City may retain the performance security until June 30 of that plow season. Damage claims which are not settled within the approved time frame will cause the City to proceed to take action against the performance security and other amounts due to the contractor.
- 6.7.4 If there are no outstanding claims at the end of the term of the contract and the contractor has satisfactorily repaired all damages, the Director of Parking may authorize release of the performance security if the contract is not to be extended for the following year.

6.8 NON-DISCRIMINATION

The bidder agrees, as required by the Labor Law of the State of New York and ordinances of the City of Rochester:

- 6.8.1 To hire employees without regard to age, race, creed, color, national origin, sex, sexual orientation, disability or marital status.
- 6.8.2 That (s)he, and any person on her/his behalf, shall not in any manner discriminate against or intimidate any employee hired for the performance of

work under this contract on account of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status.

- 6.8.3 That this contract may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited for a second day or any subsequent violation of the terms or conditions of Section 6.8.

6.9 RESPONSIBILITIES TO COMPLETE THE CONTRACT

6.9.1 In order to obtain release of the performance security, the contractor must have:

- A. Repaired all damages
- B. Obtained the Director of Parking's sign-off that all contract obligations are complete.

6.9.2 In order to obtain release of a \$1,000 cash or check performance security (if the contract is not extended), the contractor must submit a properly written invoice to the ordering department. The contractor invoice may not be submitted until all items above have been completed.

6.10 RESPONSIBILITIES FOR COMPLETE RECORDS

The contractor must keep, and present to the City upon request, a complete log of all calls made to the City regarding performing this contract, and a complete log of the activity of his equipment and drivers used to meet the requirements of this contract. These records must be stored and available for use by the City for a period of one (1) year after the contract expires.

6.11 SPECIAL REQUIREMENTS AND RESPONSIBILITIES FOR CONTRACTORS BIDDING FACILITIES

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6.11.1 The contractor will be responsible for providing equipment that will clear the snow within 3/4 of an inch of the parking lots without marking, discoloring, or damaging any of the specialty features such as patterned concrete, patterned asphalt, benches, artwork, lighting, or any other enhancements within the City's right of way.

6.11.2 The contractor will use rubber tipped plows to plow parking garage surfaces.

6.11.3 Damage Repairs/Reimbursement:

Any damage done to patterned sidewalks will be full depth repairs. Patching will not be allowed. Damage to benches, artwork, and lighting shall be repaired or if necessary, reimbursed to cover all costs of replacement to the satisfaction of the Director of Parking or her designated representative.

- 6.11.4 The contractor will use a spreader owned by her/him to apply Mr. Magic Ice Melt to de-ice surfaces. Contractor shall not use any substitute or generic brand to the Mr. Magic Ice Melt brand.

7. RIGHTS OF THE CITY

- 7.1 Since snow removal is crucial to public safety, the City reserves the right to immediately terminate a contract in whole or part upon a contractor's breach of contract. Wherever practical, the City will give notice of such termination in writing. Breach of contract may result in substantial penalties, forfeiture of performance securities, limitation of facility in future contracts, or default proceedings.
- 7.2 The contract may be terminated or suspended upon recommendation of the Director of Parking when an authorized representative has determined that the contractor has:
  - 7.2.1 Abandoned the work to be performed under this contract;
  - 7.2.2 Assigned this contract to others without prior City consent;
  - 7.2.3 Unnecessarily or unreasonably delayed any of the work to be performed under this contract;
  - 7.2.4 Failed to furnish enough properly skilled workers or appropriate equipment to perform the work;
  - 7.2.5 Disregarded the instructions of the Director of Parking or her authorized representative;
  - 7.2.6 Failed to perform properly on any facility as determined by the performance rating or other performance measures;
  - 7.2.7 Failed to repair damages properly in a timely manner;
  - 7.2.8 Otherwise been guilty of any substantial violation of any provision of the contract.
- 7.3 All services performed under this contract are at the direction and supervision of the Director of Parking and her authorized representatives. The contractor shall only be paid for services authorized by the Director of Parking and performed in a manner satisfactory to the Director and her authorized representatives.
- 7.4 If the contractor's equipment fails at any time to meet the contract requirements, the department will have the right to order such equipment off the job.
- 7.5 Should the department notify the contractor that any contractor's employee is insolent, disorderly, careless, unobservant of instructions, or in any way a detriment to the satisfactory performance of these services, such employee shall be ordered off the job at once and thereafter shall not be allowed to engage in any part of the services. The contractor must replace that employee immediately.

- 7.6 At any time during the term of the contract, the department representative or authorized agent will have the right and privilege to inspect the equipment of the contractor and such equipment shall be made available for inspection within twenty-four (24) hours after request. The equipment shall be kept and maintained by the contractor in excellent working order and ready to start immediately at all times for the duration of the contract.
- 7.7 The decision as to when to call a run shall rest entirely with the City. City officials will determine when conditions warrant a run. Therefore, it is not possible for contractors to predict when they will be called. Contractors starting prior to the start time will not be paid for that work performed and will be required to restart the facility.
- 7.8 The City reserves the right to add or delete similar locations specified in the Contract as requirements change during the course of the contract. Prices for locations to be added to/deleted from the contract will be mutually agreed to by the City and the contractor. A contract amendment will be issued for each addition/deletion. Failure to reach a mutually agreed contract price revision shall be cause for this contract to be terminated at a schedule to be determined by the City.
- 7.9 The City reserves the right to add or delete services/items similar to those shown on the evaluation sheets that the contractor will be expected to perform at some or all locations. Minor additions or deletions will be performed at no additional cost to the City. If substantial changes are requested, revised prices may be negotiated, and the contract amended. Failure to reach a mutually agreed contract price revision shall be cause for this contract to be terminated at a schedule to be determined by the City.

## 8. RESPONSIBILITIES OF THE CITY

The City acknowledges and accepts the importance of its role in making this contract work smoothly. The City accepts responsibility for fulfilling the following obligations to the best of its ability:

- 8.1 Maintain and encourage full communication with the contractor.
- 8.2 Inspect vehicles in a timely manner.
- 8.3 Provide as much lead time as possible when calling for a run. In general, the City will give approximately, at least, a two (2) hour notification unless there is the need for back-to-back runs, or immediate runs due to severe conditions or other reasons.
- 8.4 Provide properly trained inspectors who are to review the contractor's work during and at the completion of each run, including call-backs, and who are to maintain and fully complete the inspection report for each run and facility.

- 8.5 Make payment within thirty (30) days of receipt of a properly executed claim voucher. If there is a dispute about the amount owed, the City will approve payment of the amount not in dispute within thirty (30) days and withhold the disputed amount until resolution of the dispute. However, the City will retain the final run payment until all contract provisions have been met.
- 8.6 If disputes due to performance arise between the time of billing and the time of paying, the City reserves the right to withhold payment.

9. SNOWPLOWING SPECIFICATIONS

- 9.1 The contractor shall be totally responsible for cleaning all lots and garages within the entire facility, including drifts.
- 9.2 The City will furnish a plowing sequence to the contractor listing the order in which the facilities shall be plowed. This sequence of plowing must then be adhered to unless the contractor submits a letter to the Director of Parking requesting and explaining the reason for changing the plowing sequence. The request shall be granted or denied by a return letter to the contractor. The plowing sequence must be adhered to, as City inspectors will be checking the contractor's progress by facility sequence.
- 9.3 The contractor will report at the start of the facility snow removal job at the designated time.
- 9.4 The contractor will plow parking lots and garage roofs in the exact order shown on the facilities sequence list.
- 9.5 The contractor will keep all lights on while plowing.
- 9.6 Since the facility cannot be plowed according to the specifications with improperly adjusted shoes or runner, the contractor will be required to adjust or replace the equipment prior to completion of the facility snow removal job.
- 9.7 Contractor will be responsible for removing snow from lots and garages at the direction of the Parking Director or designee.
- 9.8 The contractor should do whatever is necessary within the scope of this contract to properly clear the facility of snow prior to declaring the facility snow removal job complete.
- 9.9 Contractor will report to the Parking Director or designee immediately:
  - 9.9.1 If contractor cannot start plowing at appointed time.
  - 9.9.2 If equipment breaks down while plowing.
  - 9.9.3 If any lot or garage cannot be plowed, and why.
  - 9.9.4 If any damage is done to other vehicles or property.
  - 9.9.5 At completion of facility snow removal job.

- 9.10 Upon request of the Parking Director or designee, the contractor shall provide documentation how he intends to implement or perform traffic control as required per Section 11.3 in these specifications. The City shall reserve the right to void this contract if it deems that the bidder's traffic control plan is unsafe and not in the best interest of the City.

10. EQUIPMENT SPECIFICATIONS

- 10.1 The equipment furnished under this contract must be in accordance with the following specifications and fully comply with any and all applicable Motor Vehicle Laws of the State of New York, including showing a valid New York State registration.
- 10.2 All equipment must be in excellent condition, smooth running at high rpm's, clean inside and out and under the hood, with evidence of proper maintenance and inspection.
- 10.3 The City reserves the right to reject any piece of equipment that does not pass City-administered inspections and road tests and comply fully with these specifications at any time during the term of the contract.
- 10.4 The bid price shall include the cost of furnishing the operator, insurance, repairs, operating expendables, ballast, chains, fuel, lubricants and all other costs related to the operation of the equipment. The City will not provide ballast.

11. RESPONSIBILITIES DURING SNOW STORM

- 11.1 The contractor is expected to plow upon departmental notification whenever there is three inches (3") or more of accumulated snow in the parking lot or garage roof.
- 11.2 The contractor must supply sufficient equipment to plow the parking lot or garage roof and load out the accumulated snow when required to do so.
- 11.3 The contractor must provide traffic control (flagmen, barricades, etc) to allow the safe plowing and removal of the snow without closing down the lot to citizen or employee vehicles.
- 11.4 The contractor is responsible for the legal and safe disposal of any snow removed from the parking lot or garage roof.
- 11.5 The snow shall be plowed and stockpiled after each snow call-out. The Director of Parking or her designee will provide the Contractor a list of facilities to complete plowing and stockpiling.
- 11.6 Snow removal (load & haul) will be required only upon notification by the City and will be completed within six hours of the initial notification.
- 11.7 The snow removal (load and haul) must be coordinated with employee shift changes to maximize efficiency and to clear the stockpiled snow.

- 11.8 Snow removal (load out and haul) shall occur when twelve inches (12”) of snow accumulate within the facility, or when at least 10% of parking spaces are lost due to snow whichever is determined in the best interest of the City by the Parking Director or departmental designee.
- 11.9 Contractor shall not dump snow off the garage roof.
- 11.10 Snow removal (load out and haul) shall usually occur during weekdays between 5:00 P.M but before 6:00 A.M, and weekends at the direction of Parking Director or departmental designee. Snow removal and application of Mr. Magic de-icing shall not impede City of Rochester business operations.

12. LIQUIDATED DAMAGES, PENALTIES AND PROCEDURES

- 12.1 The contractor agrees that the City has the right to retain all or a portion of monies owed the contractor as liquidated damages for the contractor's failure to comply with the requirements in this contract; specifically, failure to plow as required and failure to repair all damages.
  - 12.1.1 Liquidated damages shall not exceed the City's reasonable costs of completing these contractual requirements.
  - 12.1.2 Imposition of liquidated damages will not preclude the City from seeking performance of the contract through the performance security or taking other legal recourse to recover any and all damages as a result of contractor non-performance, breach of contract or default.
- 12.2 Failure to provide the services required in this contract may lead to imposition of progressive penalties.
- 12.3 Penalties involving fines and/or partial payments and/or limiting the number of facilities for snow removal will be imposed by the Director of Parking and will depend on the severity of the failure, the frequency of the failure, and other circumstances.
- 12.4 The contractor will be notified in writing of any penalties imposed by the Director.
- 12.5 If a penalty is imposed by the Bureau of Parking, the contractor may appeal by presenting additional facts, in writing, to the Director of Parking. The appeal may be in person or in writing. However, a request for an appeal must be made in writing within five (5) days of the date of the Director's letter notifying the contractor of the penalty. The Director of Parking will schedule the appeals hearing, if requested. Failure to request an appeal within five (5) days will indicate full acceptance of the Director of Parking's determination.
- 12.6 After reviewing the appeal, the Director of Parking will make a final determination, which is not subject to further appeal.
- 12.7 Penalties involving a breach of contract or default will be imposed by the Purchasing Agent. Appeals are made through an administrative hearing held before another City official, usually the Finance Director. The ruling of the administrative officer is the last step in the administrative appeal process.

12.8 Following is a list of examples of failure to perform and the range of penalties applied. The penalties are listed in order of severity, and any or all or a combination may be applied. The list of failures is not intended to be all inclusive.

12.9. Failure to Complete Contract Award Requirements

12.9.1 By submitting a completed bid, the contractor acknowledges responsibility for fulfilling all contract obligations, including award requirements, if awarded a facility. If a contractor fails to comply with any of the requirements of Section 6, the contractor will forfeit the bid security for the affected facilities and the facilities will not be awarded to him/her. The contractor may also be subject to additional penalties, which may be imposed at the discretion of the Purchasing Agent. The additional penalties may include, but are not limited to, prohibiting a contractor from bidding on other facilities during the term of the contract and/or suing for damages which result from the City's inability to obtain a replacement contractor at the same price.

12.10. Failure to Complete Vehicle Inspection Requirement

Possible Penalties:

- A. Cancellation of the contract for that facility
- B. Forfeiture of bid security

12.11 Failure to Complete a Snow Removal Run

Possible Penalties:

- A. Partial or no payment for the facility
- B. Cancellation of the contract for that facility
- C. Forfeiture of performance security
- D. Default of contract
- E. Fines

12.12 Failure to Start a Snow Removal Run at the Designated Time

Possible Penalties:

- A. \$150 fine
- B. No payment for the facility
- C. Cancellation of contract for that facility
- D. Forfeiture of performance security.
- E. Limit of facilities in future contracts
- F. Default of contract

12.13 Failure to Respond to a Call-back

Possible Penalties:

- A. \$150 fine
- B. Partial or no payment for the facility
- C. Cancellation of the contract for that facility
- D. Forfeiture of performance bond for that facility
- E. Default of contract.

12.14 Failure to Repair Damage

Possible Penalties:

- A. Forfeiture of performance bond
- B. Claims for damages
- C. Forfeiture of all payments due

12.15 Failure to report accidents or break downs.

Possible Penalties:

- A. Forfeiture of performance bond
- B. Claims for damages
- C. Forfeiture of all payments due
- D. Fines

13. FINAL PAYMENT

13.1 The contractor must bill for any remaining balance by May 31 of the current contract year or be subject to the loss of all or part of his security deposit for that facility.

13.2 The City will retain payment for the last trip of the year until all contractual requirements have been met.

14. EXTENSION OF THE CONTRACT

For any extension of this contract, all terms and conditions which apply to the first year of the contract apply except as modified in this section.

14.1 Reference to days of the month and specific months will remain the same in any contract extension, with minor adjustments in the days to accommodate weekends or holidays. The years will change to be consistent with the year of the extension.

14.2 Extensions will be offered on the basis of the same equipment being used. If the contractor proposes to use another truck, he must notify the City prior to accepting the extension. The City reserves the right to cancel any extension if the proposed changes are unacceptable to the City.

14.2 BID/PERFORMANCE SECURITY

14.2.1 The bid/performance security of \$1,000 per facility will be retained by the City if an extension is offered, and held over from year to year as needed.

14.2.2 INTEREST ON BID/PERFORMANCE SECURITY WILL NOT BE PAID TO THE CONTRACTOR.

15. PRICE PER TRIP

15.1 The price per trip may be revised prior to contract extension. Any revision will be determined by the Purchasing Agent taking into account the change in the CPI-Urban (inflation rate) and/or other prices which directly bear on this contract. The price change will be a percentage price change, to be applied to each facility. The City reserves the right to make slight rounding adjustments up or down to determine trip prices to the nearest dollar.

15.2 The contractor will be notified of the new per-trip price and hourly rate prior to extension of the contract. Any facility for which the contractor does not accept the proposed per-trip price will be re-bid. There will be no individual price negotiations with contractors.

15.3 PRICE PER LOAD OUT AND HAUL

Contractor shall provide a separate price to load out and haul snow by facility as indicated on the Proposal Sheet.

16. INSURANCE AND BOND REQUIREMENTS

16.1 The insurance requirements for the plowing season are as follows:

16.1.1 The contractor shall procure and maintain at his/her own expense, until final acceptance of the work covered by the contract documents, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided from insurance companies authorized to so such business in the State of New York, covering all operations under the contract documents, whether performed by him/her or his/her subcontractors.

16.1.2 Insurance policies must be in effect from at least November 1 through June 30 of the following year. Before executing the agreement, the contractor shall furnish to the City Purchasing Agent a certificate or certificates of insurance in a form satisfactory to the City Purchasing Agent showing that he has complied with this Section, which certificate or certificates shall provide that the policies shall not be materially changed or cancelled until ten (10) days' written notice has been given to the City Purchasing Agent. In each policy of insurance except insurance for Workers' Compensation and Disability Insurance, the City shall be named as an additional insured for liability arising under this agreement. Except for Workers' Compensation and Disability Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the project. The kinds and amounts of insurance are as follows:

A. WORKERS' COMPENSATION AND DISABILITY INSURANCE

The agreement shall be void and of no effect unless the person or corporation making or executing same shall secure, and keep insured during the life of said agreement, Compensation and Disability coverage, covering all operations under the contract, whether performed by him or his/her subcontractors, for the benefit of employees in compliance with the provisions of the Workers' Compensation Law.

1. Workers' Compensation Insurance

A policy covering the operations of the contractor in accordance with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law.

2. Disability Insurance

A policy covering the operations of the contractor in accordance with the provisions of Article 9 of the Workers' Compensation Law, known as the Disability Benefits Law (Chapter 600 of the Laws of 1949) and amendments thereto.

B. PROPERTY AND CASUALTY INSURANCE

1. CONTRACTOR'S COMPREHENSIVE GENERAL LIABILITY INSURANCE issued to the contractor and covering the liability for damages imposed by law upon the contractor with respect to all work performed by him/her under the within agreement. The contractor's Comprehensive General Liability Insurance shall include: Independent contractor's insurance, completed operations insurance and broad form property damage insurance. The comprehensive general liability policy shall furnish limits of not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY  
Combined Single Limit  
\$500,000

2. MOTOR VEHICLE INSURANCE issued to the contractor and covering public liability and property damage on the contractor's vehicles in the amount of:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY  
Combined Single Limit  
\$1,000,000

17. BID SECURITY MUST BE SUBMITTED WITH THE BID

- 17.1 The bid security for this contract is \$1,000 per facility multiplied by the maximum number of facilities specified by the Contractor in the Proposal, page 18. The bid security must be cash, certified check, bank check, or irrevocable letter of credit payable to the City of Rochester. A bid bond is not acceptable.

- 17.2 The bid security will guarantee that a bidder will supply a valid proof of ownership, certificate of insurance and a vehicle in excellent condition which conforms to these specifications, according to the time frames set forth herein. Failure to provide all of these items by the time specified in the Notice of Award will result in forfeiture of the bid security and loss of contract.
- 17.3 The bid security will convert to performance security upon contract award and will be held by the City for the life of the contract. No further performance security will be required.

18. 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:

- 18.1 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.
- 18.2 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.
- 18.3 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.

19. REJECTION OF BIDS

- 19.1 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.
- 19.2 The Purchasing Agent reserves the right to reject any bid that is unrealistic or where a disproportionate unit cost is proposed.
- 19.3 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

PROPOSAL

INSTRUCTIONS TO BIDDERS

1. This document contains the proposal on which your bid is to be entered. This Proposal must be submitted, sealed, in the envelope which has been provided. By submitting a bid on this proposal, you agree to accept as a contract all terms and conditions set forth in these Lot/Garage Rooftop Snowplowing specifications, and all contract extensions thereof.
2. Be sure to provide all information required, and sign any page on which you have entered a price.
3. Be sure to include, in the bid envelope, a \$1,000 bid/performance security for each facility for which you submit a bid. The bid security must be cash, certified check, or an Irrevocable Letter of Credit valid throughout the term of the contract. A bid bond is not acceptable.
4. Be sure to write in the telephone number(s) where you may be reached during the contract period.
5. Be sure to write in the date by which you guarantee to have your equipment inspected and approved by the City.
6. Be sure to state type of vehicle.
7. Be sure to provide all information required. **DO NOT LEAVE ANY BLANKS.**

PROPOSAL

The undersigned bidder hereby agrees to furnish the goods or services specified and to otherwise fully meet all terms, conditions, and specifications contained in this Invitation to Bid without exception, unless exceptions are clearly noted in this proposal. SIGNATURE MUST BE THAT OF THE BIDDER OR OF AN EMPLOYEE OR AGENT AUTHORIZED TO SIGN ON BEHALF OF THE BIDDER.

-----  
The maximum number of facilities for which I am ready, willing, and able to provide Snowplowing services in accordance with these specifications is \_\_\_\_\_ facilities.

The Bid/Performance Security of \$1,000 per facilities multiplied by the maximum number of facilities (as stated above) equals \$ \_\_\_\_\_ Bid/Performance Security submitted with this bid.

You may bid on all or any number of facilities. The number of facilities awarded will be no more than the number entered above.

-----

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name and Title of Authorized Signer

\_\_\_\_\_  
Typed Name of Company

(Continued through page 23)

PROPOSAL- continued

Enter your price bid below where specified:

**Price To Plow & De-Ice (ITEM 1) + Price To Load & Haul (ITEM 2) = Total Price Per facility**

<b>No.</b>	<b>GARAGES:</b>		
1. \$ _____	\$ _____	High Falls, 240 State Street	\$ _____
2. \$ _____	\$ _____	Sister Cities, 28 N. Fitzhugh St.	\$ _____
3. \$ _____	\$ _____	Court Street, 194 Court St.	\$ _____
4. \$ _____	\$ _____	Washington Square, 11 Woodbury Blvd	\$ _____
5. \$ _____	\$ _____	Mortimer Street, 83 Mortimer St.	\$ _____
6. \$ _____	\$ _____	East End Garage, 475 E. Main St.	\$ _____
7. \$ _____	\$ _____	Midtown Entry/Exits	\$ _____

**GARAGE SUBTOTAL: \$ \_\_\_\_\_**  
(ITEM 3: ADD No.1 thru. No.7)

<b>No.</b>	<b>PARKING LOT:</b>	
8. \$ _____	\$ _____	Wadsworth, Corner of Wadsworth St. and Marshall . \$ _____

**PARKING LOT SUBTOTAL: \$ \_\_\_\_\_**  
(ITEM 4)

**TOTAL BID PRICE: \$ \_\_\_\_\_**  
( ITEM 3 + ITEM 4 )

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name and Title of Authorized Signer

\_\_\_\_\_  
Typed Name of Company

(Continued through page 23)

PROPOSAL- continued

State the type of vehicle you are proposing per facility below:

**No. GARAGES**

**PROPOSED VEHICLE**

- 1. High Falls, 240 State Street \_\_\_\_\_
- 2. Sister Cities, 28 N. Fitzhugh St. \_\_\_\_\_
- 3. Court Street, 194 Court St. \_\_\_\_\_
- 4. Washington Square, 11 Woodbury Blvd \_\_\_\_\_
- 5. Mortimer Street, 83 Mortimer St. \_\_\_\_\_
- 6. East End Garage 475 E. Main St. \_\_\_\_\_
- 7. Midtown Entry/Exit ramps \_\_\_\_\_

**No. PARKING LOT**

**PROPOSED VEHICLE**

- 8. Wadsworth, Corner of Wadsworth St. and Marshall \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name and Title of Authorized Signer

\_\_\_\_\_  
Typed Name of Company

(Continued through page 23)

PROPOSAL - continued

Telephone numbers for the bidder

Primary Telephone Number: 1. \_\_\_\_\_

Secondary Telephone Numbers: 2. \_\_\_\_\_

Cell Phone Number: 3. \_\_\_\_\_

Date by which contractor certifies all vehicles will be inspected: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name and Title of Authorized Signer

\_\_\_\_\_  
Typed Name of Company

(Continued through page 23)

PROPOSAL- continued

PRINT OR TYPE THE FOLLOWING INFORMATION:

\_\_\_\_\_  
Name of Firm or Corporation

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone No./Fax No. Federal Employer ID No.

\_\_\_\_\_  
E-mail Address of Recipient of Contract Awards and Extensions

\_\_\_\_\_  
Date

ACCEPTED ON BEHALF OF THE CITY OF ROCHESTER FOR:

\_\_\_\_\_

Contract No. **400945** Contract Term: One Year: **Term, One Year With Option To Extend**

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
Date

(Continued through page 23)

# APPENDIX “A”

## GARAGES AND PARKING LOT LOCATIONS

### 1. PARKING GARAGE LOCATIONS

- 1.1 HIGH FALLS GARAGE- 240 State Street
- 1.2 SISTER CITIES GARAGE- 28 N. Fitzhugh St.
- 1.3 COURT STREET GARAGE- 194 Court St.
- 1.4 WASHINGTON SQUARE GARAGE – 111 Woodbury Blvd
- 1.5 MORTIMER STREET GARAGE- 83 Mortimer St.
- 1.6 EAST END GARAGE - 475 E. MAIN ST.
- 1.7 MIDTOWN ENTRY / EXITS

### 2. PARKING LOT LOCATIONS

- 2.1 WADSWORTH LOT – Corner of Wadsworth and Marshall



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.
- 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.
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 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.

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 possible 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 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.
- i) 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 unorderd balances as of the contract expiration date unless the contractor furnishes the Purchasing Agent with a statement of unorderd 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.