



PRINTED NAME OF BIDDER

INVITATION TO BID

MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

Invitation to Bid No. 426150 Issued: December 22, 2014

PURCHASING BUREAU CONTACT: Tymothi Howard, Sr. Purchaser, 585-428-7041

BID OPENING: Tuesday, January 6, 2015 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: One Time Buy With Term Service Contract

Bid Deposit Requirement: NONE

Performance Security Requirement: NONE

Insurance Requirement: NONE

Samples Requirement: NONE

Descriptive Literature/Technical Data Requirement: SUBMIT WITH BID

Bid Identification Document Requirement: SUBMIT WITH BID

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



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1. SCOPE

- 1.1 The following specifications are intended to meet the requirements of the City of Rochester to purchase a Caterpillar® 308E2 CR SB Mini Hydraulic Excavator With Swing Boom and to establish a term contract with the successful bidder to purchase Parts and Repairs for the "Mini Hydraulic Excavator With Swing Boom for a period of three (3) years.
 - 1.1.1 Bidders may submit City approved equivalent that meets or exceeds the specifications listed herein.
- 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 these specifications 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.
- 2.3 **INSTRUCTIONS TO BIDDERS**
 - 2.3.1 Proposals will be received by the Purchasing Agent of the City of Rochester in accordance with the contract documents set forth herein.
 - 2.3.2 Bids shall be made only on the form(s) provided with these specifications

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2.4 INFORMATION TO BE FURNISHED WITH BID

- 2.4.1 The bidder shall submit with his bid DETAILED SPECIFICATIONS AND DRAWINGS, to the extent required to fully describe the equipment being offered, along with complete description including pictures and catalogs, and all other pertinent data on the equipment he proposes to furnish.
- 2.4.2 Bids offered without this information may be declared non-responsive.
- 2.4.3 The City reserves the right to request additional information deemed necessary for proper evaluation of bids. Failure to provide this information within the time requested by the City may result in the bid being declared non-responsive.

2.5 SERVICE TERM CONTRACT

- 2.5.1 A bidder must submit a service term contract proposal in addition to a purchase contract proposal. The City requires any bidder to offer full repair and maintenance service and parts availability for the vehicle(s) purchased to take effect after the new equipment warranty coverage expires.
- 2.5.2 Once accepted by the City, the service term contract will remain in place for the contract term. The contractor guarantees to provide the services specified during the contract term, if ordered through a purchase order. However the City reserves the right to obtain these services and/or parts from other term contracts that better meet the City's requirements

3. BASE BID

Unless otherwise specified, the base bid shall be the Net Delivered Unit Price, which includes all item(s) incorporated in the specification for the unit(s). Any deductions for freight allowance, cash discount, or quantity rebate must be included in the total net delivered price identified in the proposal, and should not be listed as separate items.

4. AWARD OF CONTRACT

- 4.1 This bid will be awarded to the lowest responsive and responsible bidder per net Delivered Unit Price, plus Option(s) selected by the City from the Purchase Contract Proposal. However, bidders must submit both a Purchase Contract Proposal including the Option(s) requested and a Service Contract Proposal to be considered a complete bid.
- 4.2 The City reserves the right to make an award based on the lowest cost to the City after factoring in percentage discount for parts and labor rates offered in the Service Term Contract Proposal
- 4.3 The City reserves the right to reject any bid that is unrealistic or where a disproportionate unit cost is proposed.

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- 4.4 The City of Rochester reserves the right to consider informal a bid not prepared and submitted in accordance with the provisions of the bid.

5. CONTRACT PERIOD

- 5.1 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 this time upon mutual agreement in writing of both parties.
- 5.2 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.
- 5.3 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.

6. PRICES

- 6.1 Price stated on the Purchase Contract Proposal shall be firm (not subject to change) valid during the term of the Purchase Contract (Section 5.1).
- 6.2 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.
- 6.3 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 not be submitted by the contractor more frequently than once every 180 days.
- 6.4 Bidder shall quote single percentage discount only. Bids containing multiple discounts are subject to rejection.
- 6.5 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.
- 6.6 Prices for labor for service during the Service Term Contract shall be stated in the Service Term Contract Proposal.
- 6.7 Prior to commencing any work requested under the service term contract, the contractor shall provide the City with a written estimate for the cost of the repair, including parts and labor using the prices bid. The City reserves the right to negotiate a different cost, or seek alternative bids from other contractors if the cost estimate is unacceptable to the City.
- 6.8 The City is exempt from State Sales and Federal Excise Taxes. This should be considered when quoting discount.

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- 6.9 All orders shall be priced F.O.B. destination, including unloading at storeroom door of agency.
- 6.10 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.

7. DELIVERY REQUIREMENTS

7.1 DELIVERY GUARANTEE

- 7.1.1 For all items and services (except delivery of the initial vehicle(s) per Section 7.2), delivery shall be made within five (5) days of receipt of order.
- 7.1.2 If shipment cannot be made within the allotted time, purchase may be made on the open market pursuant to paragraph 35 of the General Conditions and Instructions to Bidders.
- 7.1.3 Shipment of emergency items shall be made immediately.
- 7.1.4 Agency shall also be accorded "over-the-counter" service.
- 7.1.5 The successful bidder of the contract shall deliver the completed units to the City of Rochester, FOB to the ordering agency's facility.

7.2 DELIVERY OF VEHICLE(S) BEING BID

- 7.2.1 The City of Rochester requires delivery of the vehicle(s) specified in the Proposal as soon as possible, but not later than **thirty (30)** calendar days from the date of award. 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 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.
- 7.2.2 Each bidder is required to list on the Proposal 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.

8. SPECIAL DELIVERY NOTE

If the contractor is local, i.e., within the City of Rochester and/or within twenty (20) road miles of the Rochester Bureau of Motor Equipment at 945 Mt. Read Boulevard, the City will deliver the equipment to the contractor's garage for work to be performed under warranty and pick up the equipment when work is completed.

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- 8.1 If the contractor is not local, he shall assume, at his expense, all transportation costs of moving the equipment supplied under this contract to and from the contractor's shop where warranty and/or repair is to be performed.

9. GUARANTEES AND WARRANTIES

- 9.1 The Contractor shall guarantee all equipment furnished for a period of two (2) years from date of delivery and acceptance if such equipment is not included in the manufacturer's standard warranty. All warranties shall be of the non-declining type.
- 9.2 The Contractor hereby warrants and guarantees that, for a period of two (2) years from date of final acceptance, 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 two (2) year minimum warranty shall be deemed to be incorporated into this contract.
- 9.3 Contractor shall furnish a copy of the standard factory warranty during the bid evaluation period upon request of the City.
- 9.4 In the event of a machine failure or the warranted component during the warranty period, the contractor shall supply an equivalent loaner machine at no charge.
- 9.5 The starting date of warranty for each machine shall be the date the machine is placed into actual service, not the date when it is delivered by the Contractor.
- 9.6 The Contractor will be notified by the City of Rochester in writing of the date the machine(s) are placed in service.
- 9.7 All guarantees and warranties shall be furnished by the Contractor and shall be delivered to the Equipment Services Division before the final payment on the contract is issued.
- 9.8 **WARRANTY WORK**
- 9.8.1 In order to ensure rapid repair of vehicles and equipment to maintain response times, the City of Rochester's Equipment Services Division expects to be approved by the factory/manufacturer to perform in-house warranty repairs with all the books and forms required for reimbursement. 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.
- 9.8.2 Bidders must indicate on the Purchase Contract Proposal whether or not the manufacturer will approve the City to perform in-house warranty work. If the bidder is unable to certify that the City can be approved by the

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manufacturer to perform in-house warranty work, the City reserves the right to declare the bid nonresponsive and proceed to the lowest bid that meets this requirement, if doing so is in the best interest of the City.

9.8.3 Upon request of the City during the bid evaluation, a bidder must provide any and all paperwork, forms, fees, etc. required to be submitted by the City in order to be approved by the factory/manufacturer as a warranty repair facility. Should such requirements be unacceptable, the City reserves the right to declare the bid nonresponsive and to proceed to the lowest fully responsive bid.

9.8.4 City of Rochester warranty work labor will be reimbursed at 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 paid by, not credit.

9.9 When operational restraints do not permit the Equipment Services Division to repair and/or replace defective parts or subassemblies or perform any other work covered by the warranty, the City will require the contractor to perform warranty repairs.

9.10 The contractor must provide the City with a complete description of all warranty work performed by the contractor, including, labor, parts and cost of such warranty work billed to the factory/manufacturer.

9.11 The contractor must guarantee any and all repair work completed and parts delivered under the term service contract for thirty (30) days after acceptance by the City or for the term offered by the manufacturer, whichever is longer.

10. QUALIFICATION OF BIDDER

10.1 No bid will be considered unless the firm submitting the bid can meet the following conditions:

10.1.1 That the bidder(s) or manufacturer(s) has current business operations adequate for and actively engaged in the manufacture of the equipment which he proposes to furnish.

10.1.2 That there are at least ten (10) 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. Upon request of the Purchasing Agent, manufacturer shall furnish evidence that the unit to be 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.

10.2 That it has or will have in operation in or reasonably near the City of Rochester, a service operation adequately equipped and carrying stock of parts, and regularly

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employs qualified personnel to render prompt and efficient service on the equipment delivered under this contract.

10.3 MANUFACTURER'S CERTIFICATION

If requested, bidder must submit a certificate executed by the manufacturer stating that bidder is an authorized agent, dealer, or distributor of the manufacturer and that the equipment offered is completely in compliance with the specifications and proposal and will be available during the term of the contract.

10.4 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.

11. INVOICES AND PAYMENT

11.1 Payment will be based on any invoice used in the contractor's normal course of business. Payment will not be made, however, unless the invoice is clearly legible and contains at a minimum all of the following information.

- 11.1.1 Accurate item description
- 11.1.2 Catalog number of the item
- 11.1.3 Quantity
- 11.1.4 Unit price per item
- 11.1.5 Net total cost to the City, after discount
- 11.1.6 City contract number
- 11.1.7 Date of delivery
- 11.1.8 Location of delivery

11.2 All billings must be accompanied with a signed contractor invoice.

11.3 Invoices for service and/or parts provided under the service term contract must be the same as the estimate provided to the City unless the City approves changes to the original estimate.

11.4 The responsibility to submit a properly completed invoice rests entirely with the contractor. Failure to submit a properly completed invoice will result in rejection of a claim for payment.

11.5 PAYMENT

11.5.1 Payment will be made by the City to the Contractor upon submission of invoice by the Contractor in the form approved by the City within thirty (30) days after the equipment has been delivered, inspected and accepted.

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- 11.5.2 When the COMPLETE ORDER is delivered by the Contractor, the City may process the 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.
- 11.5.3 The invoice(s) shall be forwarded to the "Ordered By/Bill To" department indicated on the Purchase Order.

12. PURCHASE ORDER REQUIRED

- 12.1 Advertisement, receipt of bids, and award of this contract for the equipment specified herein only signifies the City's intention to purchase the equipment specified. This contract shall not obligate the City to purchase any equipment or services from the contractor. However, if the City does utilize this contract to purchase the specified equipment or services, the terms and conditions of this contract shall apply.
- 12.2 The City is only obligated to purchase, and the vendor should only deliver, items ordered on a City of Rochester Purchase Order that incorporates this contract.

13. CHANGE ORDERS

Minor changes to the equipment specifications may be made subsequent to the order but prior to delivery upon the mutual written agreement of the vendor and the City. Such changes are intended to permit modifications for upgrades or improvements subsequent to award which the City determines will improve the quality and/or efficiency of the equipment. Minor changes to the service term contract may also be negotiated during the contract term. Additions or deletions which affect the total cost must be authorized by a Change Order approved by the Purchasing Agent.

14. SERVICING

All equipment shall be completely serviced prior to delivery. Service shall include not less than the following: lubrication, conditioning, and all other checks and adjustments required for proper complete servicing of new equipment. Particular attention shall be given to hardware, paint condition, and overall operation. It shall be the contractor's responsibility to insure at that time that all components and accessories have been properly installed and are operational.

15. INSPECTION OF WORK

- 15.1 For equipment that is being manufactured for the City of Rochester per this contract, The City requires that authorized agents of the City 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.

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- 15.2 The cost of any such inspection trip(s) by agent(s) of the City will be at the expense of the City. A final inspection will be made when the apparatus is ready for delivery and before it leaves the manufacturer's shop.
- 15.3 If, during the final inspection of item or items to be furnished under this contract, any are found to be defective, 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.
- 15.4 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 city property at no expense to the City. If the successful bidder fails to remove the items which, in the opinion of the Purchasing Agent, 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.

16. PAYMENT OR ACCEPTANCE NOT CONCLUSIVE

- 16.1 No payment made under the contract shall be conclusive evidence of the performance of the contract, either wholly or in part, and no payment made for the delivery of the items in whole or in part should be construed as an acceptance of defective work or improper materials, nor relieve the Contractor from correcting the defects.
- 16.2 The final acceptance shall not be conclusive nor binding upon the City of Rochester should it subsequently develop that the Contractor has furnished inferior items or has deviated from the specifications and/or the terms of the contract. Should such a condition become evident, the Purchasing Agent shall have the right, notwithstanding final acceptance and payment, to cause the item(s) to be furnished in accordance with the specifications (and drawings, if any) at the expense of the Contractor or his Surety, if any.

17. 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.

18. 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 Governments which may in any manner affect the preparation of proposals or the performance of this contract.

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19. DEFAULT

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

19.1.1 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

19.1.2 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.

20. INTERCHANGEABILITY

20.1 All assemblies, sub-assemblies, and component parts, etc., of the items supplied under these specifications shall be interchangeable throughout the quantity of units supplied.

20.2 The items furnished under these specifications shall be new and shall be the manufacturer's current production model.

21. TECHNICAL SERVICE BULLETINS

The contractor shall also furnish any and all bulletins, modification notices, service letters and related addenda, throughout the life of equipment being furnished under this contract. This data shall be sent to the City of Rochester, Motor Equipment Division, 945 Mt. Read Boulevard, Bldg. #100, Rochester, NY 14606, Attn: Fleet Manager.

22. SPECIAL NOTICE TO BIDDERS

22.1 If requested, the contractor must furnish to the Purchasing Agent a copy of the factory order and number covering the equipment bid upon within five (5) days after the date of the receipt of Purchase Order.

22.2 The Purchasing Agent of the City of Rochester may require the successful bidder to furnish copies of all correspondence (including purchase orders) placed with the various manufacturers or suppliers for materials, supplies, and equipment ordered as proof that the contract is being filled as specified. Failure to submit documents which clearly demonstrate that the contract will be fulfilled within the required delivery date, may be deemed sufficient grounds for cancellation of the order and contract.

23. PARTS AVAILABILITY

The bidder understands and agrees that he is obligated to make Original Manufacturer's Equipment parts for the equipment available to the City of Rochester for a period of five

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(5) years at a price no greater than the then-current Fleet List Price, F.O.B. delivered. If during such five-year period the City of Rochester is unable to establish a contract for the purchase of Original Manufacturer's Equipment parts for the equipment purchased from the successful bidder, the successful bidder agrees to supply to the City the Original Manufacturer's Equipment parts at a price no greater than the then-current Fleet List Price, F.O.B. delivered, within time frames standard to the industry.

24. 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.

25. PERFORMANCE CHARACTERISTICS

25.1 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 of how the units offered will meet the desired performance characteristics. A decision as to equivalency shall be made by the City of Rochester, whose decision shall be final.

25.2 These specifications are to establish a minimum acceptable standard. All products equal to these specifications will be considered provided they meet the foregoing criteria and specifications.

25.3 Any references herein to a particular make or model are not intended to be restrictive, but to set forth an acceptable level of quality, design, and performance.

26. 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

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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:

26.1 ENGINE

- 1.1.1 Engine Model: Cat® C3.3B
- 1.1.2 Net Power: 65.0 hp
- 1.1.3 Bore: 3.7 in
- 1.1.4 Displacement: 203.2 in³
- 1.1.5 Gross Power (ISO 14396): 66.6 hp
- 1.1.6 Net Power (ISO 9249): 65.0 hp
- 1.1.7 Rated Net Power @ 2,400 rpm (ISO 9249/EEC 80/1269): 65.0 hp
- 1.1.8 Stroke: 4.7 in

26.2 WEIGHTS

- 1.1.9 Operating Weight: 18519.0 lb
- 1.1.10 Operating Weight with Cab: 18519.0 lb

26.3 TRAVEL SYSTEM

- 1.1.11 Ground Pressure: 5.26 psi
- 1.1.12 Gradeability (maximum): 30.0 Degrees
- 1.1.13 Maximum Traction Force - High Speed: 14500.0 lb
- 1.1.14 Maximum Traction Force - Low Speed: 8408.0 lb
- 1.1.15 Travel Speed – High: 3.17 mph
- 1.1.16 Travel Speed – Low: 1.74 mph
- 1.1.17 Rubber Belt Track System: 17.7 in width

26.4 HYDRAULIC SYSTEM

- 1.1.18 Digging Force - Stick (long): 7891.0 lb

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1.1.19	Digging Force – Bucket:	13534.0 lb
1.1.20	Digging Force - Stick (standard):	9015.0 lb
1.1.21	Auxiliary Circuit – Primary:	(186 bar/2,734 psi) 33.8 gal/min
1.1.22	Auxiliary Circuit – Secondary:(174 bar/2,524 psi)	16.9 gal/min
1.1.23	Operating Pressure – Equipment:	4061.0 psi
1.1.24	Operating Pressure – Swing:	3481.0 psi
1.1.25	Operating Pressure – Travel:	4061.0 psi
1.1.26	Pump Flow at 2,000 rpm:	39.6 gal/min

26.5 SWING SYSTEM

1.1.27	Machine Swing Speed:	11.0 RPM
1.1.28	Boom Swing – Right:	50.0 Degrees
1.1.29	Boom Swing – Left:	60.0 Degrees

26.6 BLADE

1.1.30	Width:	91.3 in
1.1.31	Height:	17.7 in
1.1.32	Dig Depth:	14.2 in
1.1.33	Lift Height:	15.0 in

26.7 SERVICE REFILL CAPACITIES

1.1.34	Cooling System:	3.7 gal
1.1.35	Engine Oil:	3.0 gal
1.1.36	Hydraulic Tank:	21.7 gal
1.1.37	Fuel Tank:	33.0 gal
1.1.38	Hydraulic System:	24.8 gal

26.8 OPERATING SPECIFICATIONS

1.1.39	Counterweight:	551.0 lb
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1.1.40	Machine Overhang:	11.0 in
1.1.41	Machine Overhang with Counterweight:	16.0 in
1.1.42	Maximum Dig Depth:	13.62 ft
1.1.43	Stick Length – Long:	7.25 ft
1.1.44	Stick Length – Standard:	5.48 ft

26.9 CAB

1.1.45 Average Exterior Sound Pressure: 99 dB(A) ISO 6395 - Dynamic Test

1.1.46 Dynamic Operator Sound Pressure: 70 dB(A) ISO 6396

26.10 MISCELLANEOUS

1.1.47 Included Options

1.1.47.1 Dozer blade with bolt on cutting edge

1.1.47.2 Hydraulic quick coupler lines

1.1.47.3 Secondary auxiliary hydraulic lines

1.1.47.4 Wain Roy Quick Coupler System

1.1.47.4.1 60" Ditching Bucket

1.1.47.4.2 24" Excavating Bucket

1.1.47.4.3 Hydraulic Thumb

27. 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 VEHICLE AND EQUIPMENT DEALERS AND INSTALLERS SHALL NOT BE ATTACHED TO THE VEHICLE. IN ANY INSTANCE OF VIOLATION OF THESE RESTRICTIONS, THE COST OF REMOVAL OF SUCH ADVERTISING WILL BE DEDUCTED FROM CONTRACTOR'S OUTSTANDING INVOICE.

28. DATA PLATE

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

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29. BIDDER IDENTIFICATION DOCUMENTS

Bidders are required to provide additional documentation as indicated in this section:

- 29.1. Bidder must submit along with Proposal Page, the bidder's W-9 Form.
- 29.2. Upon request of the City, the bidder must provide the City with one of the following:
 - 29.2.1. A copy of the bidder's IRS Form SS-4 EIN Assignment Letter.
 - 29.2.2 A copy of the bidder's IRS Form 147C

30. 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 the subdivision and the contractor. The City will have no responsibility for any such purchases and will have no other role other than to provide other political subdivisions a copy of this contract if requested.

31. 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 knowledge and belief:

- 31.1 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.
- 31.2 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.
- 31.3 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.

MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

PROPOSAL

PURCHASE CONTRACT 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.

ITEM DESCRIPTION

Caterpillar 308E2 CR SB MINI Hydraulic Excavator with Swing Boom

NET DELIVERED UNIT PRICE: \$ _____

MAKE & MODEL BID: _____

DELIVERY WILL BE MADE IN _____ CALENDAR DAYS AFTER RECEIPT OF ORDER.

W-9 FORM: _____ YES

City will be approved to perform warranty repairs (Section 9.8): Yes _____ No _____

Hourly reimbursement rate to City for warranty work done by City (Section 9.8.4): \$ _____

Authorized Signature

Typed Name and Title of Authorized Signer

Typed Name of Company

(Continued through Page 21)

MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

PROPOSAL

OPTIONS

The optional trade in option shall be bid as a separate item and will not be considered as part of the base bid price. The City reserves the right to trade in all, or none of the items listed herein, throughout the term of the contract.

TRADE-IN VEHICLE

Trade #1: 1997 Case 580 Super L (4X4, Extenda-Hoe)

Serial #: JJG0199842

Hours: 2,674

City Fleet #: 977091

Note: Includes front 4in³ bucket and 24" excavating bucket

Trade-In Price: \$ _____

To schedule a time to inspect the vehicle(s) contact: Kevin Holmes @ 585-428-6647.

Authorized Signature

Typed Name of Authorized Signature

Typed Name of Company

(Continued through Page 21)

MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

SERVICE TERM CONTRACT PROPOSAL

PERCENTAGE DISCOUNT OFF PARTS MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

PART I.

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

PRICE LIST NUMBER: _____

PRICE COLUMN USED: _____

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. _____

Authorized Signature

Typed Name of Authorized Signature

Typed Name of Company

(Continued through Page 21)

MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

PROPOSAL

PRINT OR TYPE THE FOLLOWING INFORMATION:

Name of Firm or Corporation

Street Address

City State Zip Code

Telephone / Fax No. Federal Employer Identification No.

E-mail Address of Recipient of Contract Awards and Extensions

Date

ACCEPTED ON BEHALF OF THE CITY OF ROCHESTER FOR:
MINI HYDRAULIC EXCAVATOR, WITH SWING BOOM

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.
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 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 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 non-support 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.