



City of Rochester

Bureau of Purchasing
City Hall Room 105 A, 30 Church Street
Rochester, New York 14614-1290
www.cityofrochester.gov

PRINTED NAME OF BIDDER

SIDEWALK SNOWPLOWING, 2016-2017 SEASON, 2ND ROUND, ROUTE 37

Invitation to Bid No. 428710 Issued: October 31, 2016

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

BID OPENING: Tuesday, November 8, 2016 at 11:00 a.m.

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

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

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

Type of Contract: TERM, ONE YEAR WITH OPTION TO RENEW

Bid Security Requirement: \$1,000. PER ROUTE TIMES MAXIMUM NUMBER OF ROUTES, PER SECTION 1 OF PROPOSAL PAGE

Performance Security Requirement: YES, SEE SECTION 16.

Insurance Requirement: **YES, SEE SECTION 16. MOTOR VEHICLE INSURANCE POLICIES MUST BE IN EFFECT AT LEAST FROM OCTOBER 15 THROUGH APRIL 15 OF THE FOLLOWING YEAR. OTHER POLICIES ALSO REQUIRED PER SECTION 16**

Samples Requirement: NONE

Descriptive Literature/Technical Data Requirement: NONE

Bidder Identification Document Requirement: YES

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.

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1. SCOPE

- 1.1 It is the intention of the City of Rochester to enter into contracts with competent and responsive contractors for plowing the City of Rochester's residential sidewalk routes in the manner described herein.
- 1.2 The contractor must supply a suitable, well maintained vehicle in excellent operating condition, as specified in Section 9, with an operator, for each route that is awarded. Additionally, one (1) vehicle must be provided as back-up for every three (3) routes awarded. All equipment intended for use in snowplowing City sidewalks will be subject to passing a minimum of two (2) inspections administered by the City.
- 1.3 The City is contracting for two types of snowplowing services:
- 1.3.1 The most frequently used service will be a full run. The contractor will be paid the amount bid, per run, per route, for satisfactory completion of the route. The average route is approximately 80,000 feet long. Each route is shown on the maps in these specifications. The City reserves the right to increase or decrease the size of the route shown on each map by up to five (5%) percent during this contract while still paying the price bid. The City reserves the right to treat each route independently and to order service on one or more routes at any given time.
- 1.3.2 On an as-needed basis, the City may call for hourly sidewalk snowplowing service. The contractor shall perform such service wherever required and shall be paid at the hourly rate for that route.
- 1.3.3 Per-hour work will be delegated to the contractor for the services on his own routes, the routes of other contractors, or in any manner required at the sole discretion of the Director of Operations or his authorized representative.
- 1.4 In consideration of the need to reserve equipment to meet the needs of this contract, the City will guarantee payment of a minimum of \$5,000 per route to the contractor during this contract if the contractor fully performs the services of this contract to the satisfaction of the City.

2. TERM OF CONTRACT

- 2.1 The initial contract will be for one season. The season will be defined as commencing on the date of the award and ending on June 30 of the following year.
- 2.2 The City reserves the right to extend the contract for up to two (2) additional seasons, starting on the date of award of the extension season and ending on June 30 of the extension period.

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- 2.3 In addition to Section 2.2, The City reserves the right to extend a contract for one (1) additional season (not to exceed a total of three (3) seasons past the initial contract) for any route for which a tractor type plow is being used for that route.
- 2.4 If a contract is extended the prices for each route may be adjusted annually per the consumer price index (CPI), per Section 15.4.

3. METHOD OF AWARD

Award will be made to the lowest responsive bidder, by route. The City desires to award as many routes as possible to those contractors using tractor type plows (four tires as opposed to a track vehicle) that are capable of plowing thirty (30) inches or more of snow from one storm. These tractor type vehicles shall be capable of plowing snow of the aforementioned depth without riding over the top of the snow.

- 3.1 A bidder will be awarded no more routes than the limit set forth on the Proposal by the bidder.
- 3.2 If a bidder is low on more routes than allowed by the self-imposed limit, selection of the routes to be awarded will be made by the Purchasing Agent in the best interest of the City of Rochester.
- 3.3 The City reserves the right to reject any individual bid, by route or in total, where the price bid is deemed excessive.
- 3.4 A bidder may bid either a tractor or a non-tractor type of equipment, per route. However, a bidder may only submit a bid for one (1) type of equipment per route. **Bidders may not bid two types of equipment per route.** If two types of equipment are bid on a route, the bid for that route will be declared informal and will not be accepted.
- 3.5 If the City receives bids on a route for both a tractor and a non-tractor type of sidewalk plow, the City may award to the contractor who bids a tractor type plow, if that bid is within 15% of the low bidder with a track type plow.
- 3.6 At the discretion of the Purchasing Agent and/or the Commissioner of Environmental Services, the City reserves the right to reject any or all bids for any route.
- 3.7 Issuance of the official award letter by the Purchasing Agent shall create a binding contract. Failure by the contracted bidder to deliver the insurance certificates, performance bond and other documents required by the contract, and/or failure to provide equipment and/or drivers as specified, shall constitute default of contract and forfeiture of the bid security.

4. REJECTION OF PROPOSALS AND LIMIT OF AWARDS

- 4.1 Because the quality of snowplowing services directly impacts public safety, the City of Rochester and the bidder acknowledge the importance of obtaining quality service under the terms of this contract. Therefore, the City may limit the number of routes awarded to any contractor, or reject any proposal for the following reasons:
- 4.1.1 A history of inadequate or substandard performance on snowplowing or other contracts of a similar nature and/or has a history of failing to meet the City's request for service.
 - 4.1.2 Equipment that does not comply with New York State inspection laws.
 - 4.1.3 Equipment that may pose a hazard due to its condition.
 - 4.1.4 Equipment that has a history of failing to meet the City's requests for service.
 - 4.1.5 Failure to provide the required number of correctly licensed and qualified drivers.
 - 4.1.6 Financial instability of the contractor or principals of the company
 - 4.1.7 Contractor is in violation of any Federal, State or local law, code, etc.
 - 4.1.8 The contractor is unable to demonstrate to the satisfaction of the City that the contractor either owns or has valid leases for the equipment and/or facilities required for the routes bid or is otherwise able to obtain the required equipment and facilities and provide correct documentation of such no later than the specified date by which all complete documentation must be submitted.
 - 4.1.9 Other reasons that the City determines may cause the contractor to not be able to fulfill the requirements of this contract.
- 4.2 The decision to limit the number of routes will be made by the Commissioner of Environmental Services prior to award. The bidder will be notified in writing that such a determination has been made. The bidder will have five (5) days after receipt of the determination to appeal to the Purchasing Agent. Based upon information supplied at the appeal, the Purchasing Agent will issue a final determination on award of the route(s) in question.
- 4.3 If the contractor is not awarded all the routes for which he or she is low bid, the Commissioner of Environmental Services will recommend to the Purchasing Agent which routes should be awarded to that contractor. The contractor must accept awards on those routes. The City will return the bid security for any other routes bid.
- 4.4 If a contractor fails to provide a vehicle which passes the City inspection, the Commissioner will determine which route will be forfeited. The remaining vehicles which pass inspection (if applicable) must be reassigned to the remaining routes

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(if any) awarded to the contractor. In addition, the bid security will be forfeited for whichever route is forfeited.

- 4.5 By submitting a bid, the bidder accepts the responsibility for proving the ability to meet the contract requirements and acknowledges the process described above and the Commissioner's right to decide without further appeal beyond that set forth in Section 4.2.
- 4.6 The City further reserves the right to limit the number of routes awarded to any one contractor in order to insure that enough different contractors are utilized to give the City the flexibility required to meet its needs.

5. DISQUALIFICATION FROM RE-BID

A bidder who fails to make submissions as required by this bid document will not be eligible to bid on this or any other snowplowing bid offering of the current 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 the City's sidewalks upon request. 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 bid documents.
- 6.2.2 Submit a properly completed bid, which includes a bid security of \$1,000 per route bid, the telephone numbers to be used during the contract and the date by which all vehicles will be inspected. Submitting a bid obligates a bidder to provide one (1) vehicle per route awarded, plus backup equipment as specified. The bid security must be either cash, a certified or bank check or an irrevocable letter of credit on a form acceptable to the City.

If a letter of credit is used, the language must indicate that it is to be used as bid security which then converts to performance security upon contract award and is valid for the term of the contract.

- 6.2.3 Prior to award, submit evidence satisfactory to the Purchasing Agent and/or the Commissioner of Environmental Services that the contractor

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can fulfill the requirements of this contract for each route awarded. Such evidence may include, but not be limited to:

- A. Adequacy of contractor's facilities and equipment including all information necessary to comply with section 6.6 below
- 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 and retain the bid security.

6.2.4 Submit at least one (1) telephone number to be used to contact the contractor as set forth in Section 6.7. At least one (1) but no more than three (3) telephone numbers must be provided with the bid.

6.2.5 Assign in writing one (1) specific vehicle to each route and provide one (1) back-up vehicle for every three (3) routes awarded.

6.3 RESPONSIBILITIES FOR VEHICLE INSPECTIONS

6.3.1 The contractor accepts full responsibility to provide one (1) vehicle per route awarded, and one back-up vehicle for every three (3) routes awarded. All vehicles, including back-up vehicles, must be inspected.

A. The contractor must specify in the bid proposal the final date by which all vehicles will be inspected and approved by the City prior to the start of the season, which must be no later than November 16, 2016 for the upcoming season and October 30 for subsequent seasons. The contractor must assume all responsibility for arranging an inspection by the City no later than that date. Failure by the contractor to have all vehicles inspected by that date may lead to forfeiture of the bid/performance security and default of the contract. A date later than November 16, 2016 of the current plow season and October 30 for subsequent seasons will not be acceptable to the City. The contractor must allow time for repairs if the equipment does not pass the inspection. Therefore, it is strongly recommended that contractors schedule inspections as soon as possible. Inspections may be scheduled at any time after award.

B. Prior to having a vehicle inspected, the contractor must prove to the City that they own, or will have, the vehicle(s) to perform this contract, by submitting the following items to the Purchasing Agent. Upon receipt of the items listed in this section, the Purchasing Agent will issue an inspection authorization slip. The City will not perform an inspection without an authorization slip. It is the contractor's responsibility to provide the necessary documents to Purchasing so that the inspection authorization slip can be issued.

1. A Certificate of Title
 2. A current New York State Registration for full year or seasonal use. A New York State Registration which is not in effect on the date specified in the Notice of Award will not be considered as valid proof of ownership. It will not be accepted in lieu of a Certificate of Title. Vehicles used as seasonal snow vehicles must be registered for the current new plow season by the scheduled inspection date.
 3. A properly executed purchase agreement, if applicable, on a form acceptable to the City. The guaranteed delivery date must occur no later than the scheduled inspection date.
 4. A vehicle or equipment lease, if applicable, on a form acceptable to the City with a starting date no later than the scheduled inspection date and ending no earlier than the ending of that plow season.
 5. 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 16 in this contract.
 6. The contractor must state which vehicle will be assigned to each route by serial number. City ID# will be affixed to windshield of each vehicle. If no windshield, the ID# will be attached to the top right hand front of vehicle structure just behind the plow.
- C. The City reserves the right to schedule alternate inspection dates if the dates contractors choose cause an overload on the City's inspectors. The contractor must agree to be inspected at the time(s) set by the City under this condition.
- D. All inspections of the contractor's vehicles must be completed by the approved final scheduled inspection date as set per Section 6.3.1 A. Failure to have plows mounted and inspected by that date shall be interpreted as a default of the contract.
 - E. The second inspection is expected to occur in mid-winter at times to be designated by the City. This will generally occur in the last two weeks of January, depending on weather and work load conditions.
- 6.3.2 The contractor must schedule the inspections through the City's Snow Office, either in writing or by calling (585) 428-7092.

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- A. The City's Inspectors will be open for appointments from 8:00 a.m. through 2:00 p.m., Monday through Friday from October 7 and October 30.
- B. Failure to schedule an inspection or show up for a scheduled inspection shall be solely the fault of the contractor. The City will not assume any responsibility or liability for failure of the contractor to have the vehicle inspected.
- C. Inspections may be made at the bidder's facility. The contractor is obligated to assist the City in coordinating a mutually convenient time within the time parameters stated herein.

6.3.3 The contractor may not schedule the initial inspection until the Purchasing Agent has issued an authorization per Section 6.3.1 B.

6.3.4 Each vehicle at the time of inspection must fully meet all conditions set forth in Section 9 of this contract.

- A. If a vehicle does not pass the inspection the first time, the contractor may modify the vehicle and request a re-inspection or may supply another piece of equipment after submitting necessary documentation to the Purchasing Agent and receiving a new authorization.
- B. However, in no event will the contractor be given a third opportunity to pass an inspection if either the original or the replacement equipment fails the second inspection.

6.4 RESPONSIBILITIES FOR PLOWS

6.4.1 The contractor must supply a plow in excellent working condition and sufficiently sized to perform the contract at the time of the vehicle inspection. The contractor's plow must meet the specifications set forth in Section 10.

6.4.2 On any route designated by the City, the contractor will be responsible for providing a piece of equipment that will clear the snow within 3/4 of an inch of the sidewalk without marking, discoloring, or damaging any of the specialty features such as patterned concrete, patterned asphalt, benches, art work, lighting, or any other enhancements within the City's right of way.

6.5 RESPONSIBILITIES FOR EQUIPMENT AND DRIVER

6.5.1 The contractor must supply plowing equipment which is in excellent working condition and sufficiently sized and with adequate horsepower, to perform this contract, and has passed the City inspection per Section 6.3. The plowing equipment must be maintained in excellent working condition for the entire contract term. The equipment must meet all conditions set forth in Sections 9 and 10 of this specification during the entire contract period. The vehicle must also meet any and all NY State License, Registration and Safety requirements. The contractor must, upon request by the City, provide License, Motor Vehicle

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Registration, and Insurance Certificates at any time during this contract for inspection by the City.

- 6.5.2 The contractor must also supply a fully qualified, licensed and responsible driver for that equipment. The contractor must supply the name(s) of the driver(s) for each vehicle to the Snow Office at the beginning of each plow run via fax or phone.
- 6.5.3 The City reserves the right to reject and disqualify any driver with a poor history of performing this type of service. The City also reserves the right to prohibit any driver from plowing a particular run if the driver exhibits behavior which the City inspector believes will result or has resulted in unacceptable performance. The contractor will be immediately notified if the City rejects or prohibits a driver from plowing, and the contractor shall make a replacement driver available within sixty (60) minutes. Replacing a driver will fall under the same requirements as if the contractor's equipment fails, as set forth in Section 6.8.2.
- 6.5.4 The contractor shall provide a copy of the driver's license for each driver who will operate a plow during a plow run throughout the snow season.
- 6.5.5 The contractor must provide licenses for each operator prior to October 30, of the current plow season. Any drivers added during the season must have a copy of their license on file with the Snow Office before they will be allowed to operate a piece of equipment.
- 6.5.6 The City of Rochester may issue the plowing contractor a hardwired or GPS-enabled cellular phone for any or all routes awarded. If such device is capable of communicating with the City's Snow Office, then the contractor must notify the Snow Office at the start of the run and again at the end of the run using the City issued device(s). The contractor must utilize the device(s) for each route and each run from start to finish. The contractor may use the device(s) to communicate with his/her employee on snowplow-related business, if necessary. The intention for using these devices is to track plow equipment and allow the City's Snow Office Personnel to contact the contractor and view the contractor's vehicle location via computer monitors. The contractor will be financially responsible for any lost or damage of City issued communication/GPS device(s).

6.6 CONTRACTOR EQUIPMENT/VEHICLE STORAGE FACILITIES

- 6.6.1 The contractor must own or lease all equipment provided to the City and the premises from which the contractor may legally operate and perform the services required under this contract.
- 6.6.2 Each bidder must indicate on their bid whether or not the equipment on the route bid is owned or leased. If leased, and the bidder does not have a valid lease for the vehicle at the time of the bid, the bidder must indicate that the vehicle is "To be leased". If the bidder intends to own the vehicle but does not own the vehicle at the time of the bid, the bidder must indicate that the vehicle is "To be purchased".

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- 6.6.3 If the bidder indicates that a vehicle is “To Be Leased” or “To Be Purchased”, the bidder must provide satisfactory evidence of a legally binding lease or proof of purchase, no later than the date specified when all documentation must be submitted for a route per Section 6.5.6. Failure to do so by that time shall be interpreted as a default of the contract which will result in forfeiture of the bid security and termination of the contract.
- 6.6.4 A valid lease must run from the date the documentation is submitted (which can be no later than the date specified in Section 6.5.6) through at least April 15 of the following spring, unless the Purchasing Agent authorizes an earlier release date upon the approval of the Commissioner of Environmental Services.
- 6.6.5 The facility/premises from which the contractor may legally operate shall include sufficient space for the storage of all snowplowing vehicles and equipment. In the event that the premises are leased, the contractor must provide the City proof that the lease term will extend through the term of the contract. In the event that the premises owned or leased by the contractor are located outside the City of Rochester, the contractor must provide proof that the contractor’s operations, including the storage of snowplowing vehicles and equipment, are legally permitted on the premises.

6.7 RESPONSIBILITIES DURING SNOW SEASON

The snow season shall be defined as the period from October 15 to April 15, unless other dates are determined by the Commissioner of Environmental Services. During the snow season, the contractor must:

- 6.7.1 Maintain a system whereby the City can contact the contractor at a specified telephone number for 24 hours a day, 7 days a week. The contractor must supply one primary telephone number and two additional secondary numbers, but not more than three telephone numbers total (one being a cell phone) to the City for this purpose.
 - A. The City will make two (2) attempts to reach the contractor at each number supplied. However, failure of the City to reach the contractor at the specified telephone number shall not relieve the contractor of the responsibility to start plowing at the designated time.
- 6.7.2 Be prepared to start plowing each route when notified by the City.
 - A. The City will under normal circumstances allow approximately two (2) hours between notification and the start time.
 - B. Failure to start at the specified time may be cause for the City to have that route plowed by other means which will result in penalties to the contractor.
 - 1. Penalties include but are not limited to a \$150 fine and loss of payment for that run to be deducted from the guaranteed minimum and the cash flow amount. Penalties are further described in Section 13.

6.7.3 Notify the City if any equipment is out of service.

- A. If the City has been so notified prior to a call for a snow run, such notice shall relieve the contractor of the \$150 penalty for failure to start the run on time. This relief may not apply after the first missed run.
- B. The contractor must notify the City when the equipment is returned to service. Equipment must be returned to service as soon as possible.
- C. The City will plow the route by other means until the contractor notifies the Snow Office that the equipment is back in service.

6.8 RESPONSIBILITIES DURING A SNOW RUN

6.8.1 Once a snow run has been called by the City, the contractor must:

- A. Have all sidewalk plows travel on the road while enroute to their assigned plow route.
- B. Arrive at the designated meeting point at the designated start time. This will under normal circumstances be approximately two (2) hours after verbal notification by the City. However, it may be less than two (2) hours under certain conditions.
- C. Arrive with the vehicle in excellent condition, prepared to work and carrying chains, if appropriate.
- D. Plow in the designated sequence as shown in the sequence listing and on the route map. Failure to plow in the designated sequence and subsequent inability of the Snow Inspector to easily find the contractor's equipment may cause the City to presume that the run was not started. In that case, the City may have the route plowed with other equipment and the contractor will be subject to penalties for not starting a run on time.
- E. Plow to the standards set forth in Section 11.
- F. The contractor's driver must meet the city's inspector and sign the inspector's report when the route is completed. This action does not relieve the contractor from remedying sections of his route that were skipped or not plowed to City specifications.
 - 1. If the inspector is not present when the route is completed, the driver must notify the Snow Office that the route is completed.
 - a. The driver, unless instructed otherwise by the Snow Office, must stay at the designated location for the sign-off.

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- b. The City will make every effort to have an inspector arrive at the sign-off location within thirty (30) minutes, if applicable.
 - c. If the inspector or supervisor has not met the driver within forty-five minutes of the call to the Snow Office, the driver should call the Snow Office and will then be released. However, except in the case of being released after forty-five minutes, failure to obtain sign-off by the inspector may lead to forfeiture of payment for that route, when requested.
- G. In the event of back-to-back runs, the driver must obtain sign-off for completion of the first run from the City's inspector.
- 6.8.2 In the event that a contractor's equipment breaks down during a run or there is an accident, he must immediately notify the Snow Office and put the equipment back into operation within sixty (60) minutes. If it has not returned to service within sixty (60) minutes, the City may take over completion of the route. In this event, the contractor shall be paid only for that portion of the route satisfactorily completed, and which the City's snow inspector has approved for payment.
- 6.8.3 A route shall not be satisfactorily completed unless it meets the standards set forth in Section 11, as witnessed and acknowledged by the City's snow inspector. If there are portions of the route which were not satisfactorily plowed, the contractor must correct the problems immediately upon notification by the snow inspector or Snow Office.
- 6.8.4 The City has the right to call the contractor back within twelve (12) hours of completion of the route for the purpose of plowing any sidewalks that were skipped or as a result of not meeting plowing specifications.
- A. The contractor is required to return with plow and driver at the location provided by the snow office or inspector within one hour of notification.
 - B. All remedial plowing must be approved by the inspector and signed off by the driver and City inspector before the driver has left the route.

6.9 RESPONSIBILITIES DURING A SEVERE SNOW EMERGENCY

By submitting a signed Proposal, the contractor is thereby certifying that his equipment and drivers will be made available to the City on a per-hour basis.

- 6.9.1 The hourly rate will be determined by dividing the per-trip price of the replacement tractor's assigned route by a factor of 5. The factor of 5 is representative of the approximate number of hours it takes to complete a sidewalk route.
- 6.9.2 Plowing under the hourly rate shall be subject to all other terms and conditions of this contract.

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6.9.3 The decision of which contractors are called for emergency work shall be at the sole discretion of the Director of Operations. As a general rule, contractors with tractors will be called to plow routes during times of abnormal snowfall and conditions.

6.10 RESPONSIBILITIES TO RECEIVE PAYMENT

6.10.1 In order to receive payment for a snow run or a cash flow guarantee, the contractor must submit a completed claim voucher to the Director of Operations.

6.10.2 The City will not pay for any run which has not been authorized by the appropriate City officials and subsequently signed off as complete by the City's snow inspector. Partial payments will be calculated by the Director of Operations on a pro-rated basis.

6.10.3 The cash flow guarantee will be payable on the following schedule:

- A. \$1,000 upon satisfactory completion of inspection;
- B. \$1,600 on December 15; \$1,600 on January 15; and
- C. Whatever balance is required to reach a total minimum payment of \$5,000 for the season shall be billed at the end of the season.
- D. The City will retain the cost of one (1) trip from the amount to be paid at the end of the season until all damages are repaired.

6.10.4 Contractors should submit invoices for the cash flow guarantees on the dates specified in Section 6.10.3, or for the amount actually earned, if that exceeds the cash flow guarantee schedule.

A. The City will adjust any invoices to reflect cash flow guarantees or invoices for services paid to date.

B. For example, if the contractor has billed for and/or been paid \$4,200 by January 10, the City will not pay a cash flow guarantee of \$1,600 on January 15, since the contractor will have already earned and billed for \$4,200 by that date.

6.10.5 The minimum cash flow guarantee will be reduced by any amount for which the contractor has been penalized for nonperformance.

A. For example, as of December 15 the contractor can expect to be owed at least \$2,600, which represents the first two cash flow payments. However, if the contractor has missed a trip and been assessed the \$150 penalty, then the cash flow guarantee will be \$2,600 less the trip price less \$150.

6.10.6 The cash flow guarantee does not represent an amount to be paid in addition to payment for services actually rendered. It is intended solely to

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insure that the contractor receives at least \$5,000 (less penalties) in one snowplowing season.

6.11 NON-DISCRIMINATION

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

- 6.11.1 To hire employees without regard to age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status.
- 6.11.2 That he, and any person on his/her 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.
- 6.11.3 That this contract may be cancelled 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 this section of the contract.

6.12 RESPONSIBILITIES FOR DAMAGES

6.12.1 The contractor is liable for damages done to sod, shrubbery, trees, and structures caused by the contractor performing this contract. The contractor must repair all damage for which the contractor is liable as determined by the Director of Operations. The City's intent is, wherever possible, to have damage claims reviewed by the Director of Operations and presented to and discussed with the contractor prior to assigning liability to the contractor. All damage covered by claims filed on or before April 1 must be repaired by May 1. All claims filed after April 1 must be repaired within fifteen (15) days of notification.

A. Damage to lawn: Rolled sod must be set back in place and/or removed as soon as possible following a plow run, pending weather and soil conditions and/or at the time of the notification of the City or citizen's request.

6.12.2 Damages to windows, trap doors, and other items which cause a safety hazard must have temporary repairs made immediately and permanent repairs within forty-eight (48) hours of notification. Damages to automobiles and auto accidents must be reported immediately to the inspector or the Snow Office.

A. Damage to specialty (patterned, colored, etc.) sidewalks within Sidewalk Routes 1, 46, and 47 must be repaired using like materials to the full depth of the sidewalk. Full sections of sidewalk will be removed and replaced as necessary to match existing patterns and joints. All repairs must be repaired to the satisfaction of D.E.S. Sidewalk Engineering.

- B. Damage to art work shall be repaired to the satisfaction of the Commissioner of Environmental Services.
- C. Damage Repairs/Reimbursement - Special Items

Any damage done to patterned sidewalks will be full depth repairs, patching will not be allowed, damage to benches, art work, lighting shall be repaired or if necessary, reimbursed to cover all costs of replacement to the satisfaction of the Commissioner of Environmental Services or the designated representative.

- 6.12.3 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 Snow Office 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 in Sections 6.12.1 and 6.12.2. For automobile repairs, the contractor must supply the City with written proof that the claims have been addressed by the contractor.
- 6.12.4 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.
- 6.12.5 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 time frame outlined in 6.12.1 and 6.12.2 will cause the City to proceed to take action against the performance security and other amounts due to the contractor.
- 6.12.6 If there are no outstanding claims at the end of the contract term and the contractor has satisfactorily repaired all damages, the Director of Operations may authorize release of the performance security, after which it will be returned to the contractor upon request or held upon approval of the contractor for an extension of the contract for the following season.

6.13 RESPONSIBILITIES TO COMPLETE THE CONTRACT

- 6.13.1 In order to obtain release of the performance security, the contractor must have:
 - A. Repaired all damages
 - B. Obtained the Director of Operation's sign-off that all contract obligations are complete.

6.14 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.

7. RIGHTS OF THE CITY

- 7.1 Since sidewalk 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 routes in future contracts, or default proceedings.
- 7.2 The contract may be terminated or suspended upon recommendation of the Commissioner of Environmental Services 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 Commissioner of Environmental Services or his authorized representative
 - 7.2.6 Failed to perform properly on any route 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 Commissioner of Environmental Services and his authorized representatives. The contractor shall only be paid for services authorized by the Commissioner and performed in a manner satisfactory to the Commissioner and his authorized representatives.
- 7.4 If the contractor's equipment fails, at any time, to meet the approval of the Commissioner of Environmental Services, the Commissioner's authorized representative will have the right to order such equipment off the job.

- 7.5 Should the Commissioner of Environmental Services or his authorized representative notify the contractor that any contractor's employee is insolvent, 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 Commissioner of Environmental Services or an authorized representative 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 of the Commissioner of Environmental Services or his authorized representative as to the suitability of equipment or employees shall be final.
- 7.8 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 route.

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 at times mutually agreed upon with the contractor.
- 8.3 Provide as much lead time as possible when calling for a run. In general, the City will give approximately a two (2) hour notification unless there is the need for back-to-back runs or immediate runs due to severe conditions.
- 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 route.
- 8.5 Maintain a switchboard around the clock during snow emergencies, and maintain a log of calls between the City and the contractor. The dispatcher will place calls for service, coordinate inspectors and sign-off vehicles where appropriate as quickly as possible.
- 8.6 Make payment within thirty (30) days of receipt of a properly executed invoice. 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.

- 8.7 Guarantee a minimum payment of \$5,000 per route to the contractor during this contract period in accordance with Section 6.10.

8.7.1 If disputes due to performance arise between the time of billing and the time of paying the minimum guarantees, the City reserves the right to withhold payment on the minimum.

8.7.2 If a contract is terminated prior to payment of a minimum guarantee, the City reserves the right to cancel this minimum guarantee provision and withhold payment of any amounts due.

8.7.3 The minimum cash flow guarantee will be reduced by any amount for which the contractor has been penalized for nonperformance, as specified in Section 6.10.5.

9. EQUIPMENT SPECIFICATIONS – VEHICLE

9.1 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.

9.2 The City reserves the right to reject any equipment that does not pass City-administered inspections and road tests and comply fully with this specification at any time during the term of the contract.

9.3 The bid price shall include the cost of furnishing the operator, insurance, repairs, operating expendables, chains, fuel, lubricants and all other costs related to the services specified hereunder.

9.4 Jeeps and other similar vehicles are not acceptable. The vehicle must have adequate horsepower to perform this contract, with a track not exceeding the width of the plow blade.

9.5 The contractor must have each vehicle prepared to pass the City inspection at the time agreed for the inspection. Inspection will include, but not necessarily be limited to the following items:

9.5.1 Engine must be smooth running at both high and low rpm's.

9.5.2 Hydraulic equipment must be in good working order to raise and lower plow assembly. Non-tractor equipment must have the ability to apply down pressure to the plow.

9.5.3 Condition of plow must be in excellent condition.

9.5.4 Plow vehicle shall have no leaks: motor oil, hydraulic oil, water.

- 9.5.5 Plow vehicle must have an operable horn.
- 9.5.6 Plow vehicle shall have working lights, front and rear that meet N.Y.S. D.O.T. specifications.
- 9.5.7 Plow vehicle must be capable of stopping within a safe operating distance.
- 9.5.8 Check clutch under engine load to check for slippage.
- 9.6 Equipment supplied for this contract must be able to meet all requirements set forth in Section 9 and 10 at all times.

10. EQUIPMENT SPECIFICATIONS - CONTRACTOR'S PLOW

For each motorized piece of equipment furnished, the contractor shall furnish one (1) "V" type plow as follows:

- 10.1 Maximum width shall be 58" at the bottom of the plow blade.
- 10.2 Minimum width shall be equal to or greater than the track of the motorized equipment.
- 10.3 Minimum height shall be twenty-eight inches (28").
- 10.4 Straight and true metal plow blades and cutting edges.
- 10.5 An override nose piece and plow shoe set to keep the blade (cutting edge) 3/4" above the sidewalk.
- 10.6 The "V" plow shall be made of metal with sufficient strength to properly remove the snow in an efficient manner.

11. SNOWPLOWING SPECIFICATIONS

- 11.1 The contractor shall be totally responsible for cleaning all sidewalks within the entire route, including drifts.
- 11.2 The City will furnish a plowing sequence and route map to the contractor listing the order in which the sidewalks shall be plowed. This sequence of plowing must then be adhered to unless the contractor submits a letter to the Director of Operations 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 route sequence.
- 11.3 Report at start of route at designated time.

SIDEWALK SNOWPLOWING, 2016-2017 SEASON, 2ND ROUND – ROUTE 37

- 11.4 Plow sidewalks in exact order shown on the maps and route sequence maps.
- 11.5 Do not turn around in private drives.
- 11.6 Preferred speed is that speed which will most effectively clean the sidewalks and prevent damage, as determined by existing conditions.
- 11.7 A tractor must be operated with its plow hoist chain loose so that the full plow weight rides on shoes and runners to adequately clear the sidewalk within 3/4 of an inch.
- 11.8 A Bombardier (track vehicle) plow must be operated with down pressure to adequately clear the sidewalk within 3/4 of an inch.
- 11.9 Keep all lights on while plowing.
- 11.10 Raise plow blade sufficiently to clear all railroad tracks and traffic signal detector pads.
- 11.11 Since a route 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 route.
- 11.12 The contractor should do whatever is necessary within the scope of this contract to properly clear the route of snow prior to declaring the route complete.
- 11.13 Report to the Snow Office immediately.
 - 11.13.1 If you cannot start plowing at appointed time.
 - 11.13.2 If equipment breaks down while plowing.
 - 11.13.3 If any sidewalk cannot be plowed and why.
 - 11.13.4 If any damage is done to other vehicles or property.
 - 11.13.5 At completion of route.
- 11.14 If sidewalk is blocked and cannot be plowed for any reason, the contractor's operator shall make every attempt to bypass the blockage. If unable to bypass the blockage, the contractor's operator shall immediately notify the Snow Office of the blockage. If the blockage is removed within a reasonable time, the contractor's operator will then plow the sidewalk.
- 11.15 The contractor shall use a figure-eight type pattern of plowing two intersecting sidewalks rather than make a right angle turn from one intersecting sidewalk to another, e.g., a sidewalk is to be plowed all the way out into the street and the plow is then to turn into the intersection approaching the right angle sidewalk from the street crossing the sidewalk just plowed, and continuing on at a 90° angle from the sidewalk previously plowed.

12. PERFORMANCE RATING

- 12.1 The contractor's performance shall be rated for each trip by an inspector or supervisor using a standard performance report form. The standard form will be distributed to contractors prior to the start of the snow season to familiarize them with the method of evaluating performance.
- 12.2 Failure to perform a run and receive a satisfactory rating shall result in penalties set forth in Section 13.

13. LIQUIDATED DAMAGES, PENALTIES AND PROCEDURES

- 13.1 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. Liquidated damages shall not exceed the City's reasonable costs of completing these contractual requirements. 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.
- 13.2 Failure to provide the services required in this contract may lead to imposition of progressive penalties.
- 13.3 Penalties involving fines and/or partial payments and/or limiting routes will be imposed by the Commissioner of Environmental Services and will depend on the severity of the failure, the frequency of the failure, and other circumstances.
- 13.4 The contractor will be notified in writing of any penalties imposed by the Commissioner.
- 13.5 If a penalty is imposed by the Commissioner, the contractor may appeal by presenting additional facts to the Commissioner. 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 Commissioner's letter notifying the contractor of the penalty. The Commissioner will schedule the appeals hearing, if requested. Failure to request an appeal within five (5) days will indicate full acceptance of the Commissioner's determination.
- 13.6 After reviewing the appeal, the Commissioner will make a final determination, which is not subject to further appeal.
- 13.7 A finding of default will be declared 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.
- 13.8 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.

13.8.1 Failure to Complete Contract Award Requirements

By submitting a completed bid, the contractor acknowledges responsibility for fulfilling all contract obligations, including award requirements, if awarded a route. If a contractor fails to comply with any of the requirements of Section 6.2 and 6.3, the contractor will forfeit the bid security for the affected route and the route 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 routes during the term of the contract and/or pursuing damages which result from the City's inability to obtain a replacement contractor at the same price.

13.8.2 Failure to Complete Vehicle Inspection Requirement

Possible Penalties:

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

13.8.3 Failure to Complete a Run

Possible Penalties:

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

13.8.4 Failure to Start a Run at the Designated Time

Possible Penalties:

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

F. Default of contract

13.8.5 Failure to have Chains (Tractors)

Possible Penalties:

- A. \$150 fine
- B. No payment for the route
- C. Cancellation of contract for that route

13.8.6 Failure to Perform a Run Satisfactorily

Possible Penalties:

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

13.8.7 Failure to Respond to a Call-back

Possible Penalties:

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

13.8.8 Failure to Repair Damage to Sod, Trees, Structures

Possible Penalties:

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

13.8.9 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

14. FINAL PAYMENT

- 14.1 The contractor must bill for any remaining balance by May 15 of the current contract year.
- 14.2 The City will retain payment for the last trip of the year until all contractual requirements have been met.

15. 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.

- 15.1 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.

15.2 BID/PERFORMANCE SECURITY

The bid/performance security of \$1,000 per route will be retained by the City if an extension is offered, and held over from year to year as needed. The City will not pay any interest on bid/performance securities held.

15.3 PRICE PER TRIP, CASH FLOW GUARANTEE AND HOURLY RATE

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 such as changes to the insurance requirements per Section 16.1.4. The price change will typically be a percentage price change, to be applied to all routes. The City reserves the right to make slight rounding adjustments up or down to determine trip prices to the nearest dollar, or to make other route specific adjustments for factors unique to individual routes.

- 15.5 Extensions will be offered on the basis of the same equipment being used. If the contractor proposes to use different equipment and/or plow arrangement, he/she must notify the City prior to accepting the extension. The City reserves the right to withdraw any offer of extension if the proposed changes are unacceptable to the City.

16. INSURANCE AND BID/PERFORMANCE SECURITY REQUIREMENTS

16.1 The insurance requirements for the Current Plow 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 Motor vehicle insurance policies for the equipment used for plowing must be in effect from at least October 15 through April 15 of the following year, or longer if the snow season is extended by the Commissioner of Environmental Services. Workers Compensation and Disability Insurance and Contractor's Comprehensive General Liability insurance must be in effect from October 15 through June 30, or until the Snow Office verifies that all contractual requirements have been met. **INSURANCE CERTIFICATES MUST PROVIDE CONTINUOUS COVERAGE WITH NO GAPS BETWEEN THE DATES SPECIFIED.**

16.1.3 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 the contractor 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. Insurance coverage must be provided for the time periods specified in Section 16.1.2. 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 services specified. 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. 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

C. 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

16.1.4 If City insurance requirements are changed in future bids or contract extensions, the City will require all contractors in an extension of this contract to provide insurance that meets the new City requirements. The City reserves the right to negotiate changes in the per-route bid prices for any extension to reflect any increased costs to the contractors as a result of such changes in the insurance requirements.

16.2 BID SECURITY - MUST BE SUBMITTED WITH THE BID

16.2.1 The bid security for this contract is \$1,000 per route multiplied by the maximum number of routes specified by the Contractor in the Proposal. 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.

16.2.2 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 this specification, 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.

16.3 PERFORMANCE SECURITY. 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.

17. REVISIONS TO CONTRACT

The City reserves the right to add to, delete or modify the terms and conditions of this contract in order to provide for the public safety. Such changes shall be consistent with the types of services and service levels stated in this specification. Such changes may be made on a route-by-route basis, or for some or all of the contracts entered into as a result of the bid for this contract.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

18.1 The contract resulting from this bid shall be subject to the requirements of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) is responsible for developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). The Prohibited Entities List as required by SFL § 165-a (3) (b) is found on the OGS web site at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

18.2 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 thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

18.3 Any bidder/contractor seeking to renew or extend this contract or assume the responsibility of the contract awarded in response to this bid solicitation must certify at the time the contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

18.4 During the term of the contract or any extension, should the City receive information that the contractor is in violation of the above-referenced, the City will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the City shall take such action as may be appropriate including, but not limited to,

imposing sanctions, seeking compliance, recovering damages or declaring the contractor in default.

- 18.5 The City reserves the right to reject any bid or request for assignment for a bidder/contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any bidder/contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

19. BIDDER IDENTIFICATION DOCUMENTS

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

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

20. 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:

- 20.1 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.
- 20.2 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.
- 20.3 No attempt has been or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

PROPOSAL

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 Sidewalk 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 route 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, in accordance with Section 6.3.1.
6. Be sure to state type of vehicle: either Tractor/Rubber tire **or** Track Vehicle. Only bid one type or the other. **Failure to show type of vehicle offered on the route will result in rejection of Bid**
7. You may bid on all or any number of routes. The number of routes awarded will be no more than the number entered above.
8. One (1) Back-up vehicle is required for every three routes awarded. (per Section 6.2.5)
9. A Bid/Performance Security is not required for back-up vehicles.
10. Be sure to complete Bid Proposal either typed or printed in ink. No exceptions

DO NOT USE FOR OFFICIAL SPEC

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.

SECTION 1.

Enter the maximum number of routes for which I am ready, willing, and able to provide snowplowing services in accordance with these specifications is _____ routes.

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

SECTION 2.

ENTER BELOW THE DOLLAR AMOUNT OF YOUR BID IN THE APPLICABLE COLUMN ONLY ENTER ONE TYPE OF EQUIPMENT PER ROUTE:

| <u>Route #</u> | <u>Price Per Trip</u> | <u>Tractor/Rubber Tire or Track Vehicle</u> |
|----------------|-----------------------|---------------------------------------------|
|----------------|-----------------------|---------------------------------------------|

Failure to show type of vehicle will result in rejection of Bid.

37 \$ _____ Type: _____

Equipment is (check one): ~~Currently~~: Owned ___ Leased ___ To Be: Purchased ___ Leased ___

NON-OFFICIAL SPEC
DO NOT USE

Authorized Signature

Typed Name and Title of Authorized Signer

Typed Name of Company
(Continued through Page 36)

BACKUP VEHICLES TO BE PROVIDED (ONE PER THREE ROUTES BID):

Vehicle 1: Type: _____

Equipment is (check one): **Currently:** Owned ___ Leased ___ **To Be:** Purchased ___ Leased ___

SECTION 3.

ENTER BELOW THE TELEPHONE NUMBER(S) FOR CONTRACTORS:

PRIMARY TELEPHONE NUMBER: 1. _____

SECONDARY TELEPHONE NUMBER: 2. _____

CELL TELEPHONE NUMBER: 3. _____

SECTION 4.

ENTER BELOW THE DATE BY WHICH THE CONTRACTOR TO HAVE ALL VEHICLE INSPECTED AND APPROVED BY THE CITY PER SECTION 6.3:

DATE: _____ (mm/dd/yy)

SECTION 5.

STORAGE FACILITY LOCATION:

SECTION 6 (LIST REFERENCE PER SECTION 6.2.4).

REFERENCES:

1. _____

2. _____

3. _____

Authorized Signature

Typed Name and Title of Authorized Signer

Typed Name of Company
(Continued through Page 36)

PROPOSAL

PRINT OR TYPE THE FOLLOWING INFORMATION:

Name of Firm or Corporation

Street Address

City State Zip Code

Telephone No./Fax No./Cell 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.: 428710 Contract Term: **TERM, ONE YEAR, WITH OPTION TO EXTEND:**

Purchasing Agent

Date



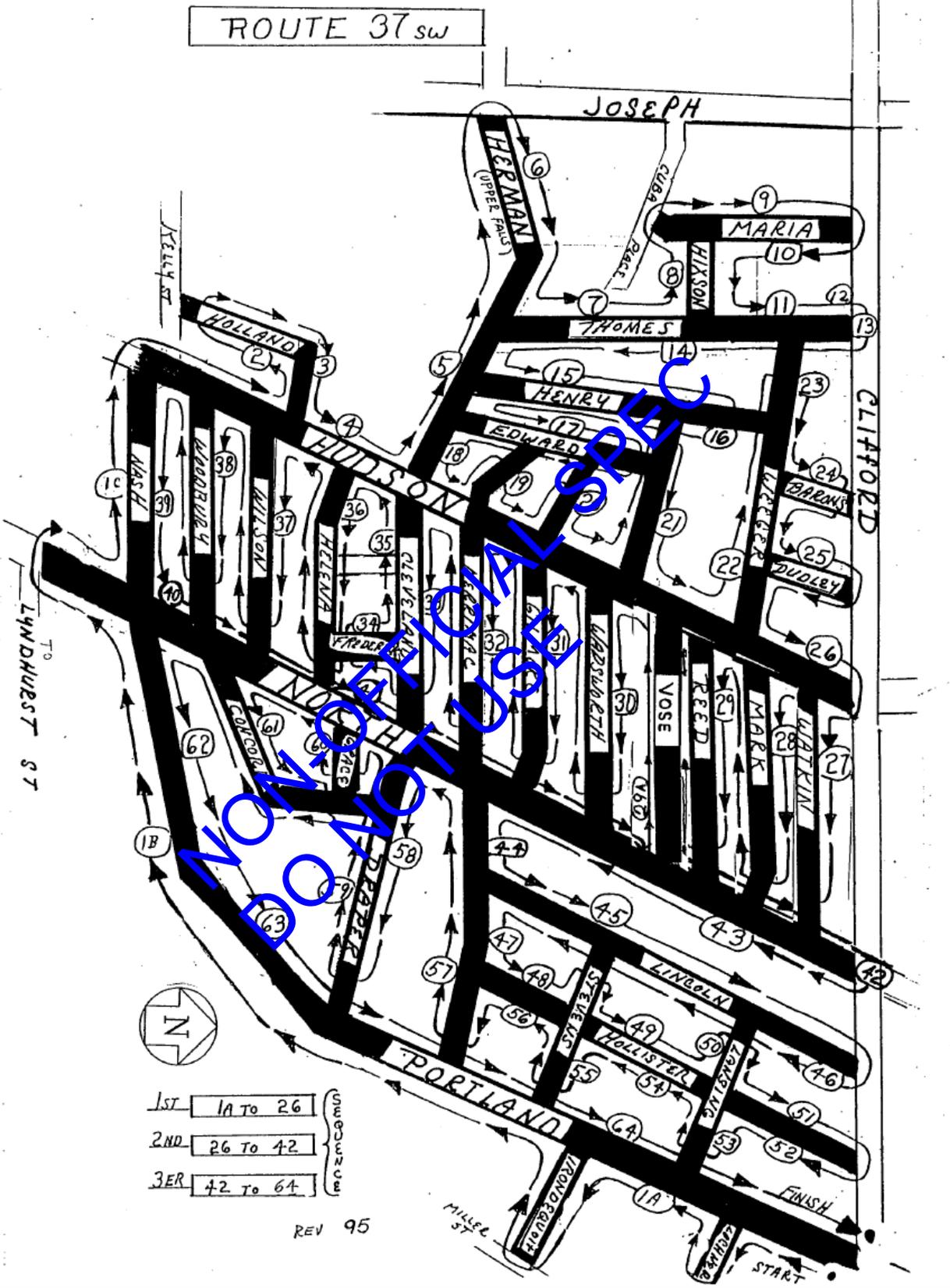
SIDEWALK SNOWPLOWING

APPENDIX "A"

ROUTE MAPS

NON-OFFICIAL SPEC
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SIDEWALK SNOWPLOWING, 2016-2017 SEASON, 2ND ROUND – ROUTE 37





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 the 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 cuts 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 in 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 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.