



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

EMERGENCY FENCING AND GATE REPAIR SERVICES

Invitation to Bid No.428870

Issued: December 12, 2016

PURCHASING BUREAU CONTACT: Roslyn Phillips, Purchaser, (585) 428-7042

BID CLOSING: Wednesday December 28, 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 closing, 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 appear immediately following this title page and are incorporated into the bidding document and contract by reference.

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

Type of Contract: **TERM CONTRACT, SIX MONTHS WITH OPTION TO EXTEND**

Bid Deposit Requirement: **YES, SEE SECTION 15.**

Performance Security Requirement: **YES, SEE SECTIONS 15 & 16.**

Insurance Requirement: **YES, SEE SECTION 13.**

Samples Requirement: **NONE**

Descriptive Literature/Technical Data Requirement: **NONE**

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



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1. SCOPE

- 1.1 The City of Rochester is seeking to establish a contract with a Contractor who can provide rapid repair and/or replacement services for fences and gates owned or controlled by the City of Rochester at various buildings or facilities owned, rented, leased or otherwise controlled by the City, or at any other location as ordered by the City as required to meet the needs of public safety.
- 1.2 Because these services are required in order to provide for the public safety, bidders must meet the qualifications and be able to demonstrate the ability to meet the service requirements specified herein.

2. CONTRACT TERM

- 2.1 The contract resulting from this bid invitation shall commence on the date of contract award and end on June 30, 2017.
- 2.2 The contract may be extended for periods of six (6) months or less, up to June 30, 2019, under the same terms and conditions upon mutual agreement of the contracting parties.
- 2.3 The Margin Amount in dollars must remain the same during any extension of the contract. The Hourly Labor Cost to the City will change if the NYSDOL Wage Rate changes.
- 2.4 This is a non-exclusive contract. The City reserves the right to request separate bids and enter into separate concurrent term services contracts and/or individual Type 1 Exhaust Hood furnish and install contracts if doing so is in the best interest of the City.

3. GENERAL DESCRIPTION OF THE CONTRACT

- 3.1 The intent of the contract is to establish a contract primary with a responsive and responsible Contractor who will respond to and initiate repairs to fences and gates for which emergency repairs are needed in order to preserve and protect City property and ensure the public safety. The decision about what constitutes an emergency to be repaired by this Contractor shall be determined solely by the City of Rochester. These services may be requested for any location within the city proper, as well as any City of Rochester facilities located outside the city limits, such as but not limited to Water facilities in Hemlock, New York.
- 3.2 Should the City determine the need for the services of this contract, the City will notify the Contractor at the emergency contact number provided by the Contractor. The Contractor must respond within two hours. The Contractor must have repair technicians on site to address the problem within the time-frame specified by the City. Typically this time frame will be 24 hours or less. Prior to

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the start of the work, the Contractor must provide the designated City representative with a repair estimate per Section 9.

- 3.3 The actual types of repairs needed cannot be predicted. The City reserves the right to request the Contractor to perform any services that fall within the general scope of the work specified herein. However, in general, based on past experience, these types of services will include the following:
- 3.1.1 Repair or replace sections of chain link, wooden or custom decorative fencing.
 - 3.1.2 Repair or replace fence gates of various construction types, from chain link fence to special custom designed decorative gates. These may be electrically operated or manual. They may be swing gates, roller gates, drop gates or barrier gates. Repairs may include repair of the electrical and/or mechanical gate system(s) to get the gate functioning properly.
 - 3.1.3 Repair or replace other perimeter barriers such as bollards, posts or railing as requested by the City.
- 3.4 The scope and quantity of work to be done during a six month contract term cannot be predetermined. Based on historical experience, the amount of work for a six month term is likely to be in the range of \$25,000, however, it could be substantially more or less than that amount. The City makes no guarantee about the amount of work that will be requested under this contract. Actual work will be as requested and approved by authorized City representatives and based upon purchase orders issued for each job.
- 3.5 The administering agency and primary user of this contract will be the Division of Building Services. No other departments or division may utilize the contract without the prior authorization of the Building Services Division.
- 3.6 The Contractor shall provide all labor, transportation, equipment and materials to make the repairs requested. A price quote must be provided per Section 9.
- 3.7 The City will issue a purchase order on a job-by-job basis based upon the accepted estimate for the job for labor, materials and equipment as specified in Section 9. Only work authorized by purchase orders will be paid by the City under this contract.
- 3.8 The City of Rochester Standard Construction Contract Documents dated November, 1991, and subsequent published modifications, are hereby incorporated by reference into this contract. All terms and conditions of the Standard Construction Contract Documents shall apply except as superseded by these bid documents and specifications. The Standard Construction Contract Documents may be purchased from the City of Rochester Bureau of Purchasing, Rm 105A, City Hall, Rochester, NY 14614, or may be obtained at the City's web site at <http://www.cityofrochester.gov/article.aspx?id=8589949335>

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4. MATERIALS AND EQUIPMENT

- 4.1 Unless otherwise requested by the City, the Contractor shall provide all materials, equipment and accessories as specified to meet the requirements of the job and bill the City at the actual Contractor cost. All materials shall be itemized on the job estimate and must be shown separately on the bill submitted to the City. The receipt for the amount billed to the Contractor by a supplier must accompany all invoices. The City reserves the right to audit the Contractor's records to determine that items were billed at the Contractor's cost. The City expects Contractor's cost to mean list, less the Contractor's discount. Overcharges shall be deducted by the City from amounts due the Contractor.
- 4.2 The City reserves the right to purchase materials, equipment and/or accessories and provide them to the Contractor for use on the job if doing so is in the best interest of the City. The Contractor shall not bill the City for the cost of any items supplied by the City.
- 4.3 All materials, equipment and accessories provided by the Contractor shall be new and unused unless otherwise specifically approved by the City in advance. The City reserves the right to reject any material, equipment or equipment manufacturer and to require the Contractor to provide items that are acceptable to the City.
- 4.4 Tools and equipment normally required to perform the work of this contract shall be incorporated into the Margin Allowance bid. Appendix A lists specific tools and equipment that at a minimum are to be incorporated into the Margin Allowance. The City will pay for the purchase or rental of specialized tools and equipment not covered by the Margin Allowance only if they are identified in the initial job estimate approved by the City and consistent with market pricing. Any equipment purchase or rental which may be required shall be billed at the Contractor's actual cost. A receipt for the amount billed to the Contractor must accompany all invoices.

5. HOURLY RATES

- 5.1 The Contractor shall be paid for the number of hours actually worked times the hourly rates in the Proposal. The total paid for labor must match the job estimate unless the City has approved changes to the job estimate subsequent to the start of the work. Overtime charges will not be paid unless the use of overtime has been specifically approved by the City prior to the overtime work.
- 5.2 Regular time rates shall be defined as the hourly rate plus fringe benefits up to and including forty hours per week, eight hours per day.
- 5.3 Overtime rates shall be defined as follows:

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- 5.3.1 The specified rate for time and one half after eight (8) hours per day and on Saturdays with benefits paid at regular time.
- 5.3.2 Double the specified hourly rate on Sundays and holidays with benefits paid at regular time.
- 5.4 Travel time shall not be allowed on regular time; however, the City shall pay an amount equal to twenty minutes one way on overtime.

6. WORK ASSIGNMENTS

- 6.1 Work assigned will be project specific. There may be projects that require single and/or multiple workers and/or specialized tools or equipment. These must be identified in the job estimate.
- 6.2 The City expects the work to be performed in as efficient and economical a manner as possible. To this end, apprentices should be used as appropriate whenever a project requires an additional worker.

7. PERMITS AND DRAWINGS

- 7.1 The Contractor shall obtain required permits for all work at the Contractor's expense.
- 7.2 All work shall be done in accordance with the New York State Building Code, laws, ordinances and other applicable regulations.
- 7.3 Contractor shall provide record drawings showing all new work as constructed when requested. The Contractor shall transfer record drawing information to the authorized City representative.
- 7.4 Record drawings must be approved by the City in order for the work to be considered complete.

8. BIDDER QUALIFICATIONS

- 8.1 A bidder must be able to demonstrate, to the satisfaction of the City, that the bidder is able to meet the following minimum qualifications:
 - 8.1.1 Performance record - must have five (5) years as a commercial fence company with demonstrated experience in performing the type of work specified herein.
 - 8.1.2 A fully stocked parts, dispatch and repair center must be located within a twenty-five (25) mile radius of the City of Rochester. The City reserves the right to visit and inspect the dispatch and repair site.

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- 8.1.3 Must provide proof of comparable size commercial projects and service capabilities.
- 8.1.4 Must have the capability of managing multiple jobs simultaneously.
- 8.1.5 Must be able to present satisfactory proof of its capacity to meet the terms of this contract including, but not limited to: length of time in business (minimum five years), appropriate staff, inventory and equipment and financial resources. In particular, a bidder must be able to demonstrate:
 - 8.1.5.1 A track record demonstrating the ability to respond within two (2) hours 24/7/365,
 - 8.1.5.2 Control of a truck mounted mobile crane for repairs to heavy gates and fences,
 - 8.1.5.3 Staff with demonstrated experience and qualifications to perform structural welding.
 - 8.1.5.4 Staff with demonstrated experience and qualifications to perform line voltage and low voltage trouble shooting and installation,
 - 8.1.5.5 Staff with demonstrated experience and qualifications to perform trouble shooting and installation of gate and door operators and associated controls.
 - 8.1.5.6 A fleet (three or more) of fully stocked company vehicles to respond to requests for services for this contract.
- 8.1.6 The City reserves the right to inspect the bidder's facilities and/or request three (3) or more references to verify the bidder's capacity to meet the service requirements of this contract.

9. WORK REQUESTS AND JOB ESTIMATES

- 9.1 Requests for specific work covered by the scope of this contract may be made, either orally or in writing, by authorized City officials. The Contractor shall submit a job estimate to the requesting agency, prior to the start of work. The job estimate shall be provided in writing unless the job must be started immediately based upon a verbal estimate. A written confirmation of the verbal job estimate must be provided to the City as soon as possible after the start of the job.

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- 9.2 A separate City Purchase Order will be issued for each job, in the amount of the job estimate approved by the City. The City will only pay the amount of the purchase order unless the City approves change orders based upon unanticipated requirements of the job.
- 9.3 Estimates shall be developed by the Contractor based upon an inspection of the work required and discussion with city representative authorized to approve the job. The estimate must show all costs, including man hours projected, total labor costs and all material, equipment and accessories that apply to the job. The estimate must also provide the time frame for start and completion of the job.
- 9.4 The Contractor must not proceed unless specifically directed to do so by the authorized City representative after approval of the job estimate.
- 9.5 If the estimate is not acceptable, the City reserves the right to:
- 9.5.1 Negotiate lower costs by providing materials, changing the scope of the work, or taking other reasonable steps.
 - 9.5.2 Seek a separate job estimate from another Contractor, and award the job to another Contractor.
 - 9.5.3 Seek separate public bids for the specific job.
 - 9.5.4 Should the estimate still be unacceptable, the agency can cancel the request.
- 9.6 The City will not be liable to pay amounts in excess of the written estimate unless such additional amounts are expressly agreed to by the ordering agency.

10. SCHEDULE OF WORK

Installation work must be performed by the Contractor on the schedule as accepted by the City per the job estimate required in Section 9.3. Failure to perform work in a reasonable time, as arranged between the City and the Contractor based on the estimate, will be grounds for terminating this contract and declaring the Contractor in default.

11. LABOR STANDARDS REQUIREMENTS

11.1 COMPLIANCE WITH LABOR LAWS

- 11.1.1 The Contractor's attention is directed to the requirements of Sections 220 and 220-a through 220-e of the Labor Law of the State of New York, compliance with the provisions of which shall be deemed a condition to the satisfactory performance of this contract.

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11.1.2 The Contractor shall cause to be posted and maintained at all times in a conspicuous place at the Site of the Work, a clearly legible copy of the Schedule of Wage Rates as prescribed by the State Commissioner of Labor. The Contractor shall further certify on any statement to the City for a partial or final payment that the wage rates paid to employees on this project have been in conformity with the wage rates set forth as determined by the State Commissioner of Labor pursuant to and in conformity with Section 220 of the New York State Labor Law.

11.1.3 The Contractor shall keep a copy of his payrolls for this project available at all times for inspection by representatives of the City or other public agency having jurisdiction over the project, and shall produce them for such inspection at the request of said duly authorized representatives. The Contractor and sub-contractors shall submit weekly certified payroll records to the Project Manager for transmission to the City's Director of Finance or his designee. The Contractor shall be responsible for the submission of copies of certified payrolls of all sub-contractors. Payments shall be withheld from the Contractor for failure to comply with this requirement.

11.1.4 In all operations related to the Work, all other State or Federal Laws, Local Ordinances and Laws controlling or limiting in any way the actions of those engaged in the Work, shall be strictly complied with by the Contractor and all employees working under his direction. The foregoing shall apply to subcontractors of the Contractor.

11.2 ANTI-KICKBACK RULES

Employees of the Contractor and his subcontractors performing work under this contract shall be paid unconditionally and not less often than once a week without deduction or rebate on any account, except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the State Commissioner of Labor pursuant to the New York Labor Law. The Contractor shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by subcontractors with such regulations, and shall be responsible for the submissions of affidavits required of subcontractors thereunder except as the Commissioner of Labor may specifically provide for variations of or exemptions from the requirements thereof.

11.3 WITHHOLDING OF PAYMENTS FROM CONTRACTOR

When a complaint is filed with the City of Rochester alleging the failure of a Contractor or subcontractor to pay or provide the prevailing wages or supplements, or when the City of Rochester has reason to believe that unpaid wages or supplements may be due, payments on the public work contract may be withheld from the prime Contractor in sufficient amount to satisfy the alleged unpaid wages and supplements, including interest and civil penalty which may be

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imposed. The amounts withheld may be disbursed by the City of Rochester for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

12. PREVAILING WAGE RATES

- 12.1 Incorporated in these Contract Documents is the Prevailing Wage Rates Schedule in effect at the time of publication of these Contract Documents. Any Prevailing Wage Rates Redetermination which may arise prior to the bid opening will be distributed by addendum.
- 12.2 In the event that the prevailing rate of wages or supplements changes after the bids have been opened, or after the contract is let, an updated schedule will be issued by the State Department of Labor. Said updated schedule will be transmitted to the Contractor by the City. Each workman, laborer or mechanic shall be paid or provided not less than the new updated rates.
- 12.3 The City will not be responsible for any of the Contractor's increased labor costs which result from defects in the Wage Rate Schedule provided, or from amendments to the Prevailing Wage Rate Schedule, whether that increase occurs before advertisement, before bid opening, before award of the contract, after the contract has been let, or during the life of the contract. No change in the contract price shall be allowed to the Contractor for any such increases, except as provided for elsewhere in these documents.
- 12.4 Information about current wage rates may be obtained on an advisory basis by contacting the City's Contract Administrator, Department of Finance, City Hall, Rochester, New York, at (535) 428-7398.
- 12.5 The Prevailing Wage Rate Schedule is attached as Appendix A

13. INSURANCE

- A. The Contractor shall procure and maintain at the Contractor's 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 do such business in the State of New York covering all operations under the contract documents whether performed by him or his subcontractors. The insurance certificate must state the demolition coverage on each policy or property to be demolished.
- B. Within ten days of request, the Contractor shall furnish to the City Purchasing Agent a certificate or certificates of insurance in 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

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materially changed or canceled until ten days' written notice has been given to the City Purchasing Agent.

- C. In each policy of insurance except insurance for Workers' Compensation and Disability Insurance, the City shall be named as an additional insured for liability arising under this agreement. Except for Workers' Compensation and Disability Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the project.
- D. The kinds and amounts of insurance are as follows:

13.1 WORKERS' COMPENSATION AND NYS DISABILITY INSURANCE

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

A. 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. The policy shall be endorsed to provide 30 days prior written notice of cancellation or non-renewal and Waiver of Subrogation in favor of the City of Rochester. A copy of these endorsements shall be included with the Certificate of Insurance.

B. NYS 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.

13.2 CASUALTY INSURANCE

- A. 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 under the within agreement. The coverage shall be written on an occurrence form utilizing ISO coverage form CG 00 01 12 07 or its equivalent. The comprehensive general liability policy shall furnish limits of not less than:

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- B. Bodily Injury and Property Damage
Limit \$1,000,000 each occurrence
- Products/Completed Operations Limit
\$2,000,000 aggregate
- Personal Injury and Advertising Injury Limit
\$1,000,000 each person or Organization
- General Aggregate
\$2,000,000 applicable on a per project basis

The City of Rochester, their officers, employees and agents and all other appropriate Funding Agencies shall be named as an additional insured for liability arising under this Contract applicable to both ongoing and completed operations on a primary and non-contributory basis.

There shall be no exclusions relating to NYS Labor Law or municipal operations.

B. Commercial Automobile Liability

Issued to the Contractor and covering all owned, non-owned and hired automobiles with limits not less than:

Bodily Injury and Property Damage Liability
Combined Single Limit
\$1,000,000

C. Umbrella Excess Liability

Issued to the Contractor providing follow form coverage over the General Liability and Automobile Liability requirements stipulated above with minimum limits of:

Bodily Injury and Property Damage Limit
\$2,000,000
Products/Completed Operations Limit
\$2,000,000
General Aggregate
\$2,000,000

All policies shall be endorsed to provide Waiver of Subrogation in favor of the City Of Rochester. All policies shall be endorsed to provide 30 days prior written notice of cancellation or non-renewal.

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A copy of the Additional Insured and Waiver of Subrogation Endorsement(s) shall be included with the Certificate of Insurance.

14. HOURS OF WORK

14.1 REGULAR TIME

This term describes work to be performed during the hours of 5:00 a.m. through 5:00 p.m., Monday through Friday, with the exception of the following legal holidays:

14.1.1 New Year's Day

14.1.2 Memorial Day

14.1.3 Independence Day

14.1.4 Labor Day

14.1.5 Thanksgiving Day

14.1.6 Christmas Day

14.2 OVERTIME

The term "overtime" includes any hours other than hours described in Section 14.1 and includes Saturdays and Sundays.

15. BID AND PERFORMANCE SECURITIES

15.1 BID BOND

A bid bond in an amount of \$ 500 shall be furnished with each bid. At its option, the City shall have the right to accept cash, a certified check, a letter of credit or a bond executed by a Surety company authorized to transact business in the state of New York in satisfaction of this requirement.

15.2 PERFORMANCE SECURITY

15.2.1 The Contractor must furnish two executed surety company bonds, each in the amount of \$ 5,000.

- A. A Performance Bond shall be furnished as security for the faithful performance by the Contractor of all terms and conditions of the contract documents.

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- B. A Labor and Material Payment Bond shall be furnished as security for the claims of laborers and material suppliers.
- C. Both bonds shall be made out to the City of Rochester, prepared on an approved form and submitted by the Contractor to the Purchasing Agent within ten (10) days of notification that his bid was 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. The surety furnishing the Performance Bond and the Labor and Material Payment Bond must waive notice of any change in the contract price or contract time. Attorneys-in-fact who sign bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

15.2.2 Alternate Security

- A. At its option, the City shall have the right to accept cash, a certified check, or a letter of credit in satisfaction of the foregoing requirements. Submission of personal checks, or checks that are not certified, will result in bid rejection.
- B. In the event the Contractor submits cash or a cash instrument as alternate security, the City will accept \$ 5,000 as satisfying both Performance and Payment security requirements.
- C. Any security accepted in lieu of a payment bond shall be retained until the City is no longer liable for mechanics' liens against the work of the contract.

16. CASH PERFORMANCE SECURITY

- 16.1 To ensure effective performance of this contract, the successful bidder shall provide, in addition to the performance bonds referenced in Section 15, a performance security in the amount of \$ 500.00 in the form of cash or certified check. If the bid bond submitted with the bid is in the form of cash or a certified check, the City will roll the bid bond over into the cash performance security. Otherwise, the successful bidder must, as a condition of the contract, provide a \$500.00 cash performance cash security.
- 16.2 This cash performance security will be used to defray costs in excess of the contract prices incurred if the Contractor does not perform within the time stipulated herein.
- 16.3 Should the City proceed against this cash security, the City retains the right to proceed against the performance bond referenced in Section 15 in order to obtain complete satisfactory performance of the entire contract.

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17. DEFINITIONS FOR THE PROPOSAL

- 17.1 Base Hourly Labor Rate - is the straight time regular prevailing wage hourly rate plus benefits, for the trade(s) identified in the Proposal, as defined by the New York State Department of Labor (N.Y.S.D.O.L.) Overtime Rates are either one-and-one-half or double the straight time regular prevailing wage hourly rate, with benefits paid at regular time as specified by the N.Y.S.D.O.L.
- 17.2 Margin Allowance - is the percentage of the Base Hourly Labor Rate charged by the Contractor to cover equipment, overhead, profit and any other costs.
- 17.3 Margin Amount - is the dollar amount resulting from multiplying the Base Hourly Labor Rate times the Margin Allowance. The Margin Amount is a fixed dollar amount that will be added to the applicable Base Hourly Labor Rate paid to each employee.
- 17.4 Regular Time Cost to City - is the Base Hourly Labor Rate plus the Margin Amount.
- 17.5 Example. Assume the Base Hourly Labor Rate as defined in 17.1 is \$50.00 per hour. Assume the bidder wants to add a Margin Allowance (i.e. markup) of 30% to the Base Hourly Labor Rate. The Margin Amount as shown on the Proposal would be calculated as $\$50.00 \times 30\% = \15.00 . Thus, the Regular Time Cost to the City will be the Base Hourly Labor Rate (\$50.00) plus the Margin Amount (\$15.00) which equals \$65.00 per hour. \$65.00 per hour is what the City will pay the Contractor for each person who works one hour on the job at regular time rates.
- 17.6 Overtime - If overtime is required by law, the City will pay the N.Y.S.D.O.L. prevailing wage rate for overtime plus benefits for trade(s) used to do the work, plus the Margin Amount shown on the Proposal. The Margin Amount does not change with overtime. Using the example shown in Section 17.6, if the overtime labor cost is \$75.00 per hour, the Margin Amount remains at \$15.00., so the City will pay \$90.00 per hour per person for overtime work required and approved by the City.

18. METHOD OF AWARD

- 18.1 Award will be made to the responsive and responsible bidder who proposes the lowest Margin Allowance.
- 18.2 The City reserves the right to reject any bid where the margin allowance or other unit prices offered are unbalanced or do not otherwise reflect current market conditions.
- 18.3 The City reserves the right to make a secondary award to the second lowest responsive and responsible bidder based upon the Margin Allowance.

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19. WARRANTY/GUARANTEE

- 19.1 The Contractor(s) must warrant and guarantee all work and products provided and installed by the Contractor to the City under this contract for a period of one (1) year from the date of acceptance. The bidder shall be obligated to repair or replace all defects in material or workmanship which are discovered or exist during said one (1) year period. All labor, parts and transportation shall be at bidder's expense.
- 19.2 The Contractor must warrant and guarantee any products or items delivered to the City for the term of the manufacturer's warranty if such term exceeds the minimum one (1) year period specified in Section 20.1

20. NON-DISCRIMINATION

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

- 20.1 To hire employees without regard to age, race, creed, color, national origin, sex, sexual orientation, disability or marital status;
- 20.2 That he, his subcontractors, and any person on his behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status;
- 20.3 That this contract may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited for a second day or any subsequent violation of the terms or conditions of this section of the contract.

21. POLITICAL SUBDIVISIONS

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

22. W-9

A W-9 is required with all bids.

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23. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

- 23.1 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>.
- 23.2 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."
- 23.3 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.
- 23.4 During the term of the contract or any extension, should the City receive information that the Contractor is in violation of the above-referenced certification, 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.
- 23.5 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.

24. NON-COLLUSIVE BIDDING CERTIFICATION

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

- 24.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting

EMERGENCY FENCING AND GATE REPAIR SERVICES

competition, as to any matter relating to such prices with any other bidder or with any competitor.

- 24.2 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.
- 24.3 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.

**NON-OFFICIAL SPEC
DO NOT USE**

EMERGENCY FENCING AND GATE REPAIR SERVICES

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.

Instructions to Bidders:

Enter the percentage you are bidding for the Margin Allowance in Section B below. Multiply this percentage by the NYSDOL hourly rate in Section A and carry this total to Section C.

MARGIN ALLOWANCE: _____ %

- A. Base Hourly Labor Rate (NYSDOL) for Ironworker/Fence Erector \$ 52.69
- B. Margin Allowance _____ %
- C. Margin Amount \$ _____
[Margin Allowance X Base Hourly Labor Rate (A X B)]
- 1. Regular Time Cost to City (=A + C) = \$ _____
- 2. Time-and-a-half Overtime Cost to City (\$65.92) = \$ _____
(NYSDOL Rate for Time-and-one-half + the Margin Amount)
- 3. Double-time Overtime Cost to City (\$79.14) = \$ _____
(NYSDOL Rate for Double-Time + the Margin Amount)

NOTE: Any Apprentices properly employed by the Contractor in carrying out this contract work will be billed at and paid for at the Prevailing Wage Rate for Apprentices plus the Margin Amount as specified in C above.

Authorized Signature

Typed Name and Title of Authorized Signer

Typed Name of Company

(Continued through Page 18)

EMERGENCY FENCING AND GATE REPAIR SERVICES

PROPOSAL

PRINT OR TYPE THE FOLLOWING INFORMATION:

Name of Firm or Corporation

Street Address

City

State

Zip Code

Telephone/Fax No.

Federal Employer ID No.

E-mail address of recipient of contract awards and extensions

Date

NON-OFFICIAL SPEC
DO NOT USE

ACCEPTED ON BEHALF OF THE CITY OF ROCHESTER FOR:

Contract No. _____ Contract Term: _____

Purchasing Agent

Date: _____

APPENDIX A

WAGE RATES

NON-OFFICIAL SPEC
DO NOT USE

Prevailing Wage Schedule and List of Employers Ineligible to Bid on or be Awarded any Public Work

Paper copies of the prevailing wage schedule and of the List of Employers Ineligible to Bid on or be Awarded any Public Work will no longer be included with the City of Rochester bid documents. A paper copy of the current documents will be provided to the successful bidder(s) upon award of the contract.

The prevailing wage schedule and the List of Employers Ineligible to Bid on or be Awarded any Public Work for this contract are available on the New York State Department of Labor's website. They can be accessed by visiting the New York State Department of Labor's website at:

<http://wpp.labor.state.ny.us/wpp/doFindProject.do?method=showIt>

and entering the assigned PRC# at the proper location on the website. The PRC# can be found on the PW-200 form which immediately follows this page.

Contractors and subcontractors must pay laborers, workers, and mechanics employed in the performance of a public work contract not less than the most current prevailing rate of wages and wage supplements (fringe benefits).

The City of Rochester will not be responsible for any of the contractor's increased labor costs which result from deficits in the prevailing wage schedule provided, or from amendments to the prevailing wage schedule, whether that increase occurs before advertisement, before bid opening, before award of the contract, after the contract has been let, or during construction. No change in the contract price shall be allowed to the contractor for any such increases.

Information about current wage rates may be obtained on an advisory basis by contacting the City of Rochester Contract Administration office at (585) 428-7398.



Andrew M. Cuomo, Governor

Roberta Reardon, Commissioner

City of Rochester
Eric Kline, Project Assistant
City Hall
30 Church St.
Room 106-A
Rochester NY 14614-1282

Schedule Year 2016 through 2017
Date Requested 12/08/2016
PRC# 2016012076

Location Various
Project ID#
Project Type Emergency Fencing and Gate Repair Services

PREVAILING WAGE SCHEDULE FOR ARTICLE 8 PUBLIC WORK PROJECT

Attached is the current schedule(s) of the prevailing wage rates and prevailing hourly supplements for the project referenced above. A unique Prevailing Wage Case Number (PRC#) has been assigned to the schedule(s) for your project.

The schedule is effective from July 2016 through June 2017. All updates, corrections, posted on the 1st business day of each month, and future copies of the annual determination are available on the Department's website www.labor.state.ny.us. Updated PDF copies of your schedule can be accessed by entering your assigned PRC# at the proper location on the website.

It is the responsibility of the contracting agency or its agent to annex and make part, the attached schedule, to the specifications for this project, when it is advertised for bids and /or to forward said schedules to the successful bidder(s), immediately upon receipt, in order to insure the proper payment of wages.

Please refer to the "General Provisions of Laws Covering Workers on Public Work Contracts" provided with this schedule, for the specific details relating to other responsibilities of the Department of Jurisdiction.

Upon completion or cancellation of this project, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

NOTICE OF COMPLETION / CANCELLATION OF PROJECT

Date Completed: _____ Date Cancelled: _____

Name & Title of Representative: _____

Phone: (518) 457-5589 Fax: (518) 485-1870
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12240



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.

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