

GENERAL TERMS AND CONDITIONS

PREPARATION OF PROPOSALS:

Proposals shall be submitted on the forms provided and must be signed by the Proposer or the Proposer's authorized representative. The person signing the proposal shall initial any corrections to entries made on the proposal forms.

Proposers must quote on all items appearing on the proposal forms unless specific directions in the advertisement, on the proposal form or in the special provisions allowed for partial Proposals. Failure to quote on all items may disqualify the proposal. When proposals on all items are not required, Proposers shall insert the words "no proposal" where appropriate.

Alternative proposals will be considered, unless otherwise stated, only if the alternate is: (1) Described completely, including, but not limited to, sample(s), if requested, and specifications sufficient so that a comparison to the request can be made; and (2) Submitted as part of the base proposal response, i.e. it shall not be a separate document which could be construed as a second proposal.

Unless otherwise stated in the Request for Proposal (RFP), the proposer agrees that the proposal shall be deemed open for acceptance for sixty (60) calendar days subsequent to submittal to the City of Concord or as modified by addendum.

Any questions or inquiries must be submitted in writing, and must be received by the Purchasing Agent no later than seven (7) calendar days before the Request for Proposals due date to be considered. Any changes to the Request for Proposals will be provided to all Proposers of record.

The Proposer shall not divulge, discuss or compare this proposal with other Proposers and shall not collude with any other Proposer or parties to a proposal whatever. (Note: No premiums, rebates or gratuities permitted either with, prior to, or after any delivery materials are allowed. Any such violation will result in the cancellation and/or return of materials, as applicable, and the removal from Proposal List).

The name of manufacturer, trade name, or catalog number mentioned in this Request for Proposal is for the purpose of designating a minimum standard of quality and type. Such references are not intended to be restrictive, although specified color, type of material and specified measurements may be mandatory. Proposals will be considered for any brand which meets or exceeds the quality of the specifications listed. On all such proposals, the Proposer shall specify the product they are proposing and shall supply sufficient data to enable a comparison to be made with the particular brand or manufacturer specified. Failure to submit the above may be sufficient grounds for rejection of the proposal.

When samples are required, they must be submitted free of cost and will be returned unless otherwise specified.

Items left for demonstration purposes shall be delivered and installed free of charge and shall be removed by the vendor at no cost to the City. Said demonstration units shall not be offered to the City as new equipment unless mutually agreed to.

The vendor may be required to supply proof of compliance with proposal specifications. When requested, the vendor must immediately supply the City with certified test results or certificates of compliance. Where none are available, the City may require independent laboratory testing. All costs for such testing, certified test results or certificates of compliance, shall be the responsibility of the vendor.

Unless otherwise stated, all prices are F.O.B.: Destination. No charge for packing or drayage will be allowed. All deliveries are to be pre-paid, C.O.D.'s will not be accepted. Each shipment shall be identified by Purchase Order and/or RFP number, commodity description and packing list. All items, packages, etc. shall have clearly identifiable external markings or tags for ease of identification.

SUBMISSION OF PROPOSALS:

Proposals must be submitted as directed in the Request for Proposals, and on the forms provided unless otherwise specified. Proposals must be typewritten or printed in ink. Proposals must be mailed or delivered in person. Proposals that are faxed or e-mailed will not be accepted.

WITHDRAWAL OF PROPOSALS:

Proposals may be withdrawn prior to the opening date and time upon written, faxed, e-mailed or telegraphic request of the Proposer to the Purchasing Manager. Negligence on the part of the Proposer in preparing this proposal shall not constitute a right to withdraw a proposal subsequent to the proposal opening. Proposals may not be withdrawn for the period as indicated in the Preparation of Proposals or as modified by addenda.

PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL:

If more than one proposal is offered by any one party, or by any person or persons representing a party, all such proposals shall be rejected. A party who has quoted prices to a Proposer is not thereby disqualified from quoting prices to other Proposers or from submitting a direct proposal in its own behalf.

RECEIPT AND OPENING OF PROPOSALS:

Proposals shall be submitted prior to the time fixed in the Request for Proposals. Proposals received after the time so indicated shall be returned unopened.

PROPOSAL RESULTS:

All proposals received shall be considered confidential and not available for public review until after a vendor has been selected. All proposals shall be subject to negotiations prior to the award of a contract.

NO TELEPHONE REQUESTS FOR RESULTS WILL BE ACCEPTED OR GIVEN.

TIE PROPOSALS:

When identical Proposals are received, with respect to price, delivery, financial resources, experience, ability to perform and quality, award may be made by a toss of coin, with the following exception: When a tie proposal exists between a local (a business establishment within City limits) Proposer and an out-of-town Proposer, preference will be given to the local Proposer. Any Proposer having a local agent who is a bona fide resident of the City is considered a local Proposer. If a tie proposal exists between two local Proposers, or two out-of-town Proposers, the decision may be made by a toss of coin.

LIMITATIONS:

This Request for Proposal (RFP) does not commit the City to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services, supplies or equipment. The City reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this RFP, if it is in the best interest of the City to do so.

PROPOSAL EVALUATION:

In an attempt to determine if a proposer is responsible, the City, at its discretion, may obtain technical support from outside sources. Each proposer will agree to fully cooperate with the personnel of such organizations.

AWARD OF CONTRACT:

Any contract entered into by the City shall be in response to the proposal and subsequent discussions. It is the policy of the City that contracts be awarded, among other considerations, only to responsive and responsible Proposers. In order to qualify as responsive and responsible, a prospective vendor must meet the following standards as they relate to this request:

- Have adequate financial resources for performance or have the ability to obtain such resources as required during performance;
- Have the necessary experience, organization, technical and professional qualifications, skills and facilities;
- Be able to comply with the proposed or required time of completion or performance schedule;
- Have a demonstrated satisfactory record of performance; and
- Adhere to the specifications of this proposal and provide all documentation required of this proposal

The contract will be awarded to a responsive and responsible proposer based on the evaluation criteria detailed on the proposal evaluation sheet. The proposer selected will be the most qualified and not necessarily the proposer with the lowest price.

The City reserves the right to reject any or all proposals or any part thereof, to waive any formality, informality, information and/or errors in the proposal, to accept any proposal in part or in whole as may be in the best interest of the City, or to purchase solid waste services on the open market or any other option if it is considered in the best interest of the City to do so.

In case of error in the extension of prices, the unit prices proposed shall govern and the unit prices in writing shall take precedence over the unit prices in figures. Also, in the event of a discrepancy between the total of the items and the lump sum total stated, the total of the items shall govern.

CONTRACT AWARD PROTEST POLICY AND PROCEDURE:

The City's Contract Award Protest Policy and Procedure can be viewed on-line at www.concordnh.gov/Purchasing.

MODIFICATIONS AFTER AWARD:

The Contract shall constitute the entire understanding between the parties, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of a contract amendment executed by both parties.

CANCELLATION OF AWARD:

The City reserves the right to cancel the award without liability to the proposer, except for the return of the proposal bond, at any time before a contract has been fully executed by all parties and is approved by the City.

CONTRACT:

Any Contract between the City and the Vendor shall consist of (1) the Request for Proposal (RFP) and any amendments thereto and (2) the Vendor's proposal in response to the RFP. In the event of a conflict in language between documents (1) and (2) referenced above, the provisions and requirements set forth and referenced in the RFP shall govern. However, the City reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict. In all other matters, not affected by written clarification, if any, the RFP shall govern. The proposer is cautioned that this proposal shall be subject to acceptance without further clarification.

RETURN OF PROPOSAL BOND:

All proposal bonds, except that of the successful proposer, will be returned after the City has awarded a contract. The successful proposer's proposal bond will be returned upon execution of the contract.

REQUIREMENTS OF SURETY BONDS:

At the time of the execution of a contract, the successful proposer shall furnish the City with surety bonds, which have been fully executed by the proposer, guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the proposer's performance of the work. The surety and the form of the bonds shall be acceptable to the City. Unless otherwise specified, the surety bonds shall be in the sum equal to the full amount of the contract. Each bond shall be maintained for the entire length of the contract and upgraded, with originals submitted to the City's Purchasing Manager, to reflect any price increases.

INSURANCE:

The successful proposer shall procure and maintain insurance, in the amounts and coverage as set forth in this Request for Proposals, or otherwise required by the City, at the proposer's sole expense, with City approved insurance companies, insuring against any and all public liability, including injuries or death to persons and damage to property, arising out of or related to the goods or proposer's performance hereunder and shall furnish to the City certificates of such insurance and renewals thereof signed by the issuing company or agent upon the City's request. Such certificates shall name the City of Concord as an additional insured. Such policies shall provide for cancellation only subsequent to 30 days prior written notice to the City and proof of subsequent insurance upon cancellation of prior policy.

The City's examination of, or failure to request or demand, any evidence of insurance hereunder, shall not constitute a waiver of any requirement and the existence of any insurance shall not limit the proposer's obligation under any provision hereof.

Except to the extent of comparable insurance acceptable to, or express waiver by the City, the proposer shall, or shall cause any carrier engaged by the proposer, to insure all shipments of goods for full value.

If the contract with the proposer involves the performance of work by the proposer's employees at property owned or leased by the City, the proposer shall furnish such additional insurance as the City may request in respect thereof, but in any event and without such request, workers' compensation insurance and unemployment compensation insurance as required by laws of the State of New Hampshire and public and automotive liability and property damage insurance. In no event shall such employees of the proposer be deemed to be the employees of, or under the direction or control of the City for any purpose whatsoever.

WORKER'S COMPENSATION:

All proposers and subcontractors at every tier under the proposer will conform with the requirements of RSA 281 Title XXIII, Section 281-A:2 with close attention to sections VI(a), VI(c) and VII(a) as well as Section 281-A:4.

EXECUTION OF CONTRACT:

The successful proposer shall sign (execute) the contract documents and shall satisfy all conditions set forth in the contract to enter into the contract and return such signed documents to the City, along with the fully executed surety bonds, within ten (10) calendar days from the date mailed or otherwise delivered to the successful proposer.

APPROVAL OF CONTRACT:

Upon receipt of the contract and surety bonds that have been fully executed by the successful proposer, the City shall complete the execution of the contract in accordance with local laws or ordinances and return the fully executed contract to the contractor. Delivery of the fully executed contract, along with a Notice to Proceed and a City purchase order, to the contractor shall constitute the City's approval of the contract with the contractor.

FAILURE TO EXECUTE CONTRACT:

Failure of the successful proposer to execute the contract and/or furnish acceptable surety bonds within ten (10) calendar days from the date mailed or otherwise delivered to the successful proposer shall be just cause for cancellation of the award and forfeiture of the proposal bond, not as a penalty, but as liquidation of damages to the City.

DISQUALIFICATION:

Awards will not be made to any person, firm and/or corporation that has defaulted upon a contract with the City, the State of New Hampshire or the Federal Government within the past 5 years. Awards will not be made to any principal owner or officers that have a 10% or greater interest in a firm or corporation that has defaulted upon a contract with the City, the State of New Hampshire or the Federal Government within the past 5 years. Corporations must currently be in good standing with the Secretary of State Office in the state in which it is incorporated.

DISAGREEMENTS AND DISPUTES:

All disagreements and disputes, if any, arising under the terms of any contract, either by law, in equity, or by arbitration, shall be resolved pursuant to the laws and procedures of the State of New Hampshire, in which state any contract shall be deemed to have been executed. No action at law, or equity, or by arbitration shall be commenced to resolve any disagreements or disputes under the terms of any contract, in any jurisdiction whatsoever other than the State of New Hampshire and Merrimack County.

TERMINATION OF CONTACT FOR CAUSE:

If the Contractor shall violate any provision of the Contract, the City shall have the right to terminate the Contract. To terminate the Contract the City shall provide written notice to the Contractor of such termination. Such written notice shall state the Contract violation(s) and be delivered to the Contractor's address as identified in the Contract Documents. This notice shall provide the Contractor with fifteen (15) calendar days from the date of delivery, to correct the violation(s) to the City's satisfaction. Should the Contractor fail to satisfactorily correct all violations within (15) fifteen calendar days, the City may terminate the contract immediately upon delivery of a Notice of Termination to the Contractor. Such termination shall become effective immediately or as otherwise determined by the City. Upon termination, all finished or unfinished work, services, plans, data programs and reports prepared by the Contractor under the Contract shall become the City's property. The City may also terminate this Contract in accordance with any other applicable Contract provision.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of any contract, and the City may withhold any payments until such time as the exact amount of damages due the City is determined.

TERMINATION FOR THE CONVENIENCE OF THE CITY:

The City may terminate any contract at any time by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.

In that event, all finished or unfinished work, services, documents and materials shall become the City's property. If any Contract is terminated by the City as provided herein, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services covered by any contract, less payments of compensation previously made.

SAFETY DATA SHEET (Right to Know):

To the extent applicable, vendor agrees to comply with RSA 277-A. Vendor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to RSA 277-A when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to RSA 277-A. Failure to submit an MSDS and/or label on each container shall constitute a violation of the contract and render vendor liable for any damages. Failure to submit MSDS and/or labels on each container may result in civil or criminal penalties, including proposal debarment and action to prevent the vendor from selling said substances, or mixtures containing said substances within the City. All vendors furnishing substances or mixtures subject to RSA 277-A are cautioned to obtain and read the law referenced above.

PATENT PROTECTION:

The successful proposer agrees to indemnify and defend the City of Concord from all claims and losses resulting from alleged and actual patent infringements and further agrees to hold the City of Concord harmless from any liability arising under RSA 382-A, 2-312 (3). (Uniform Commercial Code).

OWNERSHIP OF REPORTS:

All data, materials, plans, reports and documentation prepared pursuant to any contract between the City of Concord and the successful proposer shall belong exclusively to the City.

ASSIGNMENT PROVISION:

The successful proposer hereby agrees that it will assign to the City of Concord all cause of action that it may acquire under the anti-trust laws of New Hampshire and the United States as the result of conspiracies, combination of contracts in restraint of trade which affect the price of goods or services obtained by the City under this contract if so requested by the City of Concord.

DELIVERY:

Deliveries are to be made only to the City as set forth on the purchase order and in accordance with accepted commercial practices, without extra charge for packing or containers.

Deliveries, which do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly. Deliveries shall be inside the building, and accepted weekdays between the hours of 8:30 AM and 3:30 PM unless otherwise stated. Delivery arrangements must be made with requesting department prior to delivery.

INVOICING:

Invoices are to be submitted in duplicate upon delivery or pick-up to the user department or division. The invoice must include an itemization of all items, supplies, services, equipment or labor furnished, including unit list price, net price, extensions and total amount due (see Progress Payments below). In addition, on projects that will involve partial/progress payments and/or retainage a summary statement in the following format will be provided with each invoice:

Original Contract Amount	\$\$\$\$\$\$\$\$
Plus/minus Change Orders	\$\$\$\$\$\$\$\$
Total Adjusted Contract Amount	\$\$\$\$\$\$\$\$
Work Completed to Date	\$\$\$\$\$\$\$\$
Less Previous Invoices	\$\$\$\$\$\$\$\$
Less Retainage (if any)	\$\$\$\$\$\$\$\$
Equals: Balance due this Invoice	\$\$\$\$\$\$\$\$
Balance Remaining on Contract	\$\$\$\$\$\$\$\$

All invoices must reference a valid City of Concord Purchase Order Number.

PROGRESS PAYMENTS AND RETAINAGE:

Progress Payments: Any payment from the City to the Contractor may be negotiated between the City and the Contractor, but shall be solely determined by the City. After the City has determined such payment, the Contractor shall bill the City for services rendered in accordance with the contract documents within ten (10) calendar days following the end of the month and the City shall pay the Contractor within thirty (30) days after receipt of the Contractor's invoice.

Retainage: The City shall retain a portion of the progress payments, each month, in accordance with the following procedures:

1. Until work is 50% complete, as determined by the City, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage shall be deposited in a non-interest bearing account established by the City.
2. After the work is 50% complete, and provided the Contractor has satisfied the City in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount shall be withheld.
3. Upon substantial completion, the amount of retainage shall be reduced to 2% of the total contract price plus an additional retainage based on the City's estimate of the fair value of the punch list items and the cost of completing and/or correcting such items of work, with specified amounts for each incomplete or defective item of work. As these items are completed or corrected, they shall be paid out of the retainage until the entire project is declared completed. The final 2% retainage shall be held, in the non-interest bearing account, during the one/two year warranty period and released only after the City has accepted the project.

ANY CASH DISCOUNT SHALL BE READ TO MEAN CITY PAYDAY, CPD.

TAX:

The City is exempt from all sales and Federal excise taxes. The City's tax exemption certificate will be provided to the successful vendor upon request. Please bill less these taxes.

FUNDING OUT:

The City of Concord's obligations to pay any amount due under a contract are contingent upon availability and continuation of funds for the purpose. The City may terminate the contract at any time, due to the non-appropriation of funds, and all payment obligations of the City cease on the date of termination.

ASSIGNMENT OR SUB-CONTRACTING:

None of the work or services covered by the contract shall be assigned in full or in part, or sub-contracted without the prior approval of the City.

EXCLUSIVITY:

This contract will be for the goods/services described above; however, this contract should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these goods/services from any other vendor.

PRICING:

Unless otherwise specified all prices listed are firm for the term of the contract. All prices should include all labor, material and transportation costs, and any discounts offered. No fuel surcharges shall be allowed at any time.

AUDIT:

For a period of at least three (3) years after completion of any contract, it is the responsibility of the vendor to make available at the vendor's place of business, upon demand, all price lists, documents, financial records and other records pertaining to purchases made and/or work performed under contract for the purposes of audit by the City of Concord.

INSPECTION & EVALUATION:

The City of Concord reserves the right to inspect the vendor's facilities during operating hours to determine that the level of inventory is adequate for the City's needs. The conditions and operations of the facility shall be taken into consideration in making the award of this contract.

FUGITIVE DUST AND NOISE ORDINANCES

All work shall be conducted in conformance with the City's Code of Ordinances, Title I, General Code:

1. Chapter 11, Public Nuisances, Article 11-3 Fugitive Dust: and

2. Chapter 13, Public Health, Article 13-6 Noise

The City's Code of Ordinances can be viewed on-line at www.concordnh.gov.

GUARANTEES & WARRANTY:

All parts and labor related to contracts must be guaranteed and include a warranty. If any work is unable to be guaranteed, the contractor must inform the City, in writing, prior to the delivery of an item or any work being performed. Non-guaranteed work must be offered at a discount rate from the proposal prices. **Inspection, testing and final determination of non-warranty work shall be performed at no cost to the City.**

FORCE MAJEURE:

Neither party shall be liable for any inability to perform its' obligations under any subsequent contract due to war, riot, insurrection, civil commotion, fire, flood, earthquake, storm or other act of God.

NOTIFICATION:

Notification of the parties shall be considered to have been constructively received when it is mailed via the United State Postal Service or delivered in hand to the parties as stated in the contract.

SEVERABILITY:

If any of this Request for Proposals or subsequent contract is held to be invalid or unenforceable, it will be construed to have the broadest interpretation which would make it valid and enforceable under such holding. Invalidity or the inability to enforce a term or condition will not affect any of the Request for Proposals or contract.

PROVISION REQUIRED BY LAW DEEM INSERTED:

Each and every provision and clause required by law to be inserted in this Request for Proposals and any subsequent Contract shall be deemed to be inserted herein and this Request for Proposals and Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Request for Proposals and/or Contract shall forthwith be physically amended to make such insertion or correction.

LIQUIDATED DAMAGES:

In the event that the Contractor fails to satisfactorily complete the work contemplated and provided for under this contract, on or before _____, the City shall deduct from the payments due the Contractor each month, the sum of _____ dollars (\$ _____) plus engineering charges per day for each calendar day of delay, which sum is agreed upon not as a penalty, but as fixed and liquidated damages for each day of such delay, to be paid in full and subject to no deduction. If the payments due the Contractor are less than the amount of such liquidated damages said damages shall be deducted from any other monies due or to become due the Contractor or shall be paid by the Contractor's surety.

ENERGY STAR® COMPLIANCE

The vendor shall provide products that earn the Energy Star® and meet the Energy Star® specifications for energy efficiency. The vendor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.

DISADVANTAGED BUSINESS ENTERPRISES

The City hereby notifies all Vendors that it will affirmatively insure that in any contract entered into pursuant to this Request for Proposals, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of race, color, national origin, religion, sex, age or disability in consideration for an award.

NON-DISCRIMINATION

Contracts for work resulting from this Request for Proposals shall obligate the Vendor and the Vendor's subcontractors not to discriminate in employment practices on the grounds of race, color, national origin, religion, sex, age or disability. Statements as to non-discriminatory practices may be requested from the successful Vendor(s).

RSA 277:5-a

Effective 7/1/08 any person/vendor signing a contract to work on a construction, reconstruction, alteration, remodeling, installation, demolition, maintenance, or repair of any public work or building for the City of Concord with a total project cost of \$100,000 or more must be in compliance with RSA 277:5-a.

ELECTION DAY CONSTRUCTION POLICY

All City contracts that entail any element of construction in the public right of way shall prohibit work during the hours in which Concord is holding a primary, general or special election as determined by the Concord City Clerk. A copy of the complete Election Day Construction Policy can be viewed on-line at www.concordnh.gov/Purchasing.

ACCESS TO PUBLIC MEETINGS

All City of Concord public meetings are accessible for persons with disabilities. Any person who feels that he or she may be unable to participate in a City of Concord public meeting due to a disability should, to the extent possible, call (603) 225-8570 at least 48 hours prior to the meeting so that a reasonable accommodation can be arranged.

For meetings held in the City Council Chambers, any person who is unable to access the upper level of the Council Chambers to address the City Council or any other public body may use the podium and/or microphone located at the lower level of the Council Chambers. Other reasonable accommodations may be available upon request.

DEFINITIONS:

Proposal shall also mean quotation, bid, offer and qualification/experience statement.

Vendors shall also mean proposers, offerors, bidders, contractors or any person or firm responding to a Request for Proposals.

Contract shall also mean agreement.

GOVERNING LAW:

The Laws of the State of New Hampshire shall govern all contracts entered into by the City of Concord. Any disputes shall be resolved within the venue of the State of New Hampshire and Merrimack County.

FAILURE TO ACKNOWLEDGE THIS REQUEST FOR PROPOSALS MAY RESULT IN WITHDRAWAL FROM THE PROPOSAL LIST FOR THIS COMMODITY OR SERVICE.

FAILURE TO COMPLY WITH THESE REQUIREMENTS COULD RESULT IN THE CANCELLATION OF AN ORDER OR CONTRACT.