

## GENERAL TERMS AND CONDITIONS

### PREPARATION OF QUOTATIONS:

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

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

Alternative Quotations 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 Quotation response, i.e. it shall not be a separate document which could be construed as a second Quotation.

Unless otherwise stated in the Request for Quotation (RFQ), the Offeror agrees that the Quotation shall be deemed open for acceptance for Sixty (60) calendar days subsequent to submittal to the City of Concord.

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 Quotations due date to be considered. Any changes to the Request for Quotations will be provided to all Offerors of record.

The Offeror shall not divulge, discuss or compare this Quotation with other Offerors and shall not collude with any other Offeror or parties to a Quotation 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 Quotation List).

The name of manufacturer, trade name, or catalog number mentioned in this Request for Quotation 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. Quotations will be considered for any brand which meets or exceeds the quality of the specifications listed. On all such Quotations, the Offeror 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 Quotation.

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 Quotation 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 RFQ number, commodity description and packing list. All items, packages, etc. shall have clearly identifiable external markings or tags for ease of identification.**

#### **SUBMISSION OF QUOTATIONS:**

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

#### **WITHDRAWAL OF QUOTATIONS:**

Quotations may be withdrawn prior to the opening date and time upon written, faxed, e-mailed or telegraphic request of the Offeror to the Purchasing Agent. Negligence on the part of the Offeror in preparing this Quotation shall not constitute a right to withdraw a Quotation subsequent to the Quotation opening. Quotations may not be withdrawn for a period of sixty (60) days after the date of opening indicated herein or as modified by addenda.

#### **PROPOSERS INTERESTED IN MORE THAN ONE QUOTATION:**

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

#### **RECEIPT AND OPENING OF QUOTATIONS:**

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

#### **QUOTATION RESULTS:**

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

**NO TELEPHONE REQUESTS FOR RESULTS WILL BE ACCEPTED OR GIVEN.**

### TIE QUOTATIONS:

When identical Quotations 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 Quotation exists between a local (a business establishment within City limits) Offeror and an out-of-town Offeror, preference will be given to the local Offeror. Any Offeror having a local agent who is a bona fide resident of the City is considered a local Offeror. If a tie Quotation exists between two local Offerors, or two out-of-town Offerors, the decision may be made by a toss of coin.

### LIMITATIONS:

This Request for Quotation (RFQ) 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 or supplies. The City reserves the right to accept or reject any or all Quotations received as a result of this request, or to cancel in part or in its entirety this RFQ, if it is in the best interest of the City to do so.

### QUOTATION EVALUATION:

In an attempt to determine if a Offeror is responsible, the City, at its discretion, may obtain technical support from outside sources. Each Offeror 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 Quotation and subsequent discussions. It is the policy of the City that contracts be awarded, among other considerations, only to responsive and responsible Offerors. 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 Quotation and provide all documentation required of this Quotation

The contract will be awarded to a responsive and responsible Offeror based on the qualifications and experience of the Offeror, the quality of the equipment/product/service to be provided, the Offeror's ability to provide ongoing technical support, the Offeror's timeframe for providing the equipment/product/service and the Offeror's price/fee Quotation. **See the quotation evaluation sheet for more detail concerning how each quotation shall be evaluated.** The Offeror selected will be the most qualified and not necessarily the Offeror with the lowest price.

The City of Concord reserves the right to waive any formality, informality, information and/or errors in the Quotations submitted and the right to reject any or all Quotations at its discretion

and to accept the Quotation which will be in the best interest of the City; or to purchase on the open market 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](http://www.concordnh.gov/Purchasing).

#### MODIFICATIONS AFTER AWARD:

The City reserves the right to incorporate minor modifications, which may be required by it. The Vendor will incorporate these changes at no additional cost, but may protest such action and not be bound by any such request of it can prove that the timing or extent of the modifications implies a major effort on its part.

#### CANCELLATION OF AWARD:

The City reserves the right to cancel the award without liability to the Offeror, except for the return of the Quotation 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 Quotation (RFQ) and any amendments thereto and (2) the Vendor's Quotation in response to the RFQ. 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 RFQ shall govern. However, the City reserves the right to clarify any contractual relationship in writing with the concurrence of the Vendor, and such written clarification shall govern in case of conflict with the applicable requirements contained in the RFQ and the Vendor's Quotation. In all other matters, not affected by written clarification, if any, the RFQ shall govern. The submitter is cautioned that this Quotation shall be subject to acceptance without further clarification.

#### RETURN OF QUOTATION BOND:

All Quotation bonds, except that of the successful Offeror, will be returned after the City has awarded a contract. The successful Offeror's Quotation bond will be returned as soon as an agreement has been fully executed.

#### REQUIREMENTS OF SURETY BONDS:

At the time of the execution of the agreement, the successful Offeror shall furnish the City with surety bonds, which have been fully executed by the Offeror, guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the vendor'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 agreement.

## INSURANCE:

The successful Offeror shall procure and maintain insurance, in the amounts and coverage detailed by the Quotation documents, acceptable to the City, at the Offeror's sole expense, with reputable and financially responsible 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 Offeror'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.

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 Offeror's obligation under any provision hereof.

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

If the agreement with the Offeror involves the performance of work by the Offeror's employees at property owned or leased by the City, the Offeror 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 Offeror be deemed to be the employees of, or under the direction or control of the City for any purpose whatsoever.

## WORKER'S COMPENSATION:

All Offerors and subcontractors at every tier under the Offeror 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 AGREEMENT:

The successful Offeror shall sign (execute) the necessary agreements for entering into the contract and return such signed agreements 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 bidder.

## APPROVAL OF AGREEMENT:

Upon receipt of the agreement and surety bonds that have been fully executed by the successful Offeror, the owner shall complete the execution of the agreement in accordance with local laws or ordinances and return the fully executed agreement to the Contractor. Delivery of the fully executed agreement, along with a Notice to Proceed and a City purchase order, to the Contractor shall constitute the City's approval to be bound by the successful Offeror's Quotation and the terms and conditions of the agreement.

**FAILURE TO EXECUTE AGREEMENT:**

Failure of the successful Offeror to execute the agreement and/or furnish acceptable surety bonds within ten (10) calendar days from the date mailed or otherwise delivered to the successful Offeror shall be just cause for cancellation of the award and forfeiture of the Quotation 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's Office in the state of incorporation.

**DISAGREEMENTS AND DISPUTES:**

All disagreements and disputes, if any, arising under the terms of any agreement, 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 agreement 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 agreement, in any jurisdiction whatsoever other than the State of New Hampshire and Merrimack County.

**TERMINATION OF CONTACT FOR CAUSE:**

If, through any cause, the Vendor shall fail to furnish in a timely and proper manner its obligations under any Contract, or if the Vendor shall violate any of the covenants, agreements or stipulations of any Contract, the city shall thereupon have the right to terminate any Contract by giving written notice to the Vendor of such termination. In such event, all finished or unfinished work, services, plans, data programs and reports prepared by the Vendor under this Contract shall become the City's property and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed.

Notwithstanding the above, the Vendor 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):**

Any vendor who receives an order resulting from this Request for Quotation 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 will place the vendor in noncompliance with that purchase order. Failure to submit MSDS and/or labels on each container may result in civil or criminal penalties, including Quotation 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 Offeror agrees to indemnify and defend the City of Concord from all claims and losses resulting from alleged and actual patent infringements and further agree 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 Offeror shall belong exclusively to the City.

**ASSIGNMENT PROVISION:**

The successful Offeror 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 department or division indicated on the 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:**

Unless otherwise stated, 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, repairs or labor furnished, including unit list price, net price, extensions and total amount due. 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: On not later than the last day of every month, the Contractor shall prepare and submit an invoice covering the total quantities of work that have been completed from the start of the job up to and including the last day of the preceding month together with such supporting evidence as required by the City.

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.

**PAYMENT:**

Unless otherwise stated, payment will be made within thirty (30) days of the completion of delivery of all items or service, in acceptable condition, to the City and receipt of invoice, whichever is later.

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

**TAX:**

The City is exempt from all sales and Federal excise taxes. Our exemption number is



02-6000177. 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, for 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 agreement 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](http://www.concordnh.gov).

### GUARANTEES & WARRANTY:

All parts and labor related to agreements 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 Quotation 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 agreement 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 the GENERAL TERMS AND CONDITIONS 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 other GENERAL TERMS AND CONDITIONS.

### PROVISION REQUIRED BY LAW DEEM INSERTED

Each and every provision and clause required by law to be inserted in this Request for Quotations and any subsequent Contract shall be deemed to be inserted herein and this Request for Quotations 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 Quotations and/or Contract shall forthwith be physically amended to make such insertion or correction.

### 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](http://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 Quotations, disadvantaged business enterprises will be afforded full opportunity to submit quotations 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 Quotations shall obligate the Vendor/Contractor and the 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)/Contractor(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](http://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:

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

Offerors shall also mean vendors, offerors, bidders, contractors or any person or firm responding to a Request for Quotations.

## 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 QUOTATION MAY RESULT IN WITHDRAWAL FROM THE QUOTATION LIST FOR THIS COMMODITY OR SERVICE.**

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