

**SECTION 3**

**GENERAL INFORMATION, TERMS AND CONDITIONS  
FOR  
MISCELLANEOUS SERVICES & EQUIPMENT PURCHASES**

Rev. 011205, Express Request Doc. #1002

### 3.1 GENERAL:

A. The City reserves the right to require the successful firm to execute a contract in a format supplied by Corporation Counsel. The terms and conditions of the contract to be signed upon the award of the bid will supersede any inconsistent provision of the bidding documents.

Award of all or a portion of the requirement may be subject to approval by the Norwalk Common Council.

B. A certified check or bid bond if requested in the **Invitation to Bid** must accompany your response in the amount indicated. The certified checks will be returned to all unsuccessful candidates upon the awarding of the contract. If your proposal is not accompanied by a bond or check at the bid opening it may be rejected.

C. The successful firm may be required to furnish a performance bond and labor and materials bond acceptable to Corporation Counsel, each for the full contract amount, prior to execution of a contract and/or performance under Purchase Orders. Indicate the cost for these bonds, to be added to the contract sum on the response form.

For 3.1, B & C:

Surety Companies must be listed on the current Federal Register, licensed in the State of Connecticut and have an underwriting limitation exceeding the value of the project with no more than 5% of capitol in surplus tied to any one risk.

Banks must have a branch office in Connecticut with insurance provided by the FDIC.

D. Any unit furnished as a result of this bid is to be a new and unused model currently in production. Alternate proposals on recycled products will, however, be considered. Accessories necessary for its proper functioning on delivery, are assumed to be included in the quote though not specifically mentioned below. All assemblies, sub-assemblies and component parts for all units specified are to be standard and interchangeable.

E. The award of any contract is subject to the following conditions and contingencies:

- (1) The approval of such governmental agencies as may be required by law.
- (2) The appropriation of adequate funds by the proper agencies.
- (3) If the bidder is a corporation or other legal business entity, it must have a current license to do business in the State of Connecticut that is on file with the Connecticut Secretary of State's office, or it must be organized under the laws of the State of Connecticut and current in terms of its required filings.

Note: If you are an out-of state business and the performance of your contract with the City requires that tangible personal property will be used or consumed in this state, you must comply with Connecticut General Statutes 12-430-7 a copy of which can be found at <http://www.cga.state.ct.us/2003/act/Pa/2003PA-00147-R00SB-01137-PA.htm>

Questions concerning this statute should be addressed to the Commissioner of Revenue Services for the State of Connecticut, Department of Revenue Services, 92 Farmington Avenue, Hartford CT 06115.

Registration by out-of state corporations with the Connecticut Secretary of State, 30 Trinity Street, Hartford CT 06106, telephone 860-509-6002, is required by law as a condition for doing business in the State of Connecticut.

F. Notice is hereby given to all bidders that as a municipality the City of Norwalk is subject to and bound to comply with the terms of the Freedom of Information Act. Consequently, please be informed that under the terms of the Act some or all of your submissions, including attachments, may be subject to disclosure to the public or press upon request. The FOI Act recognizes that certain documents are exempt from disclosure or may be held confidentially. However, these exemptions are considered exceptions to the general rule favoring disclosure and are generally narrowly construed. You should consult with legal counsel before making your submission if you have any questions about what submitted document may be disclosed. You are hereby requested to submit those documents to which an exemption is claimed under seal along with those non-exempt documents. These sealed documents shall initially be held in confidence but may be released to the extent required or allowed by law.

### **3.2 RECYCLING POLICY:**

The City of Norwalk is committed to protecting the environment and managing solid waste. Where possible and practical the City will procure recycled and/or recyclable products. The City will consider alternate proposals which maximize the use of products which are produced from post consumer waste, which reduce waste or consumption, or that offer products with a salvage value.

The City requests that it's vendors eliminate all non-essential packaging that may be used in the delivery process.

### **3.3 OBLIGATIONS OF THE CANDIDATE:**

At the time of the opening of proposals, each candidate will be presumed to be thoroughly familiar with the City's requirements, and the objectives for each element of the project item or service.

### **3.4 SITE INSPECTION:**

Information contained in these documents is provided in good faith only that all candidates may have access to the same information utilized by the City, and is not intended as a substitute for personal investigations, interpretations and judgement of the candidate. As information may be approximated or incomplete, candidates should conduct a thorough inspection or study of existing conditions/equipment.

### **3.5 INSURANCE REQUIREMENTS:**

A certificate of insurance, if requested, must be presented to the City at the time of award and must name the City as an additional insured on the face of the document. In addition, please list the name and address of your insurance agent as part of the returned bid proposal. The City's Standard insurance requirements are available via FAX. Dial 203-854-7897 to access the Purchasing Department's **Express Request Line**. Request document number 1007.

All policies must be written on a "per occurrence" basis. "Claims Made" Policies are not acceptable. The Contractor is responsible for the cost of maintaining such insurance throughout the duration of the project.

### **3.6 LIQUIDATED DAMAGES:**

Time is of the essence. Provisions of a final agreement must be completed by the dates indicated. Liquidated damages will be computed from costs incurred and/or revenues lost as a result of missing this deadline.

### 3.7 RETAINAGE:

The City may retain 5% of the total project cost until such time as a guarantee bond, satisfactory to the Corporation Council's office is posted with the City or other terms for retainage are specifically stated in the contract for this project.

### 3.8 ACCEPTABLE BRANDS:

The Bid specifications are not intended to limit consideration to the particular service organization or manufacturer from which they were developed. References to brand names or numbers are to be interpreted as establishing a standard of quality and is not to be construed as limiting competition. Brand names used within these specifications shall be presumed to be followed by the words "or approved equal".

Burden of proving a product and/or material as equal to a specific product and/or material by brand name is the responsibility of the contractor.

Final determination as to what is an "or equal" product will be made by the Purchasing Agent in conjunction with other City staff. The City will award on the basis of the criteria stated herein, and reserves the right to waive or require compliance with any element of the specifications.

### 3.9 HOW TO RESPOND:

Supply the required information on and along with the response form. An explicit agent of your organization must sign and date the response form and any supplementary proposal document. *Provide six copies of any informational literature.* If this request has a "Specification Offered" column opposite the specifications complete as follows:

In the "specification offered" column write in:

- a) "As specified"
- b) "Exceeds specifications" - Identify what exceeds the specification and why
- c) "Exception to specifications" - Again, identify the substitute and define its effect.

Be sure to return these pages with your pricing sheet(s).

If a prospective bidder needs clarification or interpretation of any items in these documents he/she must request such in writing, addressed to the Buyer who's name appears on the invitation to bid, at least one calendar week prior to the bid opening. Responses shall also be in writing, and shall be distributed in the same manner as Addendas. The City of Norwalk, or its agents shall not be responsible for any oral instructions or interpretations given to a bidder.

Return all response forms, bond (if required), and any informational literature (**six copies**) to **Norwalk City Hall, Purchasing Department, Room 103, 125 East Avenue, P.O.Box 5125, Norwalk, Ct. 06856-5125**. Be sure to indicate the request number, name, and opening time in the spaces provided. Mark the original proposal package as "ORIGINAL" on the front cover. We will open the bid upon receipt if this information is not provided on the face of the envelope. In this case the Purchasing Department can not be held responsible for the confidentiality of the bid.

Late bids – bid submissions delivered or received later than the date and time specified on the invitation to bid will not be considered and will be returned unopened. The bidder shall assume full responsibility for the timely delivery of their submission at the location designated for the receipt of the submissions.

Failure to follow these guidelines may be just cause for rejection of the proposal.

Responses transmitted by FAX or E-mail are accepted with the following understandings:

1. The City is not responsible for the confidentiality of the information transmitted.
2. The City can not guarantee that our FAX or computer equipment will be available to receive transmittals. It is the Bidder's responsibility to ensure that quotations are received complete and on time. It is recommended that you call immediately after transmitting.
3. Bids transmitted by fax or E-mail which have a bond requirement are subject to the terms of paragraph 3.1 (c).

### **3.10 CRITERIA FOR AWARD:**

This Request for proposal/bid does not necessarily contemplate an award based solely on price. Rather, the City reserves its rights to accept or reject any and all proposals / bids, or any part thereof, to waive defects in the same, or accept any proposal / bid or a combination of proposals / bids deemed to be in its best interests.

### **3.11 QUALIFICATIONS OF CANDIDATES OFFERING PROPOSALS:**

The City may make such investigations as deemed necessary to determine the ability of the candidate to perform the work and the degree to which any candidate meets the criteria for Award listed herein. Each candidate agrees to furnish the City any additional information requested.

### **3.12 THE RFP PROCESS:**

Bids are advertised as required by law. The City may also mail invitations to businesses as it deems appropriate. Placement on a vendor mailing list or a history of having received invitations in the past or having received prior contract awards in no way obligates the City to continue any form of direct notification. At the discretion of the Purchasing Agent the City may remove vendors from the mailing list for whatever reason including a poor performance history or failure to respond to previous invitations.

### **3.13 TIME PROVISIONS:**

The content of any proposal submitted is to remain valid and available to the City for ninety (90) days from the day proposals are due.

Unless otherwise indicated the duration of the Contract will be one (1) year. Further, this contract may be renewed, expanded and extended at the option of the City in one (1) year increments for up to four (4) additional periods provided that the funds are available, approved by the City for this purpose and that the Contractor has established a satisfactory performance record. Revisions in terms to be negotiated on award anniversaries.

Notwithstanding the failure of City to exercise any option to renew this contract for an additional year, the Contract Administrator reserves the right to unilaterally extend this contract on a month to month basis for a period not to exceed three (3) months under the same terms and conditions applicable to the preceding contract period.

### **3.14 TERMS AND CONDITIONS**

TERMINATION (701): The City may at any time, and for any reason, direct the discontinuance of the services and work contemplated under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which the work shall be discontinued. The work shall be resumed on the dates specified in such direction, or upon such other date as the City may thereafter specify in writing. The period during which such work shall have been discontinued shall be deemed added to the time for performance. In the event that the City directs the discontinuance of the services hereunder for a period of time in excess of six (6) months, through no fault of the Contractor, the parties may negotiate and adjustment in the fees payable hereunder due to a rise in the cost of performance. Stoppage of work under this article shall not give rise to any claim against the City.

(702) The City may at any time and for any reason, with or without cause, terminate this Agreement by written notice specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, services shall be paid for in such amount as shall compensate the Contractor for the portion of the work satisfactorily performed prior to termination. Such amount shall be fixed by the City after consultation with the Contractor, and shall be subject to audit by the City's Comptroller. Termination under this section shall not give rise to any claim against the City for damages or for compensation in addition to that provided hereunder.

INTENT (703): It is the intent of this Agreement to secure the services of the Contractor or a duly authorized and competent representative or representatives of the Contractor acceptable to the City. Failure of the Contractor for any reason to make the service of such a person or persons available to the City to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this agreement. All persons engaged in the work required under this Agreement shall be authorized or permitted under State law to perform such services, as required by law.

ASSIGNMENT (704): The Contractor shall not assign or subcontract this Agreement or any of the services to be performed by it hereunder without prior consent of the City in writing. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors as it is for the acts and omissions of people directly employed by it. The Contractor shall require any subcontractor approved by the City to agree in its contract to observe and be bound by all obligations and conditions of this Agreement to which Contractor is bound.

DEFAULT (705): When the City shall have reasonable grounds for believing that:

- A. The Contractor will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or
- B. A meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor or the Contractor's breach of any provision of this Agreement;

then the City may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the City or claim against the City by reason of the City's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

In the event the Director determines that there has been a material breach by the Contractor of any of the terms of the Agreement, the City has the right, power and authority to terminate this

Agreement and to complete the work or any part thereof, and the Contractor shall be obligated to pay the City for any losses, damages, costs and expenses; including attorneys' fees, sustained or incurred thereby. For the purpose of such completion the City may, for itself or for any of its Contractors, take possession of and use or cause to be used any and all documents, plans and specifications or other items that may have been used or drawn up in connection with the performance of this Agreement. This right is in addition to any other right or remedy the City may otherwise have.

In such event, all costs, expenses, losses, damages, attorneys' fees, and any and all other charges incurred by the City under this Agreement shall be charged to the Contractor and deducted and/or paid by the City out of any monies due or payable or to become due or payable under this Agreement to the Contractor if any such cost shall exceed the sum due or to become due to the Contractor, the Contractor shall pay the excess amount to the City. In computing the amounts chargeable to the Contractor, the City shall not be held to a basis of the lowest prices for which the completion of the work or any part thereof might have been accomplished, but it shall charge to the Contractor, and the Contractor shall be liable for all sums actually paid or expenses actually incurred in effecting prompt completion of the work hereunder. The City's rights described herein are in addition to any other rights and remedies provided by law.

Termination under this section shall not give rise to any claim against the City for damages or compensation in addition to that provided hereunder.

INDEMNIFICATION (706): Contractor shall not assert any claim arising out of any act or omission by any agent, officer or employee of the City in the execution or performance of this Agreement against any such agent, officer or employee. Such claims may be made against the City.

(707) No member of the governing body of the City, and no other officer, employee, or agent of the City shall have any personal interest, direct or indirect, in this Agreement, except as permitted by the Code of Ethics of the City of Norwalk; and the Contractor covenants that no person having such interest shall be employed in the performance of this Agreement.

(708) The Contractor expressly agrees to at all times indemnify, defend and save harmless the City of Norwalk and its respective officers, agents, and employees on account of any and all demands, claims, damages, losses, litigation, financial costs and expenses, including counsel's fees, and compensation arising out of personal injuries (including death), any damage to property, real or personal and any other loss, expense or aggrievement directly or indirectly arising out of, related to or in connection with the Project and the work to be performed hereunder by the Contractor, its employees, agents, subcontractors, material suppliers, or anyone directly or indirectly employed by any of them. The Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits, proceedings and litigation. The provisions of this paragraph shall survive the expiration or early termination of this Agreement and shall not be limited by reason of any insurance coverage.

APPLICABLE LAW (709): This Agreement shall be construed in accordance with the laws of the State of Connecticut, and any action at law in connection herewith shall be brought in Connecticut state courts.

COMPLIANCE WITH LAW (710): The Contractor shall comply with all applicable laws, regulation, ordinances and codes of the State of Connecticut and the City of Norwalk, and shall commit no trespass on any private property in performing any of the work embraced by this Agreement.

EQUAL OPPORTUNITY (711): During the performance of this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, marital status, mental disability, physical disability or national origin.

ACCEPTANCE (712): This Agreement and its attachments constitute the entire understanding and agreement of the parties respecting the subject hereof and supersede any and all agreements, negotiations, commitments and writings reached by the parties prior to the execution of this Agreement, whether oral or written. No change or modification of this Agreement shall be valid unless it is in writing and signed by both parties hereto.

CHANGES (713): The City may, from time to time, request changes in the scope of services to be performed by the Contractor hereunder. Any such change, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in a written amendment to this Agreement.

CONFLICTING TERMS (714): The terms and conditions of the contract signed upon award of the bid will supersede any inconsistent provision of the bidding documents.

REQUIRED PROVISIONS (715): Each and every provision and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though such provisions and clauses were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then, upon the written consent of the parties, this Agreement shall forthwith be physically amended to make such insertion.

SUCCESSORS & ASSIGNS (716): The City and the Contractor each binds itself and its successors and assigns with respect to all covenants of this Agreement. The Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the City.

INVALID PROVISIONS (717): If any provisions of this Agreement is held invalid, the balance of the provisions of this Agreement shall not be affected thereby if the balance of the provisions of the Agreement would then continue to conform to the requirements of applicable laws.

CONFLICT OF INTEREST (718): The Contractor warrants that it has no interest in the subject matter of this Agreement and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Contractor further warrants that, in the performance of this Agreement, no person having any such interest shall be employed by it.

The Contractor represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payment of fixed salary to a bona fide full time salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. The Contractor represents that no person or persons not named in the Contractor's qualification and proposal, have any financial or personal interest in the Contractor's performance hereunder.

For the breach or violation of this provision, without limiting any other rights or remedies to which the City may be entitled or may civil or criminal penalty to which any violator may be liable, the City shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the payments to be made pursuant to this Agreement, or otherwise to recover the full amount of such fee, commission, percentage, gift or consideration.

NOTIFICATION (719): All notices of any nature referred to in this Agreement shall be in writing and sent to: The Name of the Contract Administrator  
Norwalk City Hall  
P.O. Box 5125  
Norwalk, Ct. 06856

### **3.15 INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor and shall not be regarded as an employee or agent of the City.

### **3.16 INSPECTION:**

The City shall have the right to inspect Contractor's work at all reasonable times.

### **3.17 HAZARDOUS WASTE:**

In the event that the specified project involves the handling of hazardous waste and associated insurance coverages are not identified elsewhere in the bid documents, the contractor's insurance policy must provide Environmental Impairment Liability as described in Doc. #1007, General Insurance Requirements.

Title to all Waste accepted by the Contractor from City for transport and disposal by the Contractor shall pass directly from the City to the Contractor at the time of such acceptance. Appropriate documents so signifying shall be signed by a representative of the Contractor. Under no circumstances shall title to such Wastes be deemed to be held by the City.

The Contractor warrants that it understands the currently known hazards and suspected hazards which are presented to persons, property, and the environment by the transport, treatment, and disposal of Wastes. The Contractor further warrants that it will perform all services under this Agreement in a Safe, efficient, and lawful manner using industry-accepted practices, and in full compliance with all applicable Connecticut and Federal laws and regulations.

### **3.18 LICENSES AND PERMITS:**

The Contractor certifies that for the duration of contract performance, he shall have and provide proof of permits and licenses as required by the City of Norwalk Department of Code Enforcement and/or other City, State or Federal regulatory bodies as applicable.

### **3.19 PATENT INFRINGEMENT:**

Contractor shall fully indemnify, save harmless and protect the City, the City's agents, and agents and employees of all of them against any loss, claim, liability, damage or expense resulting directly or indirectly from patent infringement claims arising out of Contractor's performance.

### **3.20 PAYMENT:**

Payment will be made within thirty (30) days after receipt of acceptable monthly statements with appropriate supporting documentation. Prior to final payment, Contractor will be required to complete a close-out form certifying that all work has been completed and releasing the City (and any other party owning property with respect to which Contractor performed services hereunder) from all further obligations and liabilities. Unless compensation to Contractor is a fixed lump sum, the City shall have the right, during the course of the Contractor's services and for a period of two years after completion of the services, to examine Contractor's records to verify all direct charges, expenses and disbursements made or incurred by Contractor in connection with the services.

### **3.21 TAXES:**

The City is exempt from Connecticut Sales Tax under G.S. Sect. 12-412(A), Federal excise taxes, and the provisions of the Federal Robinson-Patman Act.

### **3.22 WARRANTIES, GUARANTEES, & INSTRUCTIONS:**

3.22.1 Contractor warrants for itself, its subcontractors and its suppliers, that services performed shall conform to the requirements of the agreement and shall be accomplished in a workmanlike manner and, unless otherwise specified, in accordance with generally recognized and adequate practices and standards. If any services do not conform in all respects or are defective in any respect, and the City notifies Contractor within a reasonable time after discovery thereof, Contractor, at its sole expense, promptly shall correct such non-conformity or defect. This obligation of Contractor to correct non-conforming or defective services shall continue for one year after final completion of services. All warranties herein shall be assignable to any customer of the City or agent thereof intended to benefit from such services. These warranties shall survive any termination of this agreement and any acceptance or payment by the City and shall be in addition to any remedies provided by applicable law.

3.22.2 Contractor warrants that the merchandise supplied hereunder will be of good workmanship and material, free from defects and in accordance with specifications and if the intended use thereof has been made known to vendor that it is adequate for that intended use.

3.22.3 Contractor warrants that all goods and services furnished hereunder will be designed, constructed and performed so as to comply with the Williams- Steiger Occupational Safety and Health Act of 1970, as amended from time to time, and the rules, regulations and standards issued thereunder by any applicable governmental authority which as of the date of this agreement will apply to the goods and services furnished hereunder.

### **3.23 ASSIGNMENT OF ANTITRUST CLAIMS:**

The Contractor offers and agrees to assign to the City of Norwalk all of its right, title and interest in and to any and all causes of action it may have under Section 4 of the Clayton Act, 15 U.S.C. Section 15, or under Chapter 624 of the Connecticut General Statutes, arising out of the purchase of services, goods, property or intangibles of any kind pursuant to a purchase order, contract agreement, subcontract or other form of public purchase by the City of Norwalk. This assignment shall be made and become effective upon award or acceptance by the City of Norwalk of the bid, purchase order or contract agreement with the Contractor without requiring any additional or further act or acknowledgment by the parties.

The Contractor shall include the terms of this assignment to the City of Norwalk in any contract, agreement or purchase document that it may enter into for services, goods, property or intangibles used for or incorporated into any work or materials, performed for or provided to the City of Norwalk.

### **3.24 SMOKING POLICY**

No person shall smoke in any municipal or school system facility.

### **3.25 OTHER TERMS**

1. Invoice and bill of lading or other notice containing complete shipping information must be mailed at time of shipment.
2. City's order number must be shown on all packages, invoices and correspondence.
3. Acknowledge order and advise approximate shipping date immediately upon receipt of this order.

END OF SECTION