

CITY OF CANANDAIGUA
Department of Public Works
205 Saltonstall Street
Canandaigua, New York 14424
585-396-5060

April 9, 2015

NOTICE TO BIDDERS

Sealed bids for the purchase of **RECYCLING COLLECTION ROLL OUT RECEPTACLES/CONTAINERS** will be received at the City of Canandaigua at the Department of Public Works' Hurley Building, 205 Saltonstall Street, Canandaigua, New York, until 2:00 p.m. on Wednesday, April 22, 2015, when they will be publicly opened and read.

All bids shall be in accordance with specifications furnished by and obtainable at 205 Saltonstall Street, Canandaigua, New York 14424 (585-396-5060).

James P. Sprague, P.E.
Director of Public Works

Note: This entire document must be submitted when bidding. Do not detach any pages.

Sealed bids for the purchase of recycling collection roll out receptacles will be received by the City of Canandaigua at the Hurley Building, 205 Saltonstall Street, Canandaigua, New York until 2:00 P.M., on Wednesday, April 22nd, when they will be publicly opened and read.

All bids must be submitted on the attached Bid Proposal Form and include the Non-Collusive Bidding Certificate as well as all other data requested on the Bid Proposal Form.

A certified check or bid bond in the amount of five percent (5%) shall accompany each bid.

No bids may be withdrawn after bid opening. All bids shall be in effect up to sixty (60) days after bid opening.

The City reserves the right to waive any informality or accept or reject any or all bids that it deems to best serve the needs of the City of Canandaigua.

The bid proposal notice shall be part of the specifications.

Delivery

The equipment and components to be furnished under this Contract shall be delivered to the City of Canandaigua, Hurley Building, 205 Saltonstall Street, Canandaigua, New York 14424.

All bidders are requested to specify a delivery date, which shall be considered in the award of bid. The City would like a delivery timeline that staggers delivery in four equal installments with deliveries occurring on May 25th, June 1st, June 8th and June 15th. However, adjustment to the delivery dates will be considered. The City of Canandaigua reserves the right to immediately cancel its order and be entitled to receive as damages the bid bond or check of the bidder.

Each bidder is required to list on the Proposal and Bid Form the latest date he expects delivery to be made at destination as defined on page 8, 'DELIVERY' section. FAILURE TO INCLUDE A SPECIFIC DELIVERY DATE MAY BE SUFFICIENT GROUNDS FOR REJECTION OF BID.

Information to be Furnished With Bid

The bidder shall submit with its bid; detailed specifications, complete description including pictures, and all other pertinent data on the equipment he proposes to furnish.

Bids offered without said data may be declared "Informal".

The City, however, reserves the right to request additional information deemed necessary for proper evaluation of bids.

Payment

Payment will be made by the City to the Contractor/Vendor upon execution of an invoice by the Contractor/Vendor, in triplicate, to the City of Canandaigua within thirty (30) days after the equipment has been delivered and accepted.

Preparation of Proposal

The proposal is contained in these contract documents and MUST NOT BE DETACHED HEREFROM by any bidder when submitting a proposal.

THE BIDDER MUST RETURN THE BID DOCUMENT INTACT, REMOVAL OF ANY PART THEREOF WILL INVALIDATE THE BID.

All blank spaces on the proposal page or pages must be completely filled in. Either a unit price or a lump sum price, as the case may be, must be stated for each and every item, either typed in or written in ink, in figures, and if requested, in words.

All blank spaces on the questionnaire page or pages must be completely filled in. Answers must be stated for each and every item, either typed or written in ink, in figures, and if required, in words.

Base Bid

Attention of the Bidder is called to the fact that the Proposal and Bid Form requires, Under Base Bid, the Net Delivered Price covering the item(s) specified. Any deductions for freight allowance, cash discount, or quantity rebate should be included in the total net price, as given on the bidding sheet, and should not be listed as separate items.

Compliance With Laws

The Bidder shall at all times observe and comply with all laws, ordinances, and regulations of the Federal, State, Local, and City Government, which may in any manner affect the preparation of proposals or the performance of this Contract.

Tax

The City of Canandaigua is exempt from paying Manufacturer's Excise, Floor or Sales Tax and for that reason the Bid Price shall not include any tax on the item(s) specified.

The City of Canandaigua will furnish a signed exemption form covering the tax, if any, applying to the item or items covered by these specifications, as may be required by law.

Late Delivery Of Supplies

It is expressly understood and agreed that, as a result of the dangers inherent to the public, and because of the monetary losses which will be sustained by the City as a result of failure to deliver the materials described in the Contract on time, that time is of the essence in the performance of this Contract. It is agreed that damages resulting from late delivery can neither be accurately anticipated nor calculated.

At the option of the Public Works Director, the City may invoke the DEFAULT provision of the Contract, in addition to any liquidated damages as outlined above.

For the purposes of this sub-section, any days in excess of three days following arrival of the materials at the destination as defined under the section entitled "DELIVERY", (not including the day of arrival) which the City expends in inspecting and either accepting or initially rejecting the equipment shall not be considered as a day that the equipment is delivered late.

EXTENSIONS OF TIME - EXCUSABLE DELAYS

The City shall grant extensions of the Contract time of completion for any delays resulting from causes beyond the Contractor/Vendor's control, which are not to be considered normal hazards of the Contract. Delays of this classification are as follows:

- a) Acts of the Federal Government, including: controls or restrictions upon the use or obtaining of materials, equipment, tools or labor essential to completion of the work, by reason of war, National defense, or any other National emergency.
- b) Acts of the City, including but not limited to changes in the method or the scope of work covered by the Contract upon order of the City.
- c) Causes not reasonably foreseeable by the parties to this contract at the time of the execution of the Contract, which are beyond the control of and through no fault or negligence of the Contractor/Vendor. This shall include, but is not restricted to: Acts of God or the public enemy, freight embargoes, court actions, fires, floods, epidemics, quarantine and strikes, weather of unusual severity such as hurricanes, tornadoes and cyclones, and weather of unusual severity for the season which directly affect or prohibit the work under the Contract. Provided, however, that the Contractor/Vendor notifies the City in writing within ten (10) days from the beginning of any such delay and detailing the causes of the delay.

Upon receipt of such notification, the City shall ascertain the facts and the cause and extent of the delay. If, in the opinion of the City, the delay is properly excusable based on the facts and terms of the Contract, the City shall extend the time for completing delivery for a period of time commensurate with the period of excusable delay.

It is further agreed, that the foregoing occurrences shall not result in any claim for damages or contract adjustment other than extension of time.

QUALIFICATION OF BIDDER

BIDS WILL BE CONSIDERED ONLY FROM AUTHORIZED DEALERS OF RECYCLING COLLECTION ROLL OUT RECEPTACLES

NOTE: In the event a bid is submitted by other than the manufacturer, a certificate executed by the manufacturer may be required stating that the bidder is an authorized agent, dealer or distributor of the manufacturer in the Canandaigua, NY area and that the equipment offered is completely in compliance with the specifications and proposal and will be available during the life of the contract.

No proposal will be accepted from or contract awarded to any person, firm or corporation that has failed to perform faithfully any previous contract with the City.

AWARDING CRITERIA

Although proposals may be received based on the minimum requirements indicated, it is not intended that this alone shall limit the award but other factors may be considered, including the experience of the City and others.

In making an award the City will evaluate the bids received, considering such factors as listed below, as well as other factors, which are considered pertinent:

- a. Compliance with Bid Document terms and conditions
- b. Compliance with Specifications
- c. Delivery

If the above criteria are met, price will be determined on using the sum of all estimated quantities multiplied by the unit bid price.

The award will be based on lowest responsive bid total amount.

REJECTION OF BIDS

The City of Canandaigua reserves the right to reject any and all bids or proposals if the best interest of the City will be served by such action.

The Public Works Director reserves the right to reject any bid that is unbalanced, unrealistic or where disproportionate component cost of equipment are proposed.

INFORMALITIES

The City of Canandaigua reserves the right to consider INFORMAL a bid not prepared and submitted in accordance with the provisions of these specifications.

PURCHASING

The estimated bid quantities are for bidding purposes. The length of this contract shall be extended for three (3) years from the Council Award Date with written mutual consent of the Contractor/Vendor and the City of Canandaigua.

BID SPECIFICATIONS FOR THE CITY OF CANANDAIGUA FOR SUPPLYING RECYCLING COLLECTION ROLL –OUT RECEPTACLES/CONTAINERS

The City of Canandaigua is seeking competitive bids for supplying 3,200 roll-out plastic containers to be used for recycling storage and disposal purposes. The total number of containers shall include **(Item #1) 2,880 – 96 gallon** and **(Item #2) 320 – 64 gallon** sizes.

The specifications herein describe the minimum acceptable features and performance requirements for roll-out recycling containers the City will purchase for its citizens. Bidders are to have thoroughly read and understood these specifications prior to bid submission.

All bids must be submitted on the City’s forms as provided. Bidders shall complete the specification column with a checkmark indicating whether or not that item meets the specifications. Any item left blank will be assumed by the City to be not in compliance with that specification item. Failure to answer all specification questions may cause the rejection of the bid.

By checking no on any specification item, the bidder states that the product being bid does not conform to that specification. All variations and/or exceptions must be documented, referencing applicable paragraphs, and explained in detail on a separate page titled “EXCEPTIONS”. If the City determines that exceptions exist but were not identified in any such list, then that bid may be disqualified as being non-responsive. If no exceptions are taken, it will be assumed that the bid meets all specifications.

Each roll-out container shall consist of a body, lid, wheels, axle, and necessary accessories. The plastic resin material and the finished container must meet the minimum specifications contained herein.

		YES	NO
2.1	MANUFACTURING PROCESS: Each container body must be manufactured by the Rotational molding process, or equivalent.		
2.2	PLASTIC MATERIAL: Base plastic resin must be first quality linear polyethylene supplied by a national petrochemical producer. Bidder must submit technical data sheet(s) from the resin producer, which verify that the resin to be used in the container body will meet the following minimum property levels: ESCR > 1000 hours Elongation > 1000% Density 0.937-0.940		
2.3	RESIN ADDITIVES: The plastic resin must be enhanced with color pigment and ultraviolet inhibitor, which must be uniformly distributed throughout the finished container. To ensure thorough distribution of these additives, the resin and additives must be mixed in a molted state using a hot-melt compounding process. Bidder must submit a statement certifying that all of the plastic resin and additives will be hot-melted blended.		

		YES	NO
CONTAINER REQUIREMENTS: The rollout containers must be compatible with standard American semi-automated bar-locking lifters (ANSI Type B) as well as automated arm lifters (ANSI Type G) and function as follows:			
3.1	<p>ANSI CONFORMANCE: Containers bid herein must meet the requirements of ANSI Z245.30-2008 and ANSI Z245.60-1999 standards for “Type B/G” containers.</p> <p>Bidders must submit independently certified copies of all ANSI test results with bid. Test results must state load (in pounds) under which tests were conducted. The load under which the tests were conducted must be the same as the load rating stated in all literature and specifications. The ANSI Appendix D test for “Loading and Unloading Test for Carts” must clearly state that the required 520 dump cycles under the cart’s full rated load were performed on both a Semi-Automated Cart Lifter and a Fully Automated Grabber Arm.</p>		
3.2	<p>LOAD RATING: Containers must be designed to regularly receive and dump the following pounds of waste materials, excluding the weight of the container, without permanent damage or deformation. The load rating must conform with ANSI Standard Z245.30-2008.</p> <p style="text-align: center;">96 gallon – 335 pounds 64 gallon – 224 pounds</p> <p>Bidder must submit its normal printed color sales brochure which shows the exact product item bid and the corresponding load rating. Bidder must mark the location of the load rating on the brochure with a bold red arrow so as to aim directly at the load rating. Load rating stated on literature must match or exceed all specifications. ANSI certification submitted with bidder’s proposal, and the load rating permanently marked on the product.</p> <p>96 gallon – STATE LOAD RATING - _____ pounds 64 gallon – STATE LOAD RATING - _____ pounds</p>		
3.3	<p>WEIGHT: The total weight of the fully assembled container shall be as follows:</p> <p>96 gallon – 32 pounds minimum to 37 pounds maximum 64 gallon – 25 pounds minimum to 29 pounds maximum</p> <p>STATE FULLY ASSEMBLED WEIGHT OF EACH SIZE:</p> <p>96 gallon - _____ pounds 64 gallon - _____ pounds</p>		
3.4	<p>CAPACITY: The total capacity of the container body, excluding the lid, must be 96 U.S. gallons, 64 U.S. gallons (+/- 2%). Bidder must include an independent test result according to ANSI Z245.30, Appendix A (Volume Test), certified by an accredited professional engineer, showing the exact capacity of the cart body (to the nearest 0.1 U.S. gallon).</p> <p>96 gallon: STATE BODY CAPACITY - _____ U.S. Gallons 64 gallon: STATE BODY CAPACITY - _____ U.S. Gallons</p>		

		YES	NO
3.5	<p>DIMENSIONS: The exterior dimensions of the completely assembled containers shall be as follows (+/- 2"):</p> <p>96 gallon: Height: 43.25" STATE HEIGHT - _____" Length: 35.25" STATE LENGTH - _____" Width: 29.75" STATE WIDTH - _____"</p> <p>64 gallon: Height: 43.25" STATE HEIGHT - _____" Length: 35.25" STATE LENGTH - _____" Width: 29.75" STATE WIDTH - _____"</p>		
3.6	<p>RIM OF BODY: The upper rim of each body must consist of a closed tubular design, similar to square steel tubing, for maximum strength during collection. The rim must also include a ledge on which the lid rests to create a tight seal between body and lid. Rolled over or other rims that are open on the underside are NOT acceptable.</p>		
3.7	<p>HANDLES: Each container must be equipped with two (2) handles, each a minimum of 1" diameter. The handles and handle mounts must be an integrally molded part of the container body. The handles shall be designed to afford the user positive control of the loaded cart at all times. The handles must not have the ability to rotate on their own axis at any time. Handles which are molded as part of the lid are unacceptable. Bolted on handle mounts or bolted on handles are unacceptable.</p>		
3.8	<p>LID: The lid shall be configured to ensure that it will not warp, bend, slump, or distort to such an extent that it no longer fits the container properly, or becomes otherwise unserviceable. The lid must be crowned in shape and designed to disallow entry of rain when in closed position. The lid must open from a closed position through a full 270 degree arc. Living hinges and lid counter weights are unacceptable. Lid latches are unacceptable.</p>		
3.9	<p>BOTTOM: The bottom of the container must have a molded-in wear strip to protect against dragging. Container base must be impact resistant at all points (four corners and the center) of the base for durability. Screw-on, bolt-on, or pop-on wear guards are unacceptable.</p>		
3.10	<p>WHEELS: Wheels shall be 10" diameter and 1.75" wide with knobby treads. Wheels must be extra high molecular weight polyethylene capable of supporting 200 pounds per wheel.</p>		
3.11	<p>AXLE: The axle must be 5/8" diameter zinc chromate plated solid high strength steel fully supported by cart body. Axle must slide through two molded-in plastic journals in the cart bottom and must not be exposed to contents inside of container. Each molded-in axle journal must be at least 1" wide. Axles attached by means of bolts or rivets are unacceptable.</p>		

		YES	NO
3.12	STABILITY: Each container shall be stable and self-balancing when in the upright position, either loaded or empty. The container must be designed to withstand winds of up to 25 mph when empty. Containers must be easy for a citizen to tilt to the roll position when fully loaded while keeping both feet on the ground. Any container which is judged as too difficult to tilt when loaded to maximum capacity of material will be disqualified. Containers that require a foot fulcrum to assist in tilting the container are unacceptable.		
3.13	LIFT SYSTEM: Each container shall be equipped with attachment points which make it compatible with standard American semi-automated bar-locking lifters and fully-automated arm lifters. The upper lift point must be integrally molded into the body of the container. The lower lift bar must be designed to withstand over ten (10) years of lifter attachment, and must be 1” diameter galvanized steel. It must freely rotate a full 360 degrees on its own axis. The lower bar must be mounted in molded-in plastic bearings so that it is not exposed to the contents inside the container. The lower bar must be factory installed and cannot be attached by means of rivets, screws, bolts, fasteners, etc. Containers with bolted on lower bars or plastic lower bars are NOT acceptable.		
3.14	NESTABILITY: Containers must be designed so that each fully assembled container can be stacked inside another fully assembled container for maximum efficiency in storage and delivery. Containers that will not nest one inside another when fully assembled are NOT acceptable.		
3.15	COLOR: The container body color shall be solid and one of the following base colors: blue, dark blue, or green.		
MARKINGS: Each container must be permanently marked with letters/numbers as follows:			
4.1	SERIAL NUMBERS: Each container must have a serial number hot stamped in white on the front face of its body. The serial number shall be preceded by a letter or number code which designates the year of manufacturer. Serial numbers shall be in sequence beginning with a number designated by the City. The bidder will maintain a file that will identify the date of manufacturer by the serial number.		
4.2	CITY SEAL: The Seal of the City shall be hot stamped in white onto both sides of the cart body. Additionally, the Universal Recycling Logo shall be hot stamped in white onto both sides of the cart body below the City Seal. The Universal Recycling Logo shall not be smaller than 12” in diameter.		
4.3	USER INSTRUCTIONS: Instructions for the safe use of the container must be molded into each lid.		
4.4	LOAD RATING: The load rating of the container must be raised relief molded into the lid. Load rating must be stated in both pounds and kilograms.		
EXPERIENCE:			
5.1	REFERENCES: Bidder must submit with its bid a reference list of municipalities currently using the bidder’s products. The list must include at least five (5) municipalities who currently have at least 4,000 carts in service. Include the name of the municipality, year of installation, contact person, phone number, and quantity for each reference. Failure to include these references may result in bid disqualification.		

		YES	NO
WARRANTY: Bidder must submit with bid a document which clearly states the exact warranty of the bidder. The warranty must be for no less than ten (10) full years and must specifically provide for no-charge replacement of any component part which fails in materials of workmanship for a period of ten (10) years from the delivery date. The bidder's warranty is understood to include, whether stated in bidder's warranty or not, the following coverage:			
6.1	Failure to the lid to prevent rain water from entering the container when in the closed position.		
6.2	Damage to the container body, lid, or any component parts through opening or closing the lid.		
6.3	Failure to the lower lift bar from damage during interface with lifters.		
6.4	Failure of the body and lid to maintain their original shape.		
6.5	Damage or cracking of the container body through normal operating conditions.		
6.6	Failure of the wheels to provide continuous, easy mobility, as originally designed.		
6.7	Failure of any part to conform to minimum standards as specified herein.		
6.8	If bidder is owned by another business entity, then the owning entity must also accept full financial responsibility for the warranty of the bidder. The bidder must submit with their bid a letter from the owning entity which clearly states its obligation and commitment to honor the warranty of the bidder, should the bidder ever be in a position to not do so. Such letter shall be signed by the owning entity's top officer and notarized.		
6.9	Warranty specimen of exact warranty offered must be included with proposal.		
PRICE ADJUSTMENTS:			
7.1	The City of Canandaigua reserves the right to adjust its itemized quantities by adding or subtracting or substituting one size for another. This adjustment shall not exceed 10% of the initial specified quantities. Contract extensions of the products offered will be based on a mutual written agreement between the Contractor/Vendor and the Customer. Such extension shall not exceed 3 years from the contract award date.		
LEGAL OR ADMINISTRATIVE SETTLEMENTS:			
8.1	The manufacturer of the cart must submit the name, contact name, and telephone number for each government or agency with which it has had a legal or administrative settlement of warranty, cart failure claims or contract performance within the last ten (10) years including ongoing negotiations of settlement. Include a brief summary of the settlement or indicate if a "gag order" was imposed, and by whom it was ordered. This information must be provided on a separate page entitled "Legal or Administrative Settlements."		
ASSEMBLY AND DOOR TO DOOR DISTRIBUTION:			
9.1	The City of Canandaigua will be responsible distributing carts to the residents of the City. Containers shall be delivered fully assembled. Delivers should be staggered in four equal installments with deliveries occurring on May 25 th , June 1 st , June 8 th and June 15 th (Dates maybe adjusted). All deliveries sent to the City of Canandaigua, Department of Public Works, 205 Saltonstall Street, Canandaigua, New York, 14424.		
9.2	The successful bidder must provide a Microsoft Office Excel file to the City identifying each container serial number.		

		YES	NO
9.3	Each container must include a plastic hanger bag that includes a pre-printed User Instructions brochure as well as specific information provided by the City. The City will stuff materials into the plastic bag prior to distribution.		
9.4	The successful bidder may be required to assist the City in the development of the City's introduction flyer at no additional cost.		

**BID FORM
CITY OF CANANDAIGUA**

The undersigned has read and understands the contract requirements contained herein and proposes to furnish the materials/equipment in accordance with the attached specifications, to the City of Canandaigua at the price(s) shown. All prices are to be net delivered prices and shall not include taxes.

ITEM #1 – 2,880 96 gallon capacity roll out containers

Price Each \$ _____ TOTAL \$ _____

ITEM #2 – 320 64 gallon capacity roll out containers

Price Each \$ _____ TOTAL \$ _____

TOTAL PRICE FOR BOTH ITEMS:\$ _____

(Price written out in words)

Delivery Days for all items from Notice of Award Date _____
Days

Name of Firm: _____

Mailing Address: _____

City/State/Zip: _____

Telephone and Fax Number: _____

SIGNATURE OF BIDDER: _____

TITLE: _____

DATE: _____

**QUESTIONNAIRE FORM FOR CITY SPECIFICATIONS
FOR ROLL OUT RECYCLING RECEPTACLES**

Is this bid in conformance with all specifications? Yes_____ No_____

If answer is no, bidder must identify and explain each exception taken and references made to each page and paragraph to which exception will apply:

It shall be understood that if no exception is taken, the vendor shall supply all material as specified.

CITY OF CANANDAIGUA

AFFIRMATIVE ACTION/MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE POLICY STATEMENT

The City of Canandaigua has been and will continue to be an equal opportunity organization. No Minority and Women-Owned Business Enterprise (MWBE) employee or applicant for employment will be discriminated against because of race, color, religion, national origin, sex, age, disability, sexual preference or Vietnam Era Veteran status. We will take affirmative action to ensure that MWBEs, applicants and employees are treated without regard to these characteristics. To carry out our policy, the City of Canandaigua will:

1. Include minority and women-owned businesses in our solicitations;
2. Recruit, hire, train, place and promote persons for all jobs without regard to race, religion, color, national origin, sex, age, disability, sexual preference or Vietnam Era Veteran status;
3. Take affirmative steps to ensure that MWBEs have full participation in our procurement process; and
4. Administer other personnel functions, such as compensation, benefits, transfers, layoffs, returns from layoffs, and company-sponsored training, education, tuition assistance and social and recreation programs without regard to race, religion, color, national origin, sex, age, disability, sexual preference or Vietnam Era Veteran status;

The City of Canandaigua will periodically analyze its procurement and personnel actions to ensure compliance with this policy.

The Equal Employment Opportunity/Minority and Women-Owned Business Enterprise Coordinator for the City of Canandaigua is David Forrest, City Manager, 2 North Main Street, Canandaigua, New York, 585-396-5000. He is responsible for monitoring the facility's Affirmative Action/Minority and Women-Owned Business Enterprise Program and submitting required reports to appropriate locations. The coordinator is also the person to contact, if someone believes she/he has not been treated in accordance with our policy.

We ask your continued assistance and support in attaining the City of Canandaigua's objective of Equal Employment Opportunity/Minority and Women Owned Business Enterprise Opportunities.

Original Signature on File

David Forrest, City Manager

**CITY OF CANANDAIGUA
NON-COLLUSIVE PROPOSAL CERTIFICATION**

By submission of this proposal, each Contractor/Vendor and each person signing on behalf of any Contractor/Vendor certifies, and in case of a joint proposal each party thereto certified as to its own organization, under penalty of perjury, that to the best of knowledge and belief;

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Contractor/Vendor and will not knowingly be disclosed by the Contractor/Vendor prior to the opening, directly or indirectly, to any other consultant or to any competitor;

3. No attempt has been made or will be made by the Contractor/Vendor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

4. The Contractor/Vendor herein has carefully examined the annexed form of the contract and contract documents.

STATE OF _____

COUNTY OF _____

CITY OF _____

Signature of
Contractor/Vendor

Business Name

Sworn to and subscribed before me this _____ day of _____, 2015.

_____(Notary Public)

MATERIAL PURCHASE AGREEMENT

reference: Request for Quotes Dated _____
Resolution #2015 - _____
Purchase Order #2015- _____

TERMS and CONDITIONS

CITY OF CANANDAIGUA ("Buyer")	_____ and Affiliates ("Seller")
Buyer Delivery Address	Seller Address
Department of Public Works 205 Saltonstall Street Canandaigua, NY 14424	
Buyer Contact	Seller Contact
James P. Sprague, P.E., Director of Public Works (585)396-5060 james.sprague@canandaiguanyork.gov	
Material and Quantity to be Purchased:	Purchase Price:

This document, together with the attachments appended hereto constitutes the entire Agreement between the parties, and acceptance is strictly limited to the terms and conditions contained herein. **Additional or differing terms, conditions or limitations of liability proposed by Seller shall have no effect unless accepted in writing by Buyer.** Agreement by Seller to furnish the material or goods to these terms and conditions, or Seller's commencement of such performance, or acceptance of payment, shall constitute acceptance by Seller of this Agreement. This Agreement shall become effective when signed by both parties and remains in effect for the term of this Agreement, unless earlier terminated in accordance with the provisions of the Agreement.

THE PARTIES' SIGNATURES BELOW ACKNOWLEDGE THAT BOTH PARTIES HAVE READ AND UNDERSTAND EACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND EACH PARTY AGREES TO BE BOUND BY THEM.

Buyer:
 By: _____
 (Authorized Signature)

 (Typed or Printed Name)

 (Title)

 (Date)

Seller:
 By: _____
 (Authorized Signature)

 (Typed or Printed Name)

 (Title)

 (Date)

1. Definitions

Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

- (a) "Agreement" shall mean this Material Purchase Agreement, together with any other documents appended hereto or documents incorporated herein, including, Purchase Orders, subcontracts, or General Terms and Conditions.
- (b) "Buyer" shall mean CITY OF CANANDAIGUA.
- (c) "Goods" shall mean those Goods or material identified in this Agreement, which may be changed, from time to time by the mutual written agreement of the parties.
- (d) "Seller" shall mean the party identified as the Seller in this Agreement.
- (e) **ORDERS**
 Orders for Goods or Materials shall be by means of Purchase Orders placed by Buyer's Authorized Employees, which shall specify applicable prices, quantities, delivery schedules, shipping instructions, destinations, applicable specifications, required insurance, any special requirements, the address where Seller's invoice shall be sent, and other similar matters which are necessary for the individual transaction to be adequately

described. Such Purchase Orders shall also include a reference to this Agreement number.

2. Price and Term

- (a) The prices established by this Agreement are set forth in the attached Sellers offer and are firm fixed prices unless otherwise stated. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.
- (b) In the event Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off against any amounts payable to Seller under this Agreement.
- (c) This Agreement shall remain in effect for the term specified in the request for quotes, or until all goods are delivered and accepted.
- (d) Buyer and Seller may mutually agree to extend this Agreement for additional terms **within sixty (60) days prior to the expiration date of this Agreement and subject to the same terms and conditions. Agreements, which are awarded pursuant to competitive bid must specifically state that the Agreement may be extended for an additional term.**

3. Schedule and Delivery; Notice of Delay

Seller shall strictly adhere to all Agreement schedules. Time is and shall remain of the essence in the performance of this Agreement. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Agreement.

Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

4. New Materials; Packaging and Shipping

- (a) All goods to be delivered hereunder shall consist of new, authentic materials unless clearly stated otherwise in Seller's offer;
- (b) Seller shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered under this Agreement, unless otherwise specified in the Agreement;
- (c) Unless otherwise stated in the Agreement, F.O.B. point shall be the above indicated Buyer's Delivery Address.

5. Inspection and Acceptance

- (a) Buyer's final acceptance of Goods is subject to Buyer's inspection within fourteen (14) days after receipt at Buyer's location or such other place as may be designated by Buyer, notwithstanding any payment or prior test or inspection.
- (b) Seller shall keep and maintain inspection, test and related records, which shall be available to Buyer or Buyer's representative. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative.

6. Rejection

If Seller delivers non-conforming Goods, Buyer may, at its option and Seller's expense: (i) return the Goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or (iv) obtain conforming Goods from another source. Buyer shall specify the reason for any return or rejection of nonconforming Goods and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs attributable to Buyer's rejection of the non-conforming Goods.

7. Invoices

- (a) Invoices may be mailed when Goods are shipped, but the time for payment shall not commence until Buyer's actual or scheduled receipt, whichever is later, of items at their destination.
- (b) Buyer shall promptly pay Seller the amount due within 45 days, except if identified elsewhere in the Agreement, unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or non-conforming Goods. Buyer may entertain discounts on Goods for expedited payments.
- (c) Seller's invoices shall include references to this Agreement number and to Buyer's Purchase Order numbers. The invoice shall be computed on the basis of the prices set forth in the Seller's offer and shall identify and show separately quantities, unit prices, total amounts for each item, any shipping charges to be borne by Buyer, and any discounts and total amount due.

8. Changes

- (a) By written order, Buyer may from time to time direct changes for: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; and (vii) place of performance.
- (b) If any such change causes an increase or decrease in the price or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this

provision shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Agreement or Change Order.

9. Force Majeure

The following events, and only the following events, shall constitute force majeure under this Agreement: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

10. Termination for Convenience

- (a) Buyer may, by notice in writing, direct Seller to terminate this Agreement or work under this Agreement in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all goods prepared for sale to the Buyer upon notice of termination.
- (b) Seller shall immediately stop deliveries or other efforts related to this agreement and limit costs incurred as a result of the termination of this agreement.
- (c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation.

11. Termination for Default

- (a) Buyer may, by written Notice of Default to Seller, terminate this Agreement in whole or in part if the Seller fails to: (i) deliver the Goods within the time specified in this Agreement or any extension; (ii) make progress, so as to endanger performance of this Agreement; or, (iii) perform any of the other provisions of this Agreement.
- (b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (Materials) as Seller has produced or acquired for the performance of this Agreement, including the assignment to Buyer of Seller's Agreements. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the Agreement price. Payment for unfinished Goods which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller monies otherwise due Seller for completed Goods and/or

Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Goods and Materials.

(c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Agreement. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

12. Compliance with Laws

Seller shall comply with all applicable provisions of Federal, State, and local laws; ordinances and all lawful orders; rules, regulations, and FAA, DOT and other transportation regulations and Hazard Communication Standards promulgated pursuant to the Occupational Health and Safety Act.

13. Conflict of Interest.

Seller hereby stipulates and certifies that there is no member of the Canandaigua City Council or other Canandaigua City Officer or Employee forbidden by law to be interested in the Agreement directly or indirectly, who will benefit therefrom or who is a party thereto.

14. Goods Warranty

(a) Seller warrants the Goods delivered pursuant to this Agreement, unless specifically stated otherwise in this Agreement, shall (i) be new; (ii) be and only contain materials obtained directly from the Original Equipment Manufacturer (OEM) or an authorized OEM reseller or distributor; (iii) not be or contain Counterfeit Items; (iv) contain only authentic, unaltered OEM labels and other markings; (v) have documentation made available upon request that authenticates traceability to the applicable OEM; and (vi) be free from defects in workmanship, materials, and design and be in accordance with all the requirements of this Agreement. Seller further warrants that the Goods shall conform with the requirements of this Agreement and to high industrial standards. These warranties shall survive inspection, test, final acceptance and payment for Goods;

(b) Seller warrants that any hardware, software, and firmware Goods delivered under this Agreement to the extent reasonably possible: (i) do not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to (a) damage, destroy, or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and (ii) do not contain any 3rd party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer or (b) may require distribution, copying or modification of any software free of charge;

(c) This warranty entitlement shall inure to the benefit of Buyer and shall cover a period following delivery identified in the Seller's offer; and,

(d) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from the breach of any of these warranties. Remedies shall be at Buyer's election, including those specified in Article 6 herein.

15. Indemnification

(a) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods provided under this Agreement, including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, employees or anyone acting on behalf of Seller; and, (v) any claim by a third party against Buyer alleging that the Goods (including but not limited to software), the results of such goods, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.

(b) Should Buyer's use of any Goods purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing Goods; (ii) modify the Goods so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer the right to continue using the Goods; or, (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Goods.

(c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

(d) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all Worker's Compensation or Occupational Disease laws claims for bodily injury including death to employees of the seller brought forth by the Seller's employees and/or their family arising out of or in connection with this Agreement.

16. Insurance

If Seller utilizes their own vehicles to deliver Goods to Buyer's facility, Seller shall maintain the following insurance in at least the minimum amounts stated herein.

Seller shall also maintain such general liability, property damage, employers' liability, and worker's compensation insurance,

professional errors and omissions insurance, and motor vehicle liability (personal injury and property damage) insurance as are maintained in their normal and ordinary course of business. Upon request by the Buyer, Seller shall provide certificates of insurance evidencing limits of not less than the following:

1. Commercial General Liability \$2,000,000 combined single limit per occurrence (including products/completed operations and contractual liability coverage)
2. Workers' Compensation Statutory amount, including if applicable, Employers' Liability, \$1,000,000 each person/accident.
3. Automobile Liability \$2,000,000 combined single limit per accident

17. Disputes

The provisions of this Agreement shall be interpreted in accordance with the laws of the State of New York without resort to said state's Conflict of Law rule, and in accordance with its fair meaning and not strictly against either party. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Agreement and in accordance with all the Terms and Conditions contained herein and with the Buyer's direction thereof. Buyer and Seller shall each bear its own costs of processing any dispute hereunder. In no event shall the Seller acquire any direct claim or direct course of action against the Buyer.

18. Assignments and Subletting

(a) Neither this Agreement nor any interest herein nor claim hereunder may be transferred, assigned or delegated by Seller; nor may all or substantially all of this Agreement be further sublet by Seller without the prior written consent of Buyer. Lack of consent shall not be deemed as a waiver or otherwise relieve Seller of its obligations to comply fully with the requirements hereof.

(b) Notwithstanding the above, Seller may, without Buyer's consent, assign moneys due or to become due hereunder provided Buyer continues to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Agreement without notice to or consent of the assignee. Buyer shall be given prompt notice of any assignment. Amounts so assigned shall continue to be subject to any of Buyer's rights to set-off or recoupment under this Agreement or at law.

(c) Buyer may assign this Agreement to any successor in interest.

19. Piggy-Back Clause

Pursuant to NYS General Municipal Law §103(16) the City of Canandaigua certifies that if the total purchase price of this Agreement exceeds \$19,999.00 then this contract was awarded in compliance with the competitive bidding requirements of the State of New York for a competitive bids and agrees that the terms and conditions of such contract are available for use by other government entities and authorized Purchasers provided that the authorized Purchaser enters into a separate independent contract with Seller and in said contract authorized Purchaser accepts sole responsibility for any payment due the Seller for material or goods rendered to that authorized Purchaser. However, it is understood that the extension of such contracts are entirely at the discretion of the Seller and the Seller

is only bound to any contracts between the City of Canandaigua and the Seller. This proposal in part or in whole shall become the basis of the awarded contract and must meet all applicable standards as set forth under NYS General Municipal Law, New York State Finance Law and or local resolutions or updated versions thereof. Extension of contract terms to another entity is strictly between the Seller and the authorized Purchaser, and the City of Canandaigua shall be held harmless from any such activity. The City of Canandaigua reserves the right to be informed of any such activity without obligation, written or implied.

20. Order of Precedence

In the event of a conflict between these Terms and Conditions and other portions of the Agreement, the order of precedence shall be: (a) any typed provisions on the face of Buyer's Agreement specifically modifying the terms of this Agreement; (b) these Terms and Conditions; and, (c) any other provisions set forth in the Buyer's Agreements including any terms and conditions stated or referenced therein.

21. Independent Contractor Status

Seller is, and shall remain, an independent contractor during the performance of this Agreement.

22. Survivability

All of the provisions of this Agreement shall survive the termination (whether for convenience or default), suspension or completion of this Agreement unless they are clearly intended to apply only during the term of this Agreement.

23. Taxes

Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. Unless this Agreement specifies otherwise, the price of this Agreement includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Agreement except for applicable sales and use taxes that are separately stated on Seller's invoice.

24. Agreement Administration

All changes and/or amendments shall be confirmed in writing to the respective Contact shown on the first page of this Agreement.

25. Reports

Upon written request, Seller agrees to provide to Buyer the following information, not later than thirty (30) days following the date of the request. All report formats shall be mutually agreed to in advance.

- (b) A performance report containing the following information:
- Delivery information sufficient to calculate an on-time rating
 - Quality information sufficient to calculate a quality rating.