Request for Proposal
CITY OF NEW BEDFORD
New Bedford School Department
Archival Review
New Bedford, Massachusetts

#19300039

February 11, 2019

Jonathan F. Mitchell
Mayor

New Bedford School Dept.
455 County Street
New Bedford, MA 02740
REQUEST FOR PROPOSAL # 19300039

The City of New Bedford in conjunction with the New Bedford School Department is soliciting proposals for Review of Archival Collections for Appropriate Disposition, Re-Shelving and Development of an Electronic Accessing Program.

Sealed proposals will be received by the Purchasing Department, in the office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, during business hours, until the date and time that the proposals will be received.

Proposals will be received until

Friday, March 8, 2019
11:00 a.m. Prevailing Time

Contract Documents, including the General Conditions and Notice to Proposers, Form of Contract, Specifications, and other Contract Documents, may be obtained and/or examined on or after Monday, February 11, 2019, in the office of City of New Bedford, Purchasing Department, 133 William Street, Room 208, New Bedford, MA 02740, (Monday thru Friday – 8:30 AM – 4:00 PM). Documents may also be obtained by emailing Susan.Bruce@newbedford-ma.gov or purchasing@newbedford-ma.gov.

Attention is called to the fact that supplies furnished as part of this Contract are exempt from the Sales and Use Tax. All proposals submitted should take this factor into consideration, and be calculated accordingly.

The contract will be awarded within forty-five (45) days after proposal receipt. The time for award may be extended by mutual agreement between the City and the awarded vendor.

No Vendor may withdraw his/her proposal for a period of forty-five (45) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

The Vendor must furnish a Non-Collusion Form and Statement of Taxes, with their proposal.

Proposals must include ALL DOCUMENTS required by the Request for Proposal. The Awarding Authority reserves the right to waive any informality, reject any or all proposals, or accept other than the lowest priced proposal.

AWARDING AUTHORITY
CITY OF NEW BEDFORD
Susan Bruce, Director of Purchasing
The City of New Bedford in conjunction with New Bedford School Department is soliciting proposals for the Appropriate Disposition, and Re-Shelving, and Development of an Electronic Accessing Program its Archival Collections.

Sealed proposals for the above will be received in the Purchasing Department, Room 208, 133 William Street, New Bedford, MA, until Friday, March 8, at 11:00 am, at which time all proposals received will be recorded in the presence of such proposers as desire to be in attendance. No proposals will be accepted after the time and date specified. This is not a public opening.

1. There is a Bidder’s Conference Scheduled for Tuesday, February 19, 2019 at 11:00 am at the New Bedford School Department, 455 County Street, New Bedford, MA.

2. The proposer must submit their proposal in separate sealed envelopes bearing on the outside the name and address of the Proposer, addressed to the Purchasing Agent, City Hall, New Bedford, MA 02740. The Technical Proposal must be properly filled out, signed, sealed and endorsed: “Archival Collection Review – #19300039 -Technical Proposal”. The Price Proposal must be properly filled out, signed, sealed and endorsed: “Archival Collection Review – #19300039 - Price Proposal”.

3. Telephone responses, emailed and faxed replies will not be accepted. No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

4. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as informal by the Procurement Officer.

5. The Proposer will be bound by all applicable statutory provisions of law of the Federal Government, the Commonwealth of Massachusetts and of the City of New Bedford.

6. All submitted proposals and associated price quotes must be guaranteed to the City of New Bedford for a period of thirty (30) days from the date of the proposal opening. If a contract is to be awarded as a result of this RFP, it will be awarded within the thirty (30) day time period.

7. As provided by Massachusetts General Law, Chapter 64H, §6(d), purchases made by the City of New Bedford are exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax; any such taxes must not be included in the quoted price.
8. The City reserves the right to reject any and all proposals, and to make awards in a manner deemed in the best interest of the City.

9. The Proposer will not be permitted to either assign or underlet the contract nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Purchasing Agent.

10. Before submitting a proposal, each proposer must make a careful study of the specifications contained in this Request for Proposal document and fully assure themselves as to the quality, quantity and type of services/product that the City is seeking to procure.

11. The proposal for this work must cover all contingencies, including all labor and materials, transportation, etc., necessary for the purchase and delivery/execution of the services/product required by the City of New Bedford.

12. If proposers have any questions to ask about specifications or terms of this Request for Proposals, they must be submitted by email to susan.bruce@newbedford-ma.gov no later than Friday, February 22, 2019 no later than 4:00 pm. Questions shall be answered via addendum no later than Wednesday, February 27, 2019 no later than 4:00 pm. No further consideration will be given after the proposal opening. A proposer may correct, modify or withdraw a proposal by written notice received in the Office of the Purchasing Agent, prior to the time and date set for receiving of all proposals.

13. All services and equipment will be purchased from the awarded vendor via City of New Bedford Purchase Order.

14. The specifications as detailed under part entitled TECHNICAL PROPOSAL SPECIFICATIONS shall constitute a part of the contract of purchase, as well as all conditions listed within.
Proposers' attention is called to Chapter 268A of the Massachusetts General Laws. In connection with this statute, Proposer is required to submit the following information and any other information deemed necessary by the Proposer. All of the following information regarding the Proposer must be completed:

Please indicate business type by placing an X next to the appropriate category:

Corporation ☐  Partnership ☐  Proprietorship ☐
If a Corporation
Full Legal Name

State of Incorporation
If a Partnership
Full Legal Name

If a Proprietorship
   Name of Owner or d/b/a

   Principal Place of Business

   Place of Business in Massachusetts

   Business Mailing Address

Telephone Number: _________________________ Ext. _________________________

Qualified to do business in Massachusetts ☐ YES ☐ NO ☐

Give full names and titles of all the persons and parties interested in the foregoing proposals. (Note: give first and last names in full; in cases of corporations, give names of President, Treasurer, and in cases of partnerships give names of the individual partners.)

Name _________________________ Title _________________________

_____________________________ _________________________

_____________________________ _________________________

_____________________________ _________________________
A foreign corporation is required to submit its certification of corporation from the Massachusetts State Secretary's Office, as required by Chapter 151 Section 156.d of the Massachusetts General Laws.

PROPOSAL FOR: The Appropriate Disposition, Re-Shelving, and Development of an Electronic Accessing Program for its Archival Collections.

The City of New Bedford Massachusetts School Department is seeking to re-organize, properly archive and re-shelve public documents; as well as create a functional database and accessing program of such documents that will reduce overhead, increase efficiency, expedite service, and minimize the risk of legal exposure.

SPECIFICATIONS:

- Description of labor involved to include re-boxing, an index system, and one-by-one handling of most boxes, location indexing & assigning box numbers and destruction dates
- Description of filing and storage equipment, filing supplies, and all other record-keeping materials to be used
- Description of standards in terms of boxes or indexing, and procedures for either adding or removing records to and from the various storage areas
- Provide proper storage boxes that allows maximum space utilization for on-site storage
- Once boxed, materials should be stored on “real” archives shelving for maximum space utilization and ease of finding
- Provide recommendations regarding the microfilming of records as well as the destruction of old records that have already surpassed the retention guidelines
- Have experienced archive supervisors, record supervisors, and staffers familiar with record to work.
- Proposal should stipulate rates per hour, per day, by staff classification.
- Proposal should stipulate available start days to allow for completion before June 30, 2019.
- Before conclusion of service, successful bidder should have the ability to debrief and recommend next steps to maintain the developed archival system, archive records and apply formal retention schedules for effective information governance.

MINIMUM QUALIFICATIONS: Failure to meet the minimum standards shall result in a rejection of the proposal.

Proposers must have at least 3 Municipal/Governmental references, for which the proposer has provided services within the last ten years.

Proposers should have been in business for at least eight years.
Proposers should be an approved vendor State of Massachusetts and have an in-depth knowledge of the Massachusetts Disposal Schedules for Municipal Government, as outlined and published by the Office of the Secretary of State.

**PRICE:**
The City has established a not to exceed price of $40,000.00.

**Comparative Evaluation Criteria**

All responsive proposals will be judged against the Comparative Evaluation Criteria detailed below. The City will rank each proposal as:

1. Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;
2. Advantageous: The proposal fully satisfies the standards of the specific criterion;
3. Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;
4. Unacceptable: The proposal does not meet standards of the specific criterion.

The City Clerk shall rate and rank each proposal meeting the Minimum Evaluation Criteria according to the Comparative Evaluation Criteria listed below. The City Clerk will then present his/her recommendation to the Chief Procurement Officer who will then open and review the price proposal and select the most overall advantageous proposal.

**Equipment:** Shelving must be easily adjustable, sturdy and designed to maximize storage capacity in sync with storage boxes. Boxes must be of archive-quality, reusable and designed to be easily accessible and light enough (at maximum capacity) for all staff to move and lift and come with customized labels, transfer forms and security tape.

- **Highly Advantageous.** The proposal fully meets and significantly exceeds the standards of the specific criterion;

- **Advantageous:** The proposal fully satisfies the standards of the specific criterion;

- **Not Advantageous:** The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

- **Unacceptable:** The proposal does not meet standards of the specific criterion

**System:** A database that is easily learned, utilized, accessible and maintainable by in-house staff. Features will include a built in notification of document disposal dates according to state regulations, an exact “address” locator function and the ability to expand as needed.

- **Highly Advantageous:** The proposal fully meets and significantly exceeds the standards of the specific criterion;
Advantageous: The proposal fully satisfies the standards of the specific criterion;

Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

Unacceptable: The proposal does not meet standards of the specific criterion

Labor: Project team shall be identified and timeline shall be provided ensuring that all work and services will be completed within the required timeframe. Project team shall be on-site daily and maintain regular and effective communication with the City Clerk and Staff throughout the project’s duration.

Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;

Advantageous: The proposal fully satisfies the standards of the specific criterion;

Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

Unacceptable: The proposal does not meet standards of the specific criterion

Additional Service Options: Optional services (beyond initial archival project) and products are available for potential further enhancement and organization of archives, documents and records. These services and products may include, but are not limited to: off-site storage, micro-filming, scanning, specially-designed cabinets and filing systems, etc.

Highly Advantageous: The proposal provides several additional options that would be of value to the City’s records storage system.

Advantageous: The proposal provides some additional options.

Not Advantageous: The proposal does provide only minimum additional options

Unacceptable: The proposal does not offer any additional added options

**TERMINATION CLAUSE**

If at any time the Vendor fails to fulfill or comply with any of the requirements of this proposal/contract, such as shoddy workmanship, executing improper operating procedures, supplying sub-standard, improperly trained employees, not adhering to the work schedule, etc., the City, at its option, can terminate this contract upon thirty (30) days written notice to the firm.
Failure to meet project benchmarks on schedule or utilizing personnel not previously identified in the consultant’s proposal may also be considered as grounds for termination.

**SUBMISSION REQUIREMENTS**
Proposers must submit one (1) original and one (1) copy of the proposal with all required information included. The proposal must be submitted in a sealed envelope bearing on the outside the name and address of the Proposer, addressed to the Procurement Officer of the City of New Bedford. Complete proposal packages must be received by:

**Friday, March 8, 2019 at 11:00 AM**
In the Office of the Purchasing Agent
Attn: Susan Bruce, Director of Purchasing
New Bedford City Hall
133 William Street, Room 208
New Bedford, MA 02740

Prooser: ___________________________ Date: ___________________________

The proposal pricing is to cover all work required for this project as outlined in the RFP document. Proposal prices must be all-inclusive, including all fees, charges, expenses, travel, postage, fax and telephone charges, preparation of reports, meeting attendance, etc., for all work proposed to be performed by the successful proposer. No separate fees will be paid for mileage, postage, telephone, reports, presentations, etc. This contract will be in effect, in response to this RFP.

**CONTRACT AWARD**

One contract will be awarded to the one responsive and responsible proposer whom the City determines offers the most advantageous proposal, taking into consideration all evaluation criteria set forth in the RFP, as well as price.
CITY OF NEW BEDFORD
BID PRICE SHEET

The undersigned propose to furnish the goods/services required per bid specifications to the City of New Bedford for the amount listed below

Bid Amount $______________________________ (numerical)

Bid Amount ______________________________ (words)

Name of Vendor:
____________________________________

Address: ______________________________________

City/State/Zip: ____________________________

By: _______________________________________
    Signature and Title

Date: _____________________________________
CITY OF NEW BEDFORD
MASSACHUSETTS

VOTE OF CORPORATION AUTHORIZING
EXECUTION OF CORPORATE AGREEMENTS

At a meeting of the Board of Directors of ________________ duly called and held on
______________, 20____ at which a quorum was present and acting throughout, the
following vote was duly adopted.

VOTED: That ________________, the ________________ of the
corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name
and behalf of the corporation contract documents with the City of New Bedford, the above
mentioned documents to include but not be limited to Bids, Proposals, Deeds, Purchase and
Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and
also to seal and execute, as above, surety company bonds to secure bids and proposals and the
performance of said contract and payment for labor and materials, all in such form and on such
terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy

ATTEST:

________________________________________
Name (printed)

________________________________________ (Affix Corporate Seal)
Signature

________________________________________    _____________
Title                              Date

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

____________________________________
Signature of individual submitting proposal

____________________________________
Name of business/organization

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes reporting of employees and contractor, and withholding and remitting child support.

____________________________________
Signature of person submitting proposal

____________________________________
Name of business

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
Withdraw, Modify and Amend Proposals

Respondents who wish to withdraw, modify or amend their Proposal must do so in writing utilizing electronic mail to the City of New Bedford Director of Purchasing at susan.brue@newbedford-ma.gov no later than the time and date set forth herein for the receipt of the proposals. All such withdrawals, modifications, or amendments must so state in the subject line of the email correspondence. Any withdrawal, modification or amendment arriving after the date and time set forth for accepting responses will not be considered. After the opening of the proposals, a Respondents may not change any provision of the proposal in a manner prejudicial to the interests of the City of New Bedford or fair competition. Minor informalities will be waived at the discretion of the City of New Bedford.

Familiarity with Requirements

Respondents are to thoroughly familiarize themselves with the requirements of the Invitation for Proposals. Ignorance of the requirements will not relieve the Respondents from any obligations or liabilities of any contract(s) issued as a result of this Invitation for Proposals.

Independent Party

Under this Invitation for Proposals, the successful Respondents declares itself to be at all times acting and performing as an independent party and nothing in this Invitation for Proposals or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Respondent and the City of New Bedford.

Conflict of Interest

No officer or employee of the City of New Bedford shall participate in any decision relating to any contract which would affect their financial or personal interest or the interest of any corporation, partnership, sole proprietorship or association in which they are directly or indirectly interested.

Political Activity Prohibited

None of the services to be provided by any Respondent shall be used for any partisan political activity or to further the election of any candidate for public office.

Assignment by Contractor

The successful Respondent or Contractor shall not assign in whole or in part or otherwise transfer any interest in any contract without the written consent of the City of New Bedford, provided however, that the present and prospective claims for money due owing to the Contractor from the City of New Bedford or any other Buyer may be assigned to a bank or trust company or to a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) without such consent so long as notice of such assignment is promptly furnished to the City of New Bedford. Any complete or partial assignment of the Contractor’s or successful Respondent’s interest in any such
contract shall require the assignee at the City of New Bedford’s discretion, to supply such further information as the City of New Bedford deems necessary to comply with the City of New Bedford’s rules and regulations governing contracts for services. Any such assignment, in whole or in part, shall also be expressly made subject to all defenses, set-offs or counter claims which would have been made available to the City of New Bedford against the successful Respondent in the absence of such assignment.

Subcontracting

None of the services to be provided by the contractor pursuant to any contract shall be subcontracted or delegated in whole or in part to any organization, association, individual, corporation, partnership or any other such entity without the prior written approval of the City of New Bedford. All intended subcontracts shall be provisions, which are functionally identical to and consistent with the language of this Invitation for Proposals.

Choice of Law

Any contracts awarded as a result of this Invitation for Proposals shall be construed under the laws of the Commonwealth of Massachusetts. The successful Respondent and agents thereof agree to bring any federal or state legal proceedings arising from any such contract in which the City of New Bedford is a party in a court of competent jurisdiction, within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights any party may have to intervene in any action in any court or wherever pending in which the other is a party.

Notices

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when sent via electronic mail (e-mail), given in person to either party or deposited in the U.S. Mail, postage prepaid and addressed to the persons indicated in any contract or as specified by any amendment hereto.

Severable Sections Do Not Affect Entire Contract

If any provision of the Invitation for Proposals or any subsequent contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under the provision. The remainder of the Invitation for Proposals and any subsequent contract shall remain in full force and effect and enforceable to the fullest extent provided by law.

Contract Performance

The failure of any party to insist in any one or more situations, upon performance of any of the terms or provisions of any part of this Invitation for Proposals or resulting contract shall not be considered as a waiver or relinquishment of the right of either party to future performance of any such term or provision, and are the rights and obligations of the parties to such future performance shall continue in full force and effect.
Liquidated Damages for Failure to Enter into a Contract

The successful Respondent, upon its failure or refusal to execute and deliver the contract, bonds and certificates of insurance required within seven days after receipt of the Notice of Award of the Proposal, shall forfeit to the City of New Bedford, as liquidated damages for such failure or refusal, the security deposited with its proposal, provided that the amount forfeited shall not exceed the difference between its proposal price and the proposal price of the next lowest, responsive and responsible Respondent. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the Respondent, its proposal deposit shall be returned.

Liquidated Damages for Failure to Perform Under the Terms of the Contract

Should the successful Respondent fail to commence or diligently perform according to the terms if the contract, the successful Respondent agrees to pay the City of New Bedford, as liquidated damages, Two Hundred Fifty Dollars ($250.00) per calendar day that the successful Respondent fails to commence or diligently perform the work in accordance with the contract documents and/or is in violation of the contract. Liquidated damages assessed under this provision shall be deducted from any payment(s) due to the successful Respondent.

Funding & Fiscal Year Appropriation

Appropriations for expenditures by the City of New Bedford, and authorizations to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year for the City of New Bedford begins on July 1st and ends on June 30th of the following year. The obligations of the City of New Bedford under any contract resulting from this Invitation for Proposals for any subsequent fiscal year following the fiscal year in which the initial contract is awarded, is subject to the appropriations to the City of New Bedford. Expenditures for contracted services, which will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated and authorized for the said fiscal year.

Procurement Calendar

The City of New Bedford is soliciting proposals that will result in a contract. The schedule of events for this solicitation, subject to amendment by the City of New Bedford is:

Proposal Documents Available: Monday, December 3, 2018
Questions Due: Thursday, December 13, 2018 by 4:00 pm
Questions Answered: Friday, December 21, 2018 at 1:00 pm
Proposals Due: Monday, January 7, 2019 at 11:00 am

Duration of Contract

The awarded contract term will be for 12 months beginning at contract award and ending 12 months from that date. The City shall exercise an option to renew for an additional two years, in one year increments. The City in its sole discretion will exercise this option.
END OF SECTION
GENERAL PROPOSAL INFORMATION

Required RFP Sections

The Respondent must provide in its proposal, a reply to the particular specifications included in the Invitation for Proposals.

ADA, Regulatory, Compliance and Standards

Respondent are expected to provide services and commodities that are in compliance with Section 504 of the Federal Rehabilitation Act of 1973, the American with Disabilities Act 1990, the Telecommunications Act of 1996, and all successor federal and related legislation throughout the term of any contract resulting from this solicitation.

Indemnification

Any successful Respondent, in exchange for entering into an agreement or contract resulting from this Invitation for Proposals shall indemnify and hold harmless the City of New Bedford and all persons acting for or on behalf of either of them from all suits and claims against them, or either of them arising for or on occasioned by the use of any service, material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such service, material, equipment or apparatus, or any part thereof, in any suit is held to constitute infringement, the successful Respondent within a reasonable time will, at its expense, and as the City of New Bedford may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus or remove the material, equipment or apparatus and refund the amounts paid therefore. Said indemnification includes reasonable Attorney's fees related hereto.

Furthermore, any successful Respondent in exchange for entering into any agreement or contract resulting from this Invitation for Proposals agrees to indemnify and hold harmless, release and forever discharge the City of New Bedford as well as their officers, agents and employees as well as their successors and assigns from any and all manner of actions, suits, claims, demands, judgments, damages and liability in law and equity which may arise or result from performance under this contract. This includes discrimination, labor or employment claims against the successful Respondent and the City of New Bedford and any and all manners of legal action brought against the successful Respondent and/or the City of New Bedford. Said indemnification includes reasonable attorney’s fees related thereto.

Federal, State and Local Laws

The successful Respondent will comply with all applicable Federal, State and Local laws and regulations.

Tax Exempt

Purchases made by municipalities and government are exempt from Federal Excise Taxes and Massachusetts State Sales Taxes and proposal prices must show exclusion of such taxes. Tax exemption certificates will be furnished as required.
Confidentiality

The successful Respondent acknowledges that in performance of any contract resulting from the Invitation for Proposals it may require or have access to "personal data" and become a "holder" of personal data as defined by M.G.L. c. 66A. The successful Respondent shall comply with all laws and regulations relating to confidentiality and privacy, including but not limited to any rules and regulations of the City of New Bedford. The Successful Respondent shall at times recognize the City of New Bedford’s ownership of personal data and the exclusive right and jurisdiction of the City, and "data subjects" (as defined in Chapter 66A) to control the use of personal data. The successful Respondent shall immediately notify the City of New Bedford both orally and in writing if any personal data in its possession is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the City of New Bedford. The successful Respondent shall cooperate with the City of New Bedford in taking all steps it deems advisable to enjoin, misuse, regain possession and/or otherwise protect the City of New Bedford’s rights and data subject’s privacy. The successful Respondent shall allow access to any personal data held in their possession solely to those employees of the City of New Bedford who require such information in the performance of their occupational responsibilities. All personal data held by the successful Respondent shall be delivered to the City of New Bedford within 14 calendar days after termination of any contract resulting from this Invitation for Proposals. The successful Respondent agrees to take reasonable steps to insure the physical security of such data under its control, including but not limited to, fire protection, protection against smoke and water damage, alarm system, locked removal of manually held data, passwords, access logs, badges or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data, limited terminal access, access to input documents and design provisions to limit use of personal data. The successful Respondent agrees that it will inform each of its employees having any involvement with their personal data or confidentiality. The City of New Bedford shall have access to all times to any data maintained pursuant to any contract resulting from this Invitation for Proposals, without the consent of the data subject. The successful Respondent shall use personal data and material derived from such data, only as necessary to the performance of the subject contract. Failure of the successful Respondent to comply with the requirements of this section may be grounds for terminating any contract resulting from this Invitation for Proposals.

Force Majeure

Neither the City of New Bedford, nor the successful Respondent shall be liable to the other, nor deemed to be in breach of any contract resulting from this Invitation for Proposals for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to, Acts of God or the public enemy, wars, fires, flood, epidemics, quarantine restrictions, strikes, unforeseen freight embargos or unusually severe weather. Dates and times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other party promptly of the existence and nature of such a delay. It is agreed that since the performance dates of the subject contract are of the essence and
important to the implementation of essential City of New Bedford work, continued failure to perform for periods aggregating 45 or more calendar days, even for causes beyond the control of the successful Respondent, shall afford the City of New Bedford the right to terminate any contract resulting from this Invitation for Proposals without assessment of termination costs or penalties.

**Equal Opportunity**

During the performance of this contract, the successful Respondent agrees as follows:

a. The successful Respondent will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, asexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry. The successful Respondent will take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry.

b. The successful Respondent will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and all of the rules, regulations and relevant orders of the Secretary of Labor.

**Termination**

The Respondent for this Invitation for Proposals should note that the City of New Bedford reserves the right to terminate any contracts resulting from this Invitation for Proposals in whole or in part, by written notice:

- **Without Cause:** Either party may terminate the subject contract by giving written notice to the other party at least 60 calendar days prior to the normal contractual effective date of termination as stated or such other period as is mutually agreed upon in advance by the parties.

- **For Cause:** If, in the opinion of the City of New Bedford, the successful Respondent fails to fulfill its obligations, the Town of New Bedford may terminate any contract resulting from this Invitation for Proposals by giving 30 days written notice to the successful Respondent at any time. The subject contract shall be terminated immediately in the event of fraud or program abuse.

- **Emergency:** The City of New Bedford may terminate or suspend any contract resulting from this Invitation for Proposals up to 60 calendar days by providing written notice to the successful Respondent, stating the grounds for the City of New Bedford’s action, in the form of U.S. Mail, hand carried letter, or other appropriate written means if the City of New Bedford determines that immediate action is necessary to protect the City, State and/or Federal funds or property, or to protect persons from injury. Such termination or
suspension shall be effective upon receipt of notice of either suspension or termination by the successful Respondent. In the case of a suspension under this paragraph, the Notice of Suspension shall be accompanied by instructions from the City of New Bedford specifying requisite actions by the successful Respondent to remove the suspension, proposed timetable for meeting those requirements and a description by the City of New Bedford of allowable activities and costs, if any, during the suspension period. Failure by the successful Respondent to remedy the stated deficiencies according to the timetable prescribes by the City of New Bedford shall be cause for immediate termination.

- Elimination or Reduction of Funding: In the event of a reduction of funding for any reason, the City of New Bedford may terminate any contract resulting from this Invitation for Proposals by providing notice of termination in a reasonable time. The City of New Bedford may provide a conditional notice of termination with a proposed amendment to the subject contract. Any such notice shall provide that the subject contract will terminate unless the successful Respondent submits to the City of New Bedford a properly signed copy of the amendment, or such modification form of amendment as may be agreeable to the City of New Bedford, within 20 calendar days after the date of the conditional Notice of Termination, or such other time as it is otherwise specified in the Conditional Notice.

- Remedies Upon Termination for Cause or for Emergencies: Notwithstanding the terms contained in this section, in the event of termination, the successful Respondent shall not be relieved of liability to the City of New Bedford by virtue of any breach of contract resulting from this Invitation for Proposals by the successful Respondent. In the event of termination pursuant to this section, the City of New Bedford may withhold any payments to the successful Respondent for the purpose of set off until such time as the exact amount of damages due to the City of New Bedford from the successful Respondent is determined. In addition to and notwithstanding the above, the successful Respondent covenants and agrees that in the event of termination of any contract resulting from this Invitation for Proposals, the successful Respondent shall pay to the City of New Bedford as damages: (a) such sum as, at the time of termination, the City of New Bedford reasonably determines that it shall require to compensate a subsequent contractor to complete the delivery of service, and (b) the sum, reasonably determined by the City of New Bedford, which will compensate the City of New Bedford for all of the direct and indirect costs resulting from the delay of services upon the successful Respondent default. The successful Respondent further covenants and agrees with the City of New Bedford that the successful Respondent shall pay all of the City of New Bedford’s costs and expenses (including Attorney’s Fees) incurred or paid in obtaining and enforcing any court order favorable to the City of New Bedford for any obligation of the successful Respondent under any contract resulting from this Invitation for Proposals.
Obligation in the Event of Termination

Upon termination of any contract resulting from this Invitation for Proposals, all documents finished or unfinished, data, studies and reports prepared by the successful Respondent pursuant to the subject contract shall become the property of the City of New Bedford. Copies of finished and unfinished documents, data, studies and reports generated as a necessary part of performing the subject contract shall be delivered to the City of New Bedford upon reasonable request and shall be retained by the successful Respondent for future use. The City of New Bedford shall promptly pay the successful Respondent for all services performed and for all costs and un-cancelable commitments reasonably incurred in performance of the subject contract to the effective date of termination, provided the successful Respondent is not in default of the terms of the subject contract and submits to the City of New Bedford properly completed invoices with supporting documentation covering services no later than 45 days after the effective date of termination, and that the successful Respondent makes every reasonable effort to minimize or reduce costs incurred.

Ownership of Furnishings & Equipment

Unless otherwise provided by law or a federal grant award, title to all furnishings and equipment provided by the City of New Bedford or that the awarded Respondent provides under the terms of this Invitation for Proposals and paid with public funds, shall vest in and be retained by the City of New Bedford. Upon completion of performance of the awarded Respondent’s contract, the awarded Respondent shall return such furnishings and equipment in its possession in the same condition as at the commencement of any contract resulting from this Request for Proposal, normal wear and tear excepted.

Anti-Boycott Warranty

During the term of any contract resulting from this Invitation for Proposals, neither the successful Respondent nor any “affiliated company” as hereafter described, shall participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage in conduct declared to be unlawful by Sections 2 and 4 of Chapter 151E of the Massachusetts General Laws. As used herein, an “affiliated company” shall be any business entity or which at least 51% of the ownership interests are directly or indirectly owned by the successful Respondent or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful Respondent.
Proposal Information

Respondent Communication

Respondent are prohibited from communicating directly with any employee of the City of New Bedford except as specified in this Invitation for Proposals, and no other individual City of New Bedford employee or representative is authorized to provide any information or respond to any questions or inquiries concerning this Invitation for Proposals. Respondent may contact the person identified on the cover sheet of this Invitation for Proposals in the event this Invitation for Proposals is incomplete.

Reasonable Accommodation

Respondent with disabilities or hardships that seek reasonable accommodation, which may include receipt of the Invitation for Proposals information in an alternative format, must communicate such requests in writing via electronic mail (e-mail) to the contact person. Requests for accommodation will be addressed on a case by case basis. A Proponalder requesting accommodation must submit the written request via email, which describes the Respondent disability and the requested accommodation to the contact person for the Invitation for Proposals. The City of New Bedford reserves the right to reject unreasonable requests.

Public Records

All proposals and information submitted in response to this Invitation for Proposals are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, Section 10 and Chapter 4, Section 7, Subsection 26. Any statements in the Respondent proposal inconsistent with these statutes will be disregarded.

Brand Name or Equal

Unless otherwise specified in this Invitation for Proposals, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Invitation for Proposals to any manufacturer or proprietor or to constitute and endorsement of any good or service, and the City of New Bedford must consider clearly identified offers as substantially equivalent goods and services are submitted in response to such reference.
Publicity

Any Respondent awarded a contract under this Invitation for Proposals is prohibited from selling or distributing any information collected or derived from the contract, including lists or participating or eligible departments, employee names, telephone numbers, e-mail addresses, addresses or any other reports or information except as specifically authorized under this contract.

Costs

Costs for services that are not specifically identified in the Respondent response and identified as part of the contract will not be compensated under any contract awarded pursuant to this Request for Proposal.

Required Response Attachments

All Respondent are required to complete, sign and return at a minimum the following documents:

Certificate of Non-Collusion: By signing the attached Certificate of Non-Collusion, the Respondent is declaring the fact that its response was formulated without collusion with any person, representative, agent, or party submitting a competing response. No response will be accepted without the signed Non-Collusion Statement attached to the original response.

Vote of Corporation (If Respondent is a Corporation): If the Respondent is a Corporation, a vote of the Corporation approving participation in this Request for Proposal process must be signed by the Corporate Officers with the Corporate Seal affixed and attached to the original Request for Proposal.

If the Respondent is a Corporation, the names and addresses of the Corporate Officers and the State and date on Incorporation must be included. The Respondent must state if the Corporation is publicly or privately held. If the Corporation is publicly held, the exchange on which it is traded and the symbol under which it is traded is required.

Sole Proprietorship (If the Respondent is a Sole Proprietor): If the Respondent is a Sole Proprietorship, a partnership or any other legal business entity, the names and addresses of the Officers must be included, the parent state of business and the number of years this entity has been in business. In short, a complete business profile must be included in the response.

Submitted Proposals
The City of New Bedford shall be under no obligation to return any materials submitted by the Respondent in the response to this Invitation for Proposals. All materials submitted by Respondent become the property of the City of New Bedford and will not be returned to the Respondent. The City of New Bedford has the right to use any ideas, concepts or configurations that are presented in the Respondent response whether or not the response is selected for contract award.

Clarification of Proposal

The City of New Bedford is not required to seek clarification of Proposals; therefore the Respondent should be as clear as possible in all of its responses to this Invitation for Proposals.

Rejection of Respondent Response

A Respondent response may be rejected by the City of New Bedford if the Respondent response:

- Fails to adhere to one or more of the requirements.
- Fails to submit its response to the required address on or before the Invitation for Proposals are due.
- Fails to submit a response in accordance to the format and instructions specified or to supply the minimum information requested in the Invitation for Proposals.
- Fails to meet unconditionally or is unable to demonstrate competence to meet the requirements of the Invitation for Proposals.
- Misrepresents its equipment, systems or services, or provides demonstrably false information in its response, or fails to provide material information.
- Violates the restrictions on contracts with the City of New Bedford employees and representatives.
- Refuses, is unable to, or fails to provide clarification requested by the City in a reasonable time frame.

Invitation for Proposals Cancellation

The City of New Bedford retains the right to cancel this Invitation for Proposals, or any portion thereof, at any time prior to the execution and approval of a contract. If this Invitation for Proposals is cancelled, all responses received to the Invitation for Proposals will be rejected. All expenses related to the preparation of responses to this Invitation for Proposals remain the responsibility of the Respondent.

No Guarantee of Purchase

The City of New Bedford makes no guarantee that any purchases will take place from any contract resulting from this Invitation for Proposals, nor does the City of New Bedford
guarantee any minimum quantity of purchase from any contract resulting from this Invitation for Proposals. Any estimated or past procurement volumes referenced in this Invitation for Proposals are included only for the convenience of the Respondent, and not to be relied upon as any indication of future purchases.

The Respondent may not place, as a condition for providing the cost levels proposed, any minimum purchase requirements.

Prime Contractors and Subcontractors

Prior approval of the eligible entity is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same State and Federal financial program and reporting requirements and are held to the same reimbursable cost standards as the successful Respondent.

The City of New Bedford requires a single point of contact for any contract resulting from this Invitation for Proposals. Subcontractors may be used, but the successful Respondent, as a prime contractor, shall be responsible for meeting all of the terms of any contract resulting from this Invitation for Proposals, and must be accept full responsibility for any subcontractor’s performance.

Respondent must provide a list of subcontractors, a description of each subcontractor’s responsibility in regards to this contract and signed letter of agreement between the Respondent as the prime contractor, and its subcontractor(s) identifying their responsibilities and their relationship to the prime contractor. The prime contractor must notify each individual account (eligible entity) in writing, the name of their subcontractor both initially and when a subcontractor is charged. If the subcontractor has filed for Chapter 11 Bankruptcy or Chapter 7 Bankruptcy, the prime contractor must notify the City of New Bedford. The notification must be written and must be within one week of the events noted above.

Written Inquires

Respondent may submit written inquiries concerning any part or attachment of this Invitation for Proposals. Written inquiries regarding issues outside of the scope of this Invitation for Proposals will not be considered.

All inquiries must be submitted by the required date and time to the contact listed on the cover page of this Invitation for Proposals.

All written inquiries must be submitted via electronic mail (e-mail) only. No other manner of submission will be accepted.
Any change to this submission date and/or time will be made by notice sent electronically to all Respondent. The Respondent is responsible for confirming receipt of its written inquiries with Susan Bruce, Director of Purchasing, City of New Bedford at susan.brucenewbedford-ma.gov.

The City of New Bedford will provide written responses via electronic mail (e-mail) to all written inquires received by the required due date. Responses will not identify the inquiry by the Respondent.

**Deadline for Submission**

All responses to this Invitation for Proposals are due at the address listed on the cover page and no later than the date and time listed in the Procurement Calendar.

END OF SECTION
EXAMPLE

CITY OF NEW BEDFORD, MASSACHUSETTS
Goods and Services Contract

DATE:

This Contract is entered into on, or as of, this date by and between the City of New Bedford, Massachusetts, a municipal corporation, 133 William Street, New Bedford, Bristol County, Massachusetts 02740 (the "City"), and

["Contractor"]

[Address of the Contractor]

[Telephone Number] [FAX Number] [E-Mail Address]

1. This is a Contract for the procurement of the following:

2. The Contract price to be paid to the Contractor by the City is:

3. Payment will be made as follows:

   3.1 Pursuant to invoice in accordance with Article 24 hereof.

   3.2 Fees and Reimbursable Costs combined shall not exceed $___________ as more fully set forth in the Contractors Response to the Request for Proposals or Invitation for Bids.

   3.3 There shall be no further costs, fees, or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing in an Amendment hereto.

4. Definitions:

   4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the City. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the City to insure that the goods or services are complete and are as specified in the Contract.
4.2 Contract Documents: All documents relative to the Contract including (where used) Requests for Proposals and Invitations for Bids and all attachments thereto, Instructions to Bidders, Proposal Forms, General Conditions, Supplementary General Conditions, General Specifications, other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period, and Contractor's Response to the Request for Proposals or Invitation for Bids. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The "other party" to any Contract with the City. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by duly executed amendments.

4.5 Goods: Goods, supplies, and all property, other than real property, including equipment, materials, printing, and insurance and further including services incidental to the delivery, conveyance and installation of such property.

4.6 Services: The furnishing of labor, time, or effort by a Contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

4.7 Subcontractor: Those having a direct contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of the work, but does not include one who merely furnishes material not so worked.

4.8 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before __________, unless extended, in writing, at the sole discretion of the City, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the City Auditor. Time is of the essence for the completion of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the City is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the City Auditor. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the City.

7. Permits and Approvals:

Permits, licenses, approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.
8. **Termination and Default:**

8.1 **Without Cause.** The City may terminate this Contract on seven (7) calendar days notice when in the City’s sole discretion it determines it is in the best interests of the City to do so, by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

8.2 **For Cause.** If the Contractor is determined by the City to be in default of any term or condition of this Contract, the City may terminate the Contract on seven (7) days notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

8.3 **Default.** The following shall constitute events of a default under the Contract:

1) any material misrepresentation made by the Contractor to the City; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor’s reasonable control; (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor’s reasonable control; (iii) failure to perform this Contract in a manner reasonably satisfactory to the City; (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the City as unsatisfactory, or erroneous; (v) discontinuance of the services for reasons not beyond the Contractor’s reasonable control; (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination; (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal or state law and/or regulation or City Ordinance and/or regulations.

9. **Suspension or Delay:**

The City may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the performance of this Contract without cause for such period of time as the City may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor’s compensation shall be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the performance of this Contract, or if another provision of this Contract is applied to render an equitable adjustment.

10. **The Contractor’s Breach and the City’s Remedies:**

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of the Contract, and the City of New Bedford shall have all the rights and remedies provided in the Contract documents, including, without limitation, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including but not limited to monetary damages, costs, attorney’s fees or other damages resulting from said breach, as well as specific performance of this Contract, and the right to select among the remedies available to it by virtue of all of the above.

From any sums due to the Contractor for performance of this Contract, the City may retain and keep the whole or any part of the amount for expenses, losses and monetary damages incurred by the City as a
consequence of the Contractor's breach of the Contract and/or of the City having to procure goods or services as a result of any failure, omission or mistake of the Contractor in providing goods or services as required by this Contract.

11. Statutory Compliance:

11.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of the applicable law or regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract, including, but not limited to, the following:


11.2 Wherever applicable law mandates the inclusion of any term or provision into a municipal contract, this Article shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

11.3 The Contractor shall comply with all federal, state and local laws, rules, regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such Work.

11.4 The Contractor shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any and all fines, penalties or monetary liabilities incurred by the City, its officers, agents, and employees, as a result of the failure of the Contractor to comply with the previous sentence. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, rule, regulation, policy, or order, it shall forthwith report the same in writing to the City. The Contractor shall at all times observe and comply with all such existing and future laws, rules, regulations, policies and orders and shall indemnify and hold harmless the City, its officers, agents, and employees, against any claim or liability arising from or based on any violation of any such law, rule, regulation, policy, or order, whether by the Contractor, its agents, employees or subcontractors.

12. Conflict of Interest:

Both the City and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A). This Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and, by virtue of its execution of the Contract Documents, certifies to the City that neither it nor its agents, employees, or subcontractors are in violation of General Laws Chapter 268A.

13. Certification of Tax Compliance:

This Contract must include a certification of tax compliance executed by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or political subdivision thereof).
14. **Non-Discrimination:**

The Contractor shall carry out the obligations of this Contract in compliance with all requirements imposed by or pursuant to federal, state, and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the United States of America, the Commonwealth of Massachusetts, and the City as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

15. **Assignment:**

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the City, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the City.

16. **Condition of Enforceability against the City:**

The obligations of the City under this Contract for the present or any subsequent fiscal year following the fiscal year in which the Contract is executed are subject to appropriation by the City of funds sufficient to discharge the City's obligations that accrue in this or any subsequent fiscal year. In the absence of such appropriation or authorization, this Contract shall be terminated immediately upon the Contractor's receipt of notice to said effect without liability or damages, penalties or other charges arising from such early termination. Expenditures under this Contract for services that will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated or authorized for said fiscal year. The Consultant's yearly costs, as contained herein, may not exceed the amount appropriated for the fiscal year.

17. **Corporate Contractor:**

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. This Contract shall not be enforceable against the City of New Bedford unless and until the Contractor complies with this Article.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Sections 3 and 5, and any Amendments thereof and Acts in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, and shall file with the Commissioner of Corporations duly authenticated copies of its Charter or Certificate of Incorporation and comply with all the laws of the Commonwealth of Massachusetts.

18. **Liability of Public Officials:**

To the full extent permitted by law, no official, employee, agent or representative of the City shall be individually or personally liable on any obligation of the City under this Contract.

19. **Indemnification:**

The Contractor shall indemnify, defend and save harmless the City, its officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) that may arise in whole or in part out of or in connection with the work to be performed under this Contract, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly
employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the City for damage to the City’s property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the City’s gross negligence or willful misconduct.

In any and all claims against the City, its officers, agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen’s Compensation Acts, disability benefit acts, or other employee benefit acts.

The foregoing provisions shall not be deemed to be released, waived, limited, or modified in any respect by reason of any surety or insurance provided by the Contractor under this Contract.

20. Insurance:

20.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker’s Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the City for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the City a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the City.

20.2 Other Insurance Requirements:

a. Comprehensive commercial general liability insurance with limits of at least $1 Million per occurrence and $2 Million annual aggregate for property damage and $1 Million per person and $2 Million per occurrence for bodily injury, which shall include the City of New Bedford as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor’s employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.

b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least $500,000 per person, and $1 Million per accident.

c. The intent of the above provisions regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor’s responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the City from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

d. All insurance policies shall identify the City as an additional insured (except Workers’ Compensation) and shall provide that the City shall receive written
notification at least 30 days prior to the effective date of any amendment thereto or
cancellation thereof. Renewal Certificates shall be filed with the City at least 10 days
prior to the expiration of the required policies. Certificates evidencing all such coverage
shall be provided to the City upon the execution of this Contract, and upon the renewal
of any such coverage. Each such certificate shall specifically refer to this Contract and
shall state that such insurance is as required by this Contract. Failure to provide or to
continue in force such insurance shall be deemed a material breach of this Contract
and shall be grounds for immediate termination. Said insurance shall include: Workers
Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance,
and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage
for liability arising from premises, operations, independent Contractors, personal injury,
contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD"
Certificate of Insurance form, shall contain true transcripts from the policies,
authenticated by the proper officer of the insurer, evidencing in particular those
insured, the extent of coverage, the location and operations to which the insurance
applies, the expiration date and the above-mentioned notice clauses. All insurance
shall be written on an occurrence basis. Coverage’s shall be maintained without
interruption from date of the Contract until date of final payment and termination of
any coverage required to be maintained after payment.

e. The Contractor shall obtain and maintain during the term of this Contract said
insurance coverage in companies licensed to do business in the Commonwealth of
Massachusetts and acceptable to the City.

21. Documents, Materials, Etc:

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this
Contract are to be kept confidential and shall not be made available to any individual or organization by the
Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the
City, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the
General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and
regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the
City, in the United States or any other country. The City shall have unrestricted authority to, without payment
of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and
otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared
under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for
by the City shall vest in the City at the termination of this Contract. The Contractor shall at all times, during or
after termination of this Contract, obtain the prior written approval of the City before making any statement to
the press or issues any material for publication through any medium bearing on the work performed or data
collected under this Contract.

22. Independent Contractor:

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered
pursuant to this Contract, and neither the Contractor, nor its employees, agents, or servants, nor any person for
whose conduct the Contractor is responsible, shall be considered an employee or agent of the City for any
purpose, and shall not file any claim or bring any action for any worker’s compensation, unemployment
benefits, or compensation for which they may otherwise be eligible as a City employee as a result of the Work
performed pursuant to this Contract.
23. Audit, Inspection and Recordkeeping:

At any time during normal business hours, and as often as the City may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

24. Payment:

Contractor shall invoice the City for services rendered or goods provided hereunder. Invoices shall clearly describe the work performed and accepted by the City during the invoiced month. The City will compensate Contractor for work accepted by the City during the invoiced month. The City shall make all reasonable efforts to process payments within thirty (30) days from the date of receipt of each invoice. The City shall give prompt written notice of any disputed invoice amount and shall pay the amount not in dispute.

25. Waiver and Amendment:

Amendment of any term, condition, covenant, duty, or obligation contained in this Contract may be made only by written amendment duly executed by the parties hereto.

To the extent allowed by law, any term, condition, duty, or obligation contained in this Contract may be waived only by written agreement of the parties hereto.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

26. Severability:

If any term or condition of this Contract is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remaining terms and conditions shall not be affected thereby and shall remain in full force and effect.

27. Forum and Choice of Law:

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any proceedings or actions relating to the subject matter contained herein shall be brought and maintained in the courts of the Commonwealth sitting in Bristol County, Massachusetts or the United States District Court sitting in the Commonwealth.

28. Notices:

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.
29. **Binding on Successors:**

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the City nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

30. **Entire Agreement:**

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, written or oral, and shall not be modified or amended except by a written document duly executed by the parties hereto.

**IN WITNESS WHEREOF** the parties hereto have set their hands and executed this as an instrument under seal this the day and year first above written.

<table>
<thead>
<tr>
<th>Vendor:</th>
<th>CITY OF NEW BEDFORD, MASSACHUSETTS</th>
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<tbody>
<tr>
<td>By:</td>
<td>By: Jonathan Mitchell</td>
</tr>
<tr>
<td>Title:</td>
<td>Title: Mayor</td>
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<tr>
<th>CERTIFIED that funds are available</th>
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<tbody>
<tr>
<td>By: Robert Ekstrom</td>
</tr>
<tr>
<td>Title: City Auditor</td>
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<tr>
<td>By:</td>
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<td>Title:</td>
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<table>
<thead>
<tr>
<th>APPROVED as to Form and Legality</th>
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</thead>
<tbody>
<tr>
<td>By: Shannon Shreve</td>
</tr>
<tr>
<td>Title: Associate City Solicitor</td>
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<tr>
<td>By:</td>
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<td>Title:</td>
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<th>DEPT.</th>
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<tr>
<td>By:</td>
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<td>Title:</td>
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<tr>
<th>PURCHASING DEPARTMENT</th>
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<tbody>
<tr>
<td>By: Susan Bruce</td>
</tr>
<tr>
<td>Title: Director of Purchasing</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td>Ari Sky</td>
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</tbody>
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