INVITATION FOR BID
CITY OF NEW BEDFORD
Police Department
New Bedford, Massachusetts

Clearing Timber and Debris
IFB # 19450090

September 10, 2018

Jonathan F. Mitchell
Mayor

New Bedford Department of Public Infrastructure
1105 Shawmut Ave.
New Bedford, MA 02746
CITY OF NEW BEDFORD
MASSACHUSETTS
Advertisement

CLEARING TIMER and DEBRIS

INVITATION FOR BID  #19450090

The City of New Bedford, Purchasing Department, in conjunction with the Department of Public Infrastructure are soliciting bids for clearing timber and debris from city of New Bedford lands located in the towns of Freetown, Lakeville, Rochester and Middleboro, MA.

Sealed bids 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 of the bid opening.

BID OPENING

Bids will be opened Friday, September 28, 2018 at 11:00 A.M. Prevailing Time

Contract Documents, including the Information for Bidders, Form of Bid, Form of Contract, Specifications, and other Contract Documents, may be obtained and/or examined on or after Monday, September 10, 2018 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. Electronic copies can be obtained by emailing 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 bids submitted should take this factor into consideration, and be calculated accordingly.

The contract will be awarded within thirty (30) days after the bid opening. The time for award may be extended by mutual agreement between the City and the awarded bidder.

No Bidder may withdraw his/her bid for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

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

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

AWARDING AUTHORITY
CITY OF NEW BEDFORD
Susan Bruce, Director of Purchasing
CITY OF NEW BEDFORD
MASSACHUSETTS

INVITATION FOR BID #19450090

CLEARING TIMBER and DEBRIS

I. General Information and Bid Submission Requirements
The City of New Bedford, through the City of New Bedford Department of Public Infrastructure is soliciting bids for the Clearing of timber and debris from City of New Bedford lands located in the towns of Freetown, Lakeville, Rochester and Middleboro, MA.

SPECIFICATIONS: ATTACHMENT A

Sealed bids will be received by the Purchasing Department, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, during business hours, until the date and time of the bid opening.

BID OPENING

BIDS will be opened:
Friday, September 28, 2018
11:00 A.M. Prevailing Time

- TIME FOR BID ACCEPTANCE
The contract will be awarded within thirty (30) days after the bid opening. The time for award may be extended by mutual agreement between the City and the awarded vendor.

- ADDENDA
If any changes are made to this IFB, an addendum will be issued. Addenda will be emailed to all bidders on record as having picked up the IFB.

- QUESTIONS
Questions concerning this Invitation for Bid must be submitted via email to: Susan Bruce, Director of Purchasing, at susan.brucerealnewbedford-ma.gov before 4:00 p.m. on Tuesday, September 18, 2018. Written responses will be emailed to all bidders on record as having picked up the IFB.

- CORRECTIONS, MODIFICATIONS
A bidder may correct, modify, or withdraw a bid by written notice received by the City, prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope, clearly labeled “Modification No. ___. “ Each modification must be numbered in sequence, and must reference the original IFB. After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended correct bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident.

- RIGHT TO CANCEL OR REJECT
The City may cancel this IFB, or reject in whole or in part any and all bids, if the City determines that cancellation or rejection serves the best interests of the City.

- BID PRICES
All bid prices submitted in response to this IFB must remain firm for thirty (30) days following the bid opening.
Bidders are advised to include in their Bid any and all costs associated with the delivery of all products under this Contract. The City will not pay any additional fees under the Contract unless it has previously agreed to pay such additional fees in writing.

The City will not compensate Bidder for any costs under any Contract awarded by this IFB that are not specifically identified in the Bidder’s Response or Bid and accepted by the City as part of the Contract.

- **EXPECTED CLOSURE**
If, at the time of the scheduled bid opening, City Hall is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 3:00pm on the next normal business day. Bids will be accepted until that date and time.

- **NUMBER OF COPIES**
Each bidder should submit one (1) original bid document.

- **ENVELOPE MARKING**
The bid envelope should be marked as follows: Bid #19450090 “CLEARING of TIMBR and DEBRIS”

- **AUTHORIZED SIGNATORY**
A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

The City of New Bedford requires all corporate vendors soliciting business with the City of New Bedford which are not Massachusetts Corporations to be registered as a Foreign Corporation in the Commonwealth of Massachusetts. Therefore, “out of state businesses”, in accord with Massachusetts General Laws Chapter 156d, Section 15.01, must register as a foreign corporation doing business in Massachusetts and appoint a Resident Agent for service of process within the State of Massachusetts. The necessary forms may be downloaded from the state web site www.state.ma.us/sec.

No Bidder may withdraw his/her bid for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

- **USE OF OTHER NAMES AND REFERENCES**
*Unless otherwise stated, the use of manufacturer’s name and product numbers are for descriptive purposes and establishing general quality levels only. They are not intended to be restrictive, but utilized where no other manner of description will suffice. Bidders are required to state exactly what they intend to furnish, otherwise, it is fully understood that they shall furnish all items stated.*

*The jurisdiction reserves the right to determine whether something is of equal value.

- **INSURANCE REQUIREMENTS:**
Vendors doing business with the City of New Bedford are required to provide a copy of their insurance policy, including all endorsements that list the City of New Bedford as an additional insured in the amounts as specified herein. (*some coverages may not be required*)

- **ALTERNATE PRICE**
If an alternate price is requested and you estimate that there is no change in price for its inclusion, please indicate by writing “no change,” “N/C,” or “0” in the space provided. DO NOT use “N/A” or leave the space blank as these notations may cause your bid to be rejected.

- **ENVIRONMENTAL GUIDELINES**
The City of New Bedford encourages the use of environmentally preferable products and services (EPP’s) whenever possible. Such products or services must perform to satisfactory standards and represent the best value. EPP’s are products
or services that help conserve natural resources, reduce waste, promote the use of recycled materials, clean technologies and protect the health of the public and the environment.

- **CONTRACT TYPE AND TERM**
  This is a firm, fixed-price contract.

- **RULE FOR AWARD**
  The contract will be awarded to the responsive and responsible bidder offering the lowest total price for all required products/services.

  The City of New Bedford reserves the right to reject any and all bids if it is in the public interest to do so.

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:

- **Bid Documents Available:**
  - Monday, September 10, 2018
- **Questions Due:**
  - Tuesday, September 18, 2018 by 12:00 pm
- **Questions Answered:**
  - Friday, September 21, 2018 at 1:00 pm
- **Bids Due:**
  - Friday, September 28, 2018 at 11:00 am
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: ______________________________________

Tel: (_____) __________________

City/State/Zip: ________________________________

Fax: (_____) __________________

By: ____________________________________________

(Date or Print Name of Person Signing Quotation and Title)

__________________

(Signature)
I HEREBY CERTIFY THAT I HAVE RECEIVED THE FOLLOWING ADDENDUM

ADDENDUM #’S

Person submitting bid

Company Name

Please include this form with your bid if applicable.
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under penalties of perjury that this bid 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 bid

________________________
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 bid
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
CONTRACTOR CERTIFICATION

As evidenced by the signature of the Contractor’s Authorized signatory below, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of any City contract; that pursuant to federal and state requirements, the Contractor shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

Contractor Authorized Signature

Printed Name

Date

Title __________________________ Telephone: __________________________

Fax: __________________________ Email: __________________________
Withdraw, Modify and Amend Proposals

Bidders who wish to withdraw, modify or amend their bid must do so in writing utilizing electronic mail to the City of New Bedford Director of Purchasing at susan.bruce@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 Bidders 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

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

Independent Party

Under this Invitation for Bids, the successful Bidders declares itself to be at all times acting and performing as an independent party and nothing in this Invitation for Bids or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Bidders 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 Bidders shall be used for any partisan political activity or to further the election of any candidate for public office.

Assignment by Contractor

The successful Bidders 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 Bidders’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 Bidders 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 Bids.

Choice of Law

Any contracts awarded as a result of this Invitation for Bids shall be construed under the laws of the Commonwealth of Massachusetts. The successful Bidders 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 Bids 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 Bids 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 Bids 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 Bidders, 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 Bid, 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 Bidders. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the Bidders, its proposal deposit shall be returned.

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

Should the successful Bidders fail to commence or diligently perform according to the terms if the contract, the successful Bidders agrees to pay the City of New Bedford, as liquidated damages, Two Hundred Fifty Dollars ($250.00) per calendar day that the successful Bidders 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 Bidders.

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 Bids 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, September 10, 2018
Questions Due: Tuesday, September 18, 2018 by 12:00 pm
Questions Answered: Friday, September 21, 2018 at 1:00 pm
Proposals Due: Friday, September 28, 2018 at 11:00 am

Duration of Contract

The contract shall be until December 25, 2018.
END OF SECTION
GENERAL PROPOSAL INFORMATION

Required IFB Sections

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

ADA, Regulatory, Compliance and Standards

Bidders 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 Bidders, in exchange for entering into an agreement or contract resulting from this Invitation for Bids 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 Bidders 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 Bidders in exchange for entering into any agreement or contract resulting from this Invitation for Bids 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 Bidders and the City of New Bedford and any and all manners of legal action brought against the successful Bidders and/or the City of New Bedford. Said indemnification includes reasonable attorney’s fees related thereto.

Federal, State and Local Laws

The successful Bidders 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 Bidders acknowledges that in performance of any contract resulting from the Invitation for Bids 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 Bidders 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 Bidders 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 Bidders 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 Bidders 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 Bidders 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 Bidders shall be delivered to the City of New Bedford within 14 calendar days after termination of any contract resulting from this Invitation for Bids. The successful Bidders 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 Bidders 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 Bids, without the consent of the data subject. The successful Bidders shall use personal data and material derived from such data, only as necessary to the performance of the subject contract. Failure of the successful Bidders to comply with the requirements of this section may be grounds for terminating any contract resulting from this Invitation for Bids.

Force Majeure

Neither the City of New Bedford, nor the successful Bidders shall be liable to the other, nor deemed to be in breach of any contract resulting from this Invitation for Bids 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 Bidders, shall afford the City of New Bedford the right to terminate any contract resulting from this Invitation for Bids without assessment of termination costs or penalties.

**Equal Opportunity**

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

a. The successful Bidders 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 Bidders 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 Bidders 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 Bidders for this Invitation for Bids should note that the City of New Bedford reserves the right to terminate any contracts resulting from this Invitation for Bids 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 Bidders fails to fulfill its obligations, the Town of New Bedford may terminate any contract resulting from this Invitation for Bids by giving 30 days written notice to the successful Bidders 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 Bids up to 60 calendar days by providing written notice to the successful Bidders, 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 Bidders. 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 Bidders 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 Bidders 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 Bids
  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 Bidders 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 Bidders shall not be
  relieved of liability to the City of New Bedford by virtue of any breach of contract resulting
  from this Invitation for Bids by the successful Bidders. In the event of termination pursuant
  to this section, the City of New Bedford may withhold any payments to the successful
  Bidders 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 Bidders is determined. In addition to and
  notwithstanding the above, the successful Bidders covenants and agrees that in the event of
  termination of any contract resulting from this Invitation for Bids, the successful Bidders
  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
  Bidder’s default. The successful Bidders further covenants and agrees with the City of New
  Bedford that the successful Bidders 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 Bidders
  under any contract resulting from this Invitation for Bids.

Obligation in the Event of Termination

Upon termination of any contract resulting from this Invitation for Bids, all documents
finished or unfinished, data, studies and reports prepared by the successful Bidders
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 Bidders for future use. The City of New Bedford shall promptly pay the successful Bidders 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 Bidders 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 Bidders 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 Bidders provides under the terms of this Invitation for Bids and paid with public funds, shall vest in and be retained by the City of New Bedford. Upon completion of performance of the awarded Bidders’s contract, the awarded Bidders 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 Bids, neither the successful Bidders 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 Bidders or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful Bidders.
Bid Information

Bidders Communication

Bidders are prohibited from communicating directly with any employee of the City of New Bedford except as specified in this Invitation for Bids, 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 Bids. Bidders may contact the person identified on the cover sheet of this Invitation for Bids in the event this Invitation for Bids is incomplete.

Reasonable Accommodation

Bidders with disabilities or hardships that seek reasonable accommodation, which may include receipt of the Invitation for Bids 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 Bidder requesting accommodation must submit the written request via email, which describes the Bidder’s disability and the requested accommodation to the contact person for the Invitation for Bids. 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 Bids 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 Bidder’s proposal inconsistent with these statutes will be disregarded.

Brand Name or Equal

Unless otherwise specified in this Invitation for Bids, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Invitation for Bids 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 Bidders awarded a contract under this Invitation for Bids 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 Bidder’s 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 Bidders 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 Bidders 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 Bidders is a Corporation): If the Bidders 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 Bidders is a Corporation, the names and addresses of the Corporate Officers and the State and date on Incorporation must be included. The Bidders 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 Bidders is a Sole Proprietor): If the Bidders 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 Bidders in the response to this Invitation for Bids. All materials submitted by Bidders become the property of the City of New Bedford and will not be returned to the Bidders. The City of New Bedford has the right to use any ideas, concepts or configurations that are presented in the Bidder’s response whether or not the response is selected for contract award.
Clarification of Bid

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

Rejection of Bidder's Response

A Bidder’s response may be rejected by the City of New Bedford if the Bidder’s 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 Bids I 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 Bids.
- Fails to meet unconditionally or is unable to demonstrate competence to meet the requirements of the Invitation for Bids.
- 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 Bids Cancellation

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

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 Bids, nor does the City of New Bedford guarantee any minimum quantity of purchase from any contract resulting from this Invitation for Bids. Any estimated or past procurement volumes referenced in this Invitation for Bids are included only for the convenience of the Bidders, and not to be relied upon as any indication of future purchases.

The Bidders 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 Bidders.

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

Bidders 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 Bidders 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

Bidders may submit written inquiries concerning any part or attachment of this Invitation for Bids. Written inquiries regarding issues outside of the scope of this Invitation for Bids 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 Bids.

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 Bidders. The Bidders is responsible for confirming receipt of its written inquiries with Susan Bruce, Director of Purchasing. City of New Bedford at susan.brucenoebnewbedford-ma.gov.

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

Deadline for Submission
All responses to this Invitation for Bids 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
ATTACHMENT A
ATTACHMENT A

TIMBER AND DEBRIS CLEARING SPECIFICATIONS

The sites that require services are highlighted in the attached map as Fire Lanes and Fire Breakers. The highlighted areas show approximately 30 miles of fire lanes and breakers located on City of New Bedford owned land in the towns of Freetown, Lakeville, Rochester, and Middleboro. The fire lanes range in width and will need to be cleared to the existing tree lines.

All contractor debris, existing slash and large debris (branches, logs, etc.) beyond the edges of the fire lanes must be lopped to lie no more than two (2) feet above the ground. Landing locations must be agreed upon prior to cutting by the Consulting Forester. At the completion of the job the operator must repair any deep ruts or erosion before leaving.

1. The purchaser must abide by the Forest Cutting Practices and Forest Fire Laws of the State of Massachusetts and any other laws pertaining to the operation. He must assume all liability for any unlawful acts or injuries by or to his workers or independent contractors working for him.
2. The clearing will be carried out in a manner satisfactory to the Consulting Forester, the site inspector, the FEMA monitor, or the landowner and can be suspended by any of those authorities at any time if conditions of the contract are violated.
3. The work shall be in compliance with and eligible under the FEMA Public Assistance regulations, policies, and guidance detailed at https://www.fema.gov/pdf/government/grant/pa/demagde.pdf
4. The debris that will be removed is detailed in Appendix A (excerpt from the aforementioned FEMA guidelines).
5. The fallen trees will be chipped on site and removed or those chips will be left spread evenly over the fire lanes so as not to impede vehicle traffic.
6. If any debris is removed from the site, documentation of the location it is removed from, the quantity removed and the location it is shipped to will be required. The final outcome of the debris after shipment will also be required, for example if it was chipped, burned, reused, etc.
7. GPS located before and after photos will be required every 0.5 miles.
8. Trees must be utilized to their fullest reasonable extent. Stumps must be cut low.
9. Care is to be taken to protect the existing understory to the extent practicable.
10. No unnatural debris will be left after completion of the operation.
11. The successful bidder will have to provide proof of Employer's Liability and General Liability insurance with a minimum policy limit of $1,000,000.00. The City shall be named as an additional insured on the General Liability policy.
12. This project is contingent upon approval from Local, State and Federal agencies. This project must be completed to meet all FEMA public assistance requirements.
13. The successful bidder may have until December 25, 2018 to cut and chip/remove fallen and broken trees, unless the time is extended by permitting authorities.

This project will be awarded to the qualified logger/land clearer who submits the **Lowest Price Per Linear Foot**.
Only FEMA has the authority to make eligibility determinations for Public Assistance grant funding; contractors cannot make eligibility determinations. Information on eligibility can be found in FEMA 321 – Public Assistance Policy Digest, FEMA 322 – Public Assistance Guide, FEMA 323 – Public Assistance Applicant Handbook, and this document.

**Vegetative Debris Eligibility**

Vegetative debris consists of whole trees, tree stumps, tree branches, tree trunks, and other leafy material. Depending on the size of the debris, the collection of vegetative debris may require the use of flat bed trucks, dump trucks, and grapple loaders.

Most vegetative debris consists of large piles of tree limbs and branches that are piled on the public rights-of-way by the residents. The collection of this type of debris is eligible for reimbursement if it is within public rights-of-way and collected by an eligible applicant. Applicants normally limit the number of times the debris is collected; for instance, the applicant may choose to make two passes throughout the jurisdiction before resuming its normal collection activities. The applicant should discuss with FEMA the number of passes that may be eligible.

Vegetative debris is bulky and consumes a significant volume of landfill space if buried. To minimize the use of landfill space, it is prudent to reduce the volume of vegetative debris before burying. Vegetative debris may be reduced by as much as 75 percent of its volume by mulching or grinding and as much as 90 percent of its volume through burning technologies. Costs to reduce vegetative debris are eligible for Public Assistance grant funding if found to be reasonable.

A hazardous tree or stump may be collected individually, while downed or fallen debris is collected from rights-of-way or at a designated collection center. Tree and stump collection prices are typically based on the size of the tree or stump and charged by unit. Other fallen or downed material is usually billed by weight (tons) or volume (cubic yards).

Determining eligibility for hazardous trees and stumps is challenging. FEMA has established criteria to assist in making these eligibility determinations, using objective information that can be collected in the field.
Chapter 3 – Debris Removal from Public Property

Hazardous Trees

Removing a hazardous tree may be eligible for Public Assistance grant funding. A tree is considered hazardous if its condition was caused by the disaster; it is an immediate threat to lives, public health and safety, or improved property; it has a diameter breast height of six inches or greater; and one or more of the following criteria are met:

- It has more than 50 percent of the crown damaged or destroyed;
- It has a split trunk or broken branches that expose the heartwood;
- It has fallen or been uprooted within a public-use area; and/or
- It is leaning at an angle greater than 30 degrees.

Trees determined to be hazardous and that have less than 50 percent of the root-ball exposed should be cut flush at the ground level. Grinding of the resulting stump after the tree has been cut flush at the ground level is not eligible work. The cut portion of the tree is included with regular vegetative debris. The applicant should make an effort to cut the tree trunk as close to the ground as possible.

The eligible scope of work for a hazardous tree may include removing the leaning portion and cutting the stump at ground level. An example of an ineligible costing method for such work would be removing the tree and stump for two separate unit costs.

The Public Assistance Program may reimburse straightening and bracing if they are less costly than removal and disposal. Straightening and bracing are emergency protective measures if they eliminate an immediate threat to lives, public health and safety, or improved property. If an applicant chooses to straighten and brace a tree in lieu of removal, the tree would not be eligible for removal if it dies.

Hazardous Limb Removal (Hangers)

Removing hanging limbs may be eligible for Public Assistance grant assistance. Limbs must be:

- Located on improved public property;
- Greater than two inches in diameter at the point of breakage; and
- Still hanging in a tree and threatening a public-use area, e.g. trails, sidewalks, golf cart paths.

Only the minimum amount of work necessary to remove the hazard is eligible. Pruning, maintenance trimming, and landscaping are not eligible. Work should be executed in an efficient manner. For example, all hazardous limbs in a tree should be cut at the same time, not in passes for particular sizes. Work to remove hanging limbs from a tree that has been determined to be a hazard and is scheduled for removal is not eligible. If this work is contracted out, it is typically done on a per tree basis.
An eligible scope of work may be to cut the branch at the closest main branch junction. Removing the entire branch back to the trunk may not be eligible.

If the canopy of a tree located on private property extends over a public right-of-way such as a sidewalk, removal of hazardous limbs on the tree that extend over the public right-of-way and meet the above criteria may be eligible. Limbs on the tree that do not extend over the public right-of-way are not eligible.

Documentation required for Public Assistance grant consideration:
- Describe the immediate threat, e.g. photos of hanging limbs or leaning trees;
- Clearly define the scope of work to remove the immediate threat;
- Specify the improved public property location by recording the nearest building address and/or GPS location; and
- Denote date, labor (force account or contract), and equipment used to perform the work.

Hazardous Tree Stumps

A stump may be determined to be hazardous and eligible for Public Assistance grant funding as a per-unit cost for stump removal if it meets all of the following criteria:
- It has 50 percent or more of the root-ball exposed (less than 50 percent of the root-ball exposed should be flush cut);
- It is greater than 24 inches in diameter, as measured 24 inches above the ground;
- It is on improved public property or a public right-of-way; and
- It poses an immediate threat to life, and public health and safety.

If an uprooted stump must be removed prior to FEMA’s approval, the applicant must submit the following information for Public Assistance grant consideration:
- Photographs and GPS coordinates that establish the location on public property;
- Specifics of the threat;
- Diameter of the stump 24 inches from the ground; and
- Quantity of material needed to fill the resultant hole.

FEMA may reimburse a reasonable cost to remove, transport, dispose of, and fill the hole from a stump of more than 24 inches in diameter if:
- The applicant and State agree the tree or stump is hazardous according to the above definition;
- Generally, FEMA approved the removal in advance; and
A Hazardous Stump Worksheet is completed and submitted for FEMA approval. A copy of the Hazardous Stump Worksheet may be found in Appendix G, FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility.

In some instances, grinding of an uprooted stump and filling the resulting cavity may cost less than a complete extraction. In these cases, the applicant should present the cost comparison documentation to FEMA for consideration; however, the stump must have already been determined eligible for removal according to the above criteria.

Stumps measuring 24 inches in diameter or less do not require special equipment for removal; therefore, reimbursement will be based on the reasonable unit cost per cubic yard, using the Stump Conversion Table found in Appendix G, FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility. The unit price for stump removal includes the extraction, transport, and disposal of the stump as well as filling the cavity that remains.

FEMA will reimburse the applicant at the unit cost rate (usually cubic yards) for normal debris removal for all stumps, regardless of size, placed on the public rights-of-way by others, i.e., contractors did not extract them from public property or property of eligible PNP organizations. In such instances, applicants do not incur additional costs to remove these stumps; the same equipment used to pick up vegetative debris can be used to pick up these stumps.

See Appendix G, FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility for more information on hazardous stumps.

**Construction and Demolition Debris**

The definition of construction and demolition debris may vary between States. Construction and demolition debris can be defined as damaged components of buildings and structures such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures. To be eligible, construction and demolition debris must be a result of a Federally declared disaster.

Certain types of construction and demolition debris are reusable or recyclable. To conserve landfill space, it is prudent to separate materials for reuse or recycling.
Public Assistance
Debris Management Guide
FEMA-325 / July 2007
Chapter 2 – Costs

**Types of Contracts**

FEMA provides reimbursement for four types of contracts:

- **Lump sum** contracts, for work within a prescribed boundary with a clearly defined scope and a total price

- **Unit price** contracts, for work done on an item-by-item basis with cost determined per unit

- **Cost-plus-fixed-fee** contracts, either lump sum or unit price contracts with a fixed contractor fee added into the price

- **Time-and-materials** contracts, where the contractor bills the applicant for labor, equipment, materials, and overhead. These contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Time-and-materials contracts are allowed in circumstances when they are more cost-effective and appropriate for the amount and type of eligible work to be performed. The costs must be reasonable for the type of work required. Applicants must engage in comprehensive active monitoring activities to ensure contractor efficiency. Typically, **FEMA will reimburse for only 70 hours of a time-and-materials contract**. If a time-and-materials contract is awarded, the applicants must:
  
  - Monitor and document contractor expenses;
  - Have a cost ceiling or “not to exceed” provision in the contract; and
  - Contact the State to ensure proper guidelines are followed.

After 70 hours of work, the applicant should have sufficient information on the scope of work necessary to complete debris collection and disposal, and on a basis for estimating a reasonable cost for the contract work, to effectively solicit a lump sum or a unit price contract. For some types of debris work where time-and-materials contracts may be the most cost-effective and the most well-suited to the type of work, applicants should work closely with the State and FEMA when awarding the time-and-materials contracts to ensure eligibility requirements are met.

**Other Considerations**

**Contract Scope of Work Recommendations**

The contract scope of work should reference “eligible work,” “work eligible under FEMA Public Assistance regulations, policies, and guidance,” “work performed on public property and/or public rights-of-way,” or other similar elements.
**Piggyback Contracts**

FEMA does not favor “piggyback contracts.” Applicants have used piggyback contracts on occasion to have disaster-related work performed by another jurisdiction’s contractor. The variables associated with the scope of work and costs generally make this an option to be avoided. The competitive procurement requirements of 44 CFR Part 13 are also a prime concern. If FEMA encounters a request for reimbursement of costs derived from such a contract, the reimbursable costs for eligible work will be based on reasonableness.

**Prohibited Contracts**

In accordance with 44 CFR Part 13.36(f)(4), cost plus percentage of cost contracts shall not be used. Use of such contracts may result in FEMA limiting the Public Assistance grant to an amount determined to be reasonable based on the eligible work performed.

Contracts that are awarded by an applicant to debarred contractors are prohibited pursuant to 44 CFR Part 13.35; thus, no Federal funding can be awarded for eligible work completed.

**Additional Contract Requirements**

Contract payment provisions should address the obligations between parties to the contract only and not include any language that makes payment to the contractor contingent upon the applicant’s receipt of funding from FEMA.

All contracts in excess of $10,000 must contain a provision for termination for cause and for convenience by the applicant, including the manner by which it will be effected and the basis for settlement, according to 44 CFR Part 13.36(i)(2).

For contracts over $100,000 the applicant must have the following minimum bonding requirements, in accordance with 44 CFR Part 13.36(h):

- A bid guarantee from each bidder equivalent to five percent of the bid price;
- A performance bond on the part of the contractor for 100 percent of the contract price; and
- A payment bond on the part of the contractor for 100 percent of the contract price.

In accordance with 44 CFR Part 13.36(b)(8):

“Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”
Chapter 2 – Costs

Documentation requirements are specified in 44 CFR Part 13.36(b)(9) and include, but are not limited to, rationale for the procurement method, contract type, contractor selection or rejection, and the basis for contract price.

For additional contracting information, refer to Appendix G, FEMA RP9580.201, Fact Sheet: Debris Removal - Applicant’s Contracting Checklist.
SAMPLE CITY CONTRACT
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.

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<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>
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<td>Title:</td>
<td>Title: Mayor</td>
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<th>CERTIFIED that funds are available</th>
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<tr>
<td>By: Robert Ekstrom</td>
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<td>Title: City Auditor</td>
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<th>APPROVED as to Form and Legality</th>
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<tr>
<td>By: Shannon Shreve</td>
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<td>Title: Associate City Solicitor</td>
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<tr>
<td>By: Susan Bruce</td>
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<td>Title: Director of Purchasing</td>
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Chief Financial Officer

Ari Sky