



City of Wheaton, Illinois

City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187-0727
630-260-2000

www.wheaton.il.us

Aggregate Gravel or Stone

Requesting: Bids (2 originals compiled as described within)

Issue Date: March 2016

Mandatory Pre-Bid Meeting: none

Last Date for Questions: Wednesday, April 13, 2016 end of business

Response Required: Thursday, April 21, 2016 prior to 10:00 am local time

Public Bid Opening: Friday, April 22, 2016 10:00 am local time

Location: City Hall Council Chambers; 303 West Wesley St.; Wheaton, IL

Service: May 1, 2016 – April 30, 2017

Quantity: CA 1 = 100; CA 5 = 15; CA 6 = 1,312; CA 7 = 493

Enclosures: General Instructions Regarding the Solicitation of Goods
Product Requirements

*Forms Provided for Submitting this formal Offer**

Proposal Page

Certification of Compliance

Customized Mailing Label for Sealed Submittal

Agreement Document (if you are awarded the work/order)

Purchase Order Terms and Conditions

Note: Illinois Prevailing Wage Act 820 ILCS does not apply

All questions concerning this solicitation shall be via e-mail to the Procurement Officer and received no later than time stated above. A written response in the form of a public addendum will be published and forwarded to qualified proposers.

Contact with anyone other than the Procurement Officer for matters relative to this solicitation during the solicitation process is prohibitive.

Contacts for this proposal:

Procurement Officer: Joan M. Schouten MBA CPIM CPPB; JSchouten@wheaton.il.us

GENERAL INSTRUCTIONS REGARDING THE SOLICITATION OF GOODS

Solicitations are open to all business firms actively engaged in providing the goods specified and inferred.

Solicitation Process

Documents:

1. The City of Wheaton's website, www.wheaton.il.us/bids/ is the official source for all documents related to this solicitation. The City is not responsible for documents distributed by any other source.
2. It is the responsibility of the Offeror to seek clarification of any requirement that may not be clear. This includes a review of all solicitation documents.
3. All questions concerning this solicitation shall be submitted via e-mail to the attention of the Procurement Officer by the last date for questions as reflected on the cover page of this document. A written response in the form of a public addendum will be published on the City's website, www.wheaton.il.us/bids/.
4. Any interpretation, correction or change of the solicitation documents will be made by published Addendum. Interpretations, corrections and changes to the solicitation documents made in any other manner will not be binding. All addenda will be published on the City's website at <http://www.wheaton.il.us/bids/>. It is up to the Offeror to check this site for the most current addendum.
5. Offerors shall acknowledge the receipt of the addendum on the offer.

The Cone of Silence:

6. The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences.
7. During the period beginning with the issuance of the solicitation document through the execution of the award document, suppliers are prohibited from all communications regarding this solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials.
8. Any attempt by a supplier to influence a member or members of the aforementioned may be grounds to disqualify the supplier from participation in this solicitation.

Exceptions to the Cone of Silence:

9. Written communications directed to the Procurement Officer
10. All communications occurring at pre-bid meetings
11. Oral presentations during finalist interviews, negotiation proceedings, or site visits
12. Oral presentations before publicly noticed committee meetings
13. Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.
14. Procurement of goods or services for Emergency situations

Offers:

15. Exceptions to specifications, requirements, Terms and Conditions must be clearly identified.
16. **QUOTES** are to be submitted via fax or e-mail. Verbal offers will not be accepted.
17. **FORMAL OFFERS** must be on the forms provided and compiled in the order stated. Do not use binders, folders, tabs or papers larger than 8.5 x 11.
18. Delivery of an offer is acceptance of the City's Terms and Conditions and requirements. Offers containing terms and conditions contrary to those specified, or taking exception to any of the Special Provisions, General Conditions, Specifications, or Addenda as stated by the City may be considered non-responsive. The City shall not accept an offer which is based upon any other offer, contract, or reference to any other document or numbers not included in the solicitation documents.

Order of Precedence:

19. Wherever requirements are in conflict, the order of precedence shall be as follows: Contract, City Specifications, General Conditions, Special Provisions, Terms and Conditions.

20. City requirements take precedence over supplier's offer.

Signatures as Offer:

21. Under the conditions of the Uniform Commercial Code, the signing of the submittal by the supplier constitutes an offer. If accepted by the City, the offer becomes part of the Purchase Order.
22. Offers by
 - a. Individuals or sole proprietorships shall be signed by a person with the authority to enter into legal binding contracts. Said individual shall use his usual signature.
 - b. Partnerships shall be signed with partnership name by one of the members of the partnership, or an authorized representative, followed by the signature and title of the person signing.
 - c. By corporations shall be signed with the name of the corporation, followed by the signature and title of person authorized to bind it in the matter.

Withdrawal of Offers:

23. Offers may be withdrawn at any time prior to the scheduled opening or due date. Requests to withdraw an offer shall be in writing, properly signed, and received by the Procurement Officer prior to the due date.
24. Offers may not be withdrawn after the due date without the approval of the Procurement Officer.
25. Negligence in preparing an offer confers no right of withdrawal after due date.

Timeframe and Consequences:

26. Offers must be received before the designated time.
27. Offers received after the designated time will be returned to the sender without review. Offers received late that may be attributed to delays by overnight delivery services, or by delivery services trying to deliver when offices are closed, will be considered late and returned to the sender.
28. Unless otherwise specified in the solicitation, offers shall be binding for ninety (90) calendar days following due date.

Public Openings:

29. Formal Offers by sealed envelope will be publicly opened at the time and location stated. The Procurement Officer shall read the name of the Offeror, offered price, and note if deviations are stated. At the conclusion of the opening an apparent low bid will be announced. Award will be based on analysis of costs, deviations, city budget, and approval by City Council.
30. Results of Openings will be published on the City's website www.wheaton.il.us/bids/ within three business days.
31. Offerors are encouraged to attend all openings and to offer constructive suggestions for improvements to the solicitation process, to increase competition, and ways in which the City may achieve greater savings and increased transparency.
32. Despite the reading of offers at a public opening, if the offers are thence rejected and thus subject to rebid, the read results will not be published and will be exempt from FOIA requests.

Requirements

Brand Names or Equal:

33. Specifications are prepared to describe the goods which the City deems to be in its best interests to meet its performance requirements. These specifications shall be considered the minimum standards expected of the product.
34. If an offer does not indicate deviations or alternatives to the specifications, the City shall assume the offer is fully compliant with all specifications.
35. Specifications are not intended to exclude potential suppliers. Any reference in the City's specifications to a brand name, manufacturer, trade name, catalog number or the like is descriptive, not restrictive, indicating goods that are satisfactory.
36. Consideration of other makes and models will be considered, provided the Offeror submits a request for pre-approval by the last date for questions as reflected on the cover page of this document. Offeror should state exactly what good is proposed and attach a cut sheet, illustration or other descriptive matter which will clearly indicate the character of the item. A written response in the form of a public addendum will be published on the City's website, www.wheaton.il.us/bids/.

Quantities:

37. All quantities represent an estimate of the quantity of the work to be done and/or materials to be ordered. It is given as a basis for comparison of offers and to determine the awarding of the contract.

38. The City does not expressly or by implication agree that the actual quantities involved will correspond to the published estimate. The Supplier accepts that the quantities stated are estimates only and will not hold the City bound to said number.
39. The City reserves the right to modify the estimates, or remove them in their entirety, whichever is in the best interests of the City.

Bid Bonds:

40. The City may require a Bid Bond / Bid Deposit if so stated.
41. Bid Bonds / Bid Deposits are typically ten percent (10%) of the full contract price unless depicted otherwise on page one of the solicitation.
42. If a Bid Deposit (preferred), it shall be submitted with formal offer and be in the form of a certified check or a bank cashier's check made payable to the City of Wheaton. Checks will be retained by the City until an award is fully executed, at which time the checks will be promptly returned to the unsuccessful Offerors.
 - a. The Bid Deposit check of the successful Offeror will be retained until the goods have been received and found to be in compliance with specifications.
 - b. The Bid Deposit check of the successful Offeror shall be forfeited to the City in the event that the Offeror withdraws its offer, or neglects, refuses or is unable to enter into a contract.
43. If Offeror chooses to use a Bid Bond, the Bid Bond must be in compliance with all bond requirements mandated by the State of Illinois.

Deviations to Requirements and Alternate Offers:

44. If the Offeror is unable to meet most of the specifications, but believes their product will meet the needs of the city, the Offeror should submit an Alternate Bid and include material specification sheets, performance data, or other documentation justifying consideration.
45. If an Offeror plans to submit multiple offers, each offer must be packaged separately and identified on the outer envelope and on the cover page of the offer in a way that can be differentiated from the other offer(s).
46. The Procurement Officer reserves the right to make the final determination of compliance or whether any deviation or alternate is of an equivalent or better quality and which offer can best meet the needs of the City. Such determination shall be incorporated within Purchasing's recommendation to the City Council.

Environmental Requirements:

47. The City is committed to becoming a sustainable city that conserves its use of resources to optimize efficiency and minimize waste. The City is committed to provide services in an equitable manner for present and future generations.
48. Recycled Content Products: It is in the City's interest to purchase products with the highest recycled material content feasible. **The City requests that Offerors suggest recycled content products as alternatives.**
49. Recycled Packing Material: The City desires that all shipping containers/packing material for equipment, materials and supplies delivered to the City contain no less than the specified minimum EPA percentage requirements of post consumer recycled content. Containers and packing material should show the recycled product logo and recycled content percentage information.
50. To help "Turn Wheaton Green", the offerors sustainability policy, as well as green initiatives for this specific solicitation, will be considered in the evaluation of the offer.

Price:

51. Shipping shall be **F.O.B. Destination, Freight Pre-paid and Allowed.**
52. The price offered shall not exceed what is charged to any other government agency, and remain firm throughout the duration of the agreement.
53. Failure to record all requested breakdown of prices may result in disqualification. Unit price shall be shown for each unit specified. In case of mistake in extended price, unit price shall govern.
54. Price shall represent the entire cost of all requirements stated within the solicitation and award documents. No subsequent claim will be recognized for any surcharges, add on costs, increase in material prices, cost indexes, wage scales, fuel surcharges, freight costs, packaging or any other rates affecting the industry or this project.

Discounts:

55. Discounts of less than thirty (30) days will not be considered in the evaluation.
56. Discounts for thirty (30) days or more may be considered in the evaluation.
57. Where the net offer is equal to an offer with a discount deducted, the award shall be made to the net offer.

58. Discounts will be figured from either the date of receipt of a proper invoice or the approval of the quality of the product received – whichever is later.

Taxes:

59. Unit prices shall not include any local, state or federal taxes.
60. The City is exempt by law from paying sales tax on goods, from State and City Retailer's Occupation Tax, State Service Occupation Tax, State Use Tax and Federal Excise Tax.
61. The City's Sales Tax Exemption Number is E9997-4312-07.

Evaluation of Offers

Receipt of One (or too few) offers

62. If the City receives one or too few offers, as defined by the City, from a publicly broadcasted solicitation, the City may reschedule the opening to a later date. The offers received will either be:
a. returned unopened to the Offeror for re-submittal at the new due date and time, or
b. if there are no changes in requirements, and pending agreement with the Offeror, held until the new due date and time
63. If the City does not receive any offers, from a publicly broadcasted solicitation, the City may negotiate with any interested parties.

Determining Responsiveness of the Offer:

64. Responsive Offers are inclusive of, but not restricted to: received prior to the due date and time, completed as stated in the solicitation documents, inclusive of all required documents, compliant to all product requirements and specifications, able to meet delivery requirements, accepting of all Purchase Order terms and conditions.

Waivers and Rejections of Offers:

65. The City reserves the right to waive any informality, technical requirement, deficiency, or irregularity in the offer. The City may conduct discussion with Offerors to further clarify the Offerors response as may be necessary. Correction of the offer shall be effected by submission within 4 hours (e-mail or fax) of a corrected page with changes documented and signed.
66. The City reserves the right to reject any or all offers for any reason including but not limited to: budgetary constraints, suspicion of collusion, pricing aberrations, front end loading; mathematically unbalanced proposals in which prices for some items are substantially out of proportion to comparable prices, materially unbalanced proposals in which material requirements for some items are substantially higher to comparable proposals; poor quality or poor performance in past City contracts, and other reasons deemed important to the City.
67. The City reserves the right to accept or reject any offer in which the Offeror names a total price for all the goods without quoting a unit price on each and every item.

68. **FOIA:** If the City rejects all offers and concurrently provides notice of its intent to reissue the solicitation, the rejected offers remain exempt from FOIA requirements until such time as the City awards or rejects the reissued solicitation.

Determining Responsibleness of the Offeror:

69. The City reserves the right to determine the competence, the financial stability and the operational capacity, of any Offeror.
70. Upon request by the City, Offerors shall furnish evidence for the City to evaluate their resources and ability to provide the goods required. Such evidence may include; but not be limited to: tour of facilities, staffing levels, listing of equipment and vehicles, certificates, licenses; listing of committed but not yet completed orders; financial statements; ...
71. Offerors may be required to submit samples of items within a specified timeframe and at no expense to the City. If not destroyed in testing, samples will be returned at the Supplier's request and expense. Samples which are not requested for return within thirty (30) days will become the property of the City.
72. Offerors may be required to effect a demonstration of the item being proposed. Such demonstration must be at a site convenient and agreeable to the affected City personnel and at no cost to the City.
73. Offerors may be required to provide references. The City reserves the right to contact said references or other references that may be familiar with the Offeror.
74. Offerors may be required to provide their internal policy on sustainability.

Confidential Information

75. Offerors may be required to provide evidence of financial viability. This may be a Dunn and Bradstreet Report, a financial statement prepared by a licensed Certified Public Accountant showing the Supplier's financial condition at the end of the past fiscal year, an annual report.
76. Offerors considering this request to be proprietary and confidential should also submit a separate redacted response. Failure to do so may result in information becoming available to the public.

Selection Process:

77. The City endeavors to select the offer meeting the best interests of the City as stated by its City Council based on the totality of lawful considerations.
78. The City's determination of best overall value may include consideration of the City's internal cost structure for meeting requirements, such as the city's inventory carrying costs, ordering lead times, equipment maintenance costs, and items typically identified with and relating to a "Life Cycle Cost Analysis".
79. The City will consider the following non-exclusive list in determining award: soft costs of contract management; total cost of ownership factors such as transition costs, training costs, additional requirements such as spare parts and special tooling.
80. Should identical low, responsive and responsible bids be received from two or more Offerors, the City shall exercise one of the following tie breaking methods:
 - a. Tie Bid (two suppliers): The Procurement Officer, with a witness present, may flip a coin with heads representing the Offeror whose name appears first in alphabetical order. If the toss is heads, said Offeror will receive the recommendation to award.
 - b. Tie Bid (three or more suppliers): The Procurement Officer, with a witness and each vendor present, shall shuffle a new deck of playing cards and have each Offeror cut the cards. The Offeror who cuts the highest card (with Ace high) shall be recommended for award.

Award:

81. Except as otherwise stated, offers will be awarded within ninety (90) days from the opening date.
82. Award is based on the lowest responsive responsible offer; offering the lowest life-cycle cost; providing the best overall value to the City; and deemed most advantageous to the City, price and other factors considered.
83. The City reserves the right to award by item, part or portion of an item, group of items, in the aggregate. Offeror may restrict their offer to consideration in the aggregate by so stating on the proposal form.
84. The successful Offeror may be required to enter into a purchase order or contract with the City of Wheaton covering all matters set forth in the solicitation document, and addenda.

Requirements if Awarded the Order:

Registration

85. The successful supplier, prior to the execution of the order, or no later than 10 days after receipt of the award document, must be registered to do business in the City of Wheaton and the State of Illinois.

Insurance:

86. The successful Offeror, if awarded by Purchase Order, will be required to carry insurance acceptable to the City as stated on the Purchase Order Terms and Conditions.
87. Certificates of Insurance, Endorsements, and a Waiver of Subrogation must be submitted with the execution of the order.
88. The Offerors obligation to purchase stated insurance cannot be waived by the city's action or inaction.

Audit:

89. The successful Offeror may be audited by the City or an agent of the City. Audits may be at the request of federal or state regulatory agencies, other governmental agencies, courts of law, consultants hired by the City or other parties which in the City's opinion requires information. Data, information and documentation will include, but not be limited to, original estimate files, change order estimate files, supplier quotes and rebates, and all product related correspondence.

Protests:

90. Any Offeror who claims to be aggrieved in connection with a solicitation, the selection process, a pending award, or other reasonable issue may initiate a protest.
 - a. Protests involving the solicitation process or stated requirements must be presented in writing via e-mail to the Procurement Officer by the last date for questions as reflected on the cover page of this document.
 - b. Protests involving the evaluation of offers, staff recommendations, or the award process must be submitted in writing to the Procurement Officer no later than three business days after bid results are publicly posted.
91. Protests must include: the name and address of the protestor; appropriate identification of the solicitation; if an award has been initiated, the award document number (if available), identification of the procedure that is alleged to have been violated; precise statement(s) of the relevant facts; identification of the issue to be resolved; protestor's argument and supporting documentation (Exhibits, evidence, or documents to substantiate any claims).
92. A person filing a notice of protest will be required, at the time the notice of protest is filed, to post a bond in the form of a cashier's check in an amount equal to twenty-five percent of the City's estimate of the total volume of the award, or \$1,000, whichever is less.
 - a. If the decision of the Protest does not uphold the action taken by the City, then the City shall return the amount, without deduction, to the Offeror filing the protest.
 - b. If the decision of the Protest upholds the action taken by the City, then the City shall retain the amount of the cashier's check in payment for a portion of the cost and expense for time spent by City staff in responding to the protest and in conducting the evaluation of the protest.
93. Upon receipt of the notice of protest, the Procurement Officer shall stop the award process.
 - a. The Procurement Officer will rule on the protest in writing within two business days from receipt of protest.
 - b. Appeals of the Procurement Officer's decision must be made in writing within two business days after receipt thereof and submitted to the City Manager for final resolution. Appellant shall have the opportunity to be heard and an opportunity to present evidence in support of the appeal.
 - c. The City Manager's decision is final.

Other Entity Use:

94. Although this solicitation is specific to the City of Wheaton, Offerors have the option of allowing this offer, if awarded by the City to the Offeror, to be available to other local entities and agencies within the DuPage-Kane-Cook-Will and Kendall Counties. If the successful Offeror and the interested entity/agency mutually agree on the Terms and Conditions, inclusive of pricing, both parties may perform business under the authority of this solicitation and contract.
95. It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any other city, municipality or agency; nor will any city or municipality or agency be obligated for any bills incurred by any other city or municipality or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Supplier.

END OF GENERAL INSTRUCTIONS REGARDING THE SOLICITATION OF GOODS

Product Requirements Aggregate Gravel or Stone

Scope

1. The City requires a supplier of Aggregate Gravel or Stone to deliver semi-trailer trucks of material to job sites within the City of Wheaton.
2. Delivery shall be from time to time with as much advance notice as possible. Generally this is the day prior to the need.

Term of Service

3. May 1, 2016 – April 30, 2017 (one year)

Cost Structure:

4. Price shall be per ton for quantity delivered

Invoices:

5. *For unit cost:* Payment will be based on the actual quantity of product delivered at the unit price specified on the successful bidder's offer and the award document.
6. Invoices must break down Quantity x Price.
7. All invoices must reflect the following applicable information: the Contract Number, the name of the Project, the Name of the Contractor, and the services/deliverables with the price depicted in the same format as the offer.

For Internal Purposes:

8. **All invoices are mailed to the attention of the Project Manager; City of Wheaton; PO Box 727; Wheaton, IL 60187.**

Product Specifications

9. The material shall meet the most current requirements of Section 1004 of the Standard specifications for Road and Bridge construction as adopted by the State of Illinois Department of Transportation for coarse aggregate and shall be either crushed gravel or stone meeting the gradation for CA-1. CA-5, CA-6, CA-7 as set forth in the specifications.

PROPOSAL: Aggregate Gravel or Stone

Based on Amendment # _____ dated _____

PLEASE SUBMIT 2 Original Proposals AS FOLLOWS:

*This Page, followed by
Certification of Compliance*

Please do not submit perforated pages, nor bind your proposal in anything other than paper clips.

We hereby agree to furnish and deliver to the City of Wheaton, in accordance with the Terms and Conditions, Specifications, and Contract Requirements as follows:

ITEM	APPROXIMATE QUANTITY	UNIT PRICE	EXPENDED PRICE
CA-1	100 tons	\$	\$
CA-5	15 tons	\$	\$
CA-6	1,312 tons	\$	\$
CA-7	493 tons	\$	\$

Total Cost: \$ _____

CERTIFICATION OF COMPLIANCE
Aggregate Gravel or Stone

The undersigned, being first duly sworn an oath, deposes and states that he/she has the authority to make this certification on behalf of the bidder for the product, commodity, or service and:

- (A) The undersigned certifies that, pursuant to 720 ILCS Act 5, Article 33E of the Illinois Compiled Statutes, the bidder is not barred from bidding on this contract as a result of a conviction for the violation of State of Illinois laws prohibiting bid-rigging or bid-rotating.
- (B) The undersigned certifies that, pursuant to 65 ILCS 5/11-42.1-1 of the Illinois Compiled Statutes, the bidder is not delinquent in the payment of any tax administered by the Illinois Department of Revenue.
- (C) The undersigned certifies that, pursuant to 30 ILCS 580/3, Section 3 the bidder deposes, states and certifies it will provide a drug free workplace by complying to the Illinois Drug Free Workplace Act.
- (D) The undersigned certifies that, pursuant to 820 ILCS 130/1-12 of the Illinois Compiled Statutes, the bidder, when required, is in compliance to all requirements of the Prevailing Wage Act.
- (E) The undersigned certifies that, pursuant to 30 ILCS 570/ Section 5 Article 2 of the Illinois Compiled Statutes, the bidder is in compliance to all requirements of the Employment of Illinois Workers on Public Works Act.
- (F) The undersigned certifies that they agree to fulfill all Requirements, Specifications, Terms and Conditions.
- (G) The undersigned certifies that they agree to fulfill all Contract Requirements.
- (H) The undersigned certifies that they agree to present alternative Greener products/processes to the City for consideration in this work.

Check One:

- ☐ **There are no conflicts of interest;** and in the event that a conflict of interest is identified anytime during the duration of this award, or reasonable time thereafter, you, your firm, or your firm's ownership, management or staff will immediately notify the City of Wheaton in writing.
- ☐ **There is an affiliation or business relationship** between you, your management or staff, your firm, or your firm's ownership, and an employee, officer, or elected official of the City of Wheaton who makes recommendations to the City of Wheaton with respect to expenditures of money, employment, and elected or appointed positions. Provide any and all affiliations or business relationships that might cause a conflict of interest or any potential conflict of interest. Include the name of each City of Wheaton affiliate with whom you, your firm, or your firm's ownership, management or staff, has an affiliation or a business relationship.

This Business Firm is: (check one)

- ☐ a Corporation ☐ a Partnership ☐ an Individual ☐ an LLC

Firm Name: _____

Firm Address: _____

Signature: _____

Print Name _____

Position: _____

Phone #: _____

Fax #: _____

e-mail address _____

Date signed: _____

Operational Contact for this work

Name: _____

Phone #: _____

e-mail: _____

Sales Contact

Name: _____

Phone #: _____

e-mail: _____

Billing Contact

Name: _____

Phone #: _____

e-mail: _____

Signing this Agreement affirms that the original solicitation document has not been altered in any way.

CUSTOMIZED MAILING LABEL FOR SEALED BID

XXXXXXXXX CUT OUT XXXXXXXXX

Cut along outer border and affix this label to your sealed bid envelope to identify it as a "Sealed Bid".

SEALED BID - DO NOT OPEN

PROPOSAL FOR:

Aggregate Gravel or Stone

PROPOSAL FROM: *(Insert your company name below)*

Proposals due: April 21, 2016 prior to 10:00am local time

Public Bid Opening: April 22, 2016 10:00am local time

TO BE OPENED BY PROCUREMENT OFFICER

MAIL TO:

**Joan M. Schouten, MBA CPIM CPPB
Procurement Officer
City of Wheaton / City Hall
P.O. BOX 0727
303 West Wesley Street
Wheaton, IL 60187-0727**

PURCHASE ORDER TERMS AND CONDITIONS

Intent

1. This purchase order is an offer to purchase the indicated goods. Acceptance of this purchase order is evidence that a contract exists between the supplier and the City of Wheaton.
2. All applicable portions of the *Uniform Commercial Code* shall govern this contract between the supplier and the City of Wheaton.

Payment Terms

3. *All pricing* must be **FOB Destination; Freight Prepaid & Allowed**. Title to the goods passes from the supplier to the city at the point of destination and supplier pays the freight expense.
4. The City of Wheaton is exempt from payment of State, Federal Excise, and Illinois Retailers Occupational Taxes. The City's *Tax exemption number is E9997-4312-07*.
5. *Payment* will be:
 - a. made to the company awarded this order. Under no circumstances will a third party be reimbursed.
 - b. Via the City's Purchasing Card Program, MasterCard, in which payment will occur at time of product delivery (preferred); or
 - c. Via supplier generated invoice in which invoices are mailed to the attention of the Project Coordinator; City of Wheaton; PO Box 727; Wheaton, IL 60187.
6. *All invoices* must reflect the following applicable information: the Name of the Supplier, the Purchase Order Number, the Description and Stock Number, the Quantity Ordered, the Quantity Shipped, the Quantity on Back Order, the price as stated on the award document, and the city department receiving the goods. Invoices will be approved for payment following: acceptance of product, receipt of an invoice, receipt of Certificate of Insurance, Endorsements, and a Waiver of Subjugation, and any other required paperwork.
7. The City of Wheaton complies with the *Illinois Local Government Prompt Payment Act* which states that any bill approved for payment shall be paid within 30 days after date of approval.
8. Invoices must be submitted to the city within six months of order completion. Any invoices submitted in excess of six months from order completion will not be paid.

Deliveries

9. Deliveries are to the indicated ship to address between the hours of 8:30 A.M. and 3:00 P.M. Monday through Friday, excluding holidays, unless otherwise stipulated.
10. Material delivered shall remain the property of the Supplier until:
 - a. A physical inspection and actual usage of the material is made and found to be acceptable to the City; and
 - b. Material is determined to be in full compliance with the solicitation documents and executed contract.
 - c. Where circumstances or conditions exist preventing effective inspection of the goods at the time of delivery, the City of Wheaton reserves the right to inspect the goods within a reasonable time subsequent to delivery.
11. Failure to deliver within the time specified or within a reasonable time as interpreted by the Procurement Officer shall constitute authority for the Procurement Officer to purchase in the open market goods of comparable grade to replace the goods not delivered. Such purchases shall be deducted from contract quantities.
12. *COD shipments* will not be accepted unless by specific prior arrangements.
13. The supplier shall submit a *Material Safety Data Sheet (MSDS)* prior to or at the time of delivery for any/all toxic substances per Public Act 83-240, OSHA standards or any other applicable law.

Quality of Goods

Rejected Goods

14. In the event the delivered material is found to be defective or does not conform to the solicitations documents and executed contract, the City reserves the right to cancel the order upon written notice to the Supplier.
15. Supplier's advertising decals, stickers or other signs shall not be affixed to equipment.
16. Goods not in compliance to specifications will be rejected and Supplier must issue credit to City, or the City may deduct such amount from monies owed the Supplier.
17. Rejected goods must be removed by and at the expense of the Supplier promptly after notification of rejection.
18. Rejection of goods shall constitute authority for the Procurement Officer to purchase in the open market goods of comparable grade to replace the goods rejected. Such purchases shall be deducted from contract quantities. Supplier shall reimburse the City for any expense incurred in excess of contract prices;
19. Should public necessity demand it, the City reserves the right to use or consume goods delivered which are substandard in quality, subject to an adjustment in price to be determined by the Procurement Officer.

Warranty

20. The Supplier warrants that all goods furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications, or standards incorporated herein, and/or defects in goods are free from defects in design. Supplier also warrants the goods are suitable for and will perform in accordance with the purposes for which they were intended.
21. The Supplier agrees that the goods furnished under this order shall be covered by the most favorable commercial warranties the Supplier gives to any customer for such goods, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this contract or by law.

Insurance

22. Supplier shall procure *Commercial General Liability Insurance* to include products liability with a limit of \$1,000,000 and name the City as an additional insured on a primary and non-contributory basis. Failure by the city to request the Certificate of Insurance documenting this coverage shall not be construed as a waiver of such requirement.

Conditions of Offer

23. **Patents:** The Supplier agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material process, good, or device covered by this order.
24. **Hold Harmless and Indemnification:** The Supplier shall defend, hold harmless, and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, judgment, or settlement, including, but not limited to, reasonable attorneys' fees and costs of litigation including reasonable expert witness, and all causes of action of any kind or character, that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, or contractor hired to provide any goods or perform any services on behalf of the Supplier.
25. **Patents and Copyrights:** If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Supplier agrees to indemnify and save harmless the City, from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

26. **Non-Discrimination:** The Supplier shall comply with the Illinois Human rights Act, 775 ILCS5/1 – 101 et seq (2000), as amended and any rules and regulations promulgated in accordance therewith including but not limited to the equal Employment Opportunity Clauses, 5 Il Admin Code § 750 A. The Supplier shall also comply with the Public works employment Discrimination Act, 775 ILCS 10/0 01 et seq (2000), as amended.
27. It shall also be an unlawful employment practice for the Supplier (1) to fail or refuse to hire or to discharge any individual or their compensation, or the terms, conditions, or privileges of their employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate or classify their employees or applicants for any individual or employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin. Supplier shall comply with the *Civil Rights Act of 1984, 42 U S C et seq (2000)*, as amended.
28. **Non-Waiver of Rights:** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.
29. **Courts of Jurisdiction:** The parties agree that any and all disputes, disagreements or litigation, by, between, or amongst them, related to this contract shall be exclusively heard and resolved in the courts of the Eighteenth Judicial Circuit, DuPage County, Illinois.
30. **Governing Law:** This agreement is governed by the laws of the State of Illinois.

END OF PURCHASE ORDER TERMS AND CONDITIONS