



CITY MANAGER'S OFFICE
CITY OF NEWARK

220 South Main Street · Newark, Delaware 19711
302.366.7000 · Fax 302.366.7035 · www.newarkde.gov

CITY OF NEWARK
Delaware

GENERAL PROVISIONS
MINIMUM REQUIREMENTS FOR PURCHASES & CONTRACTUAL SERVICES

1. SUBMISSION OF QUOTES

Each quote and any supplemental documentation shall be submitted to the department sending the quote request and the Purchasing Division (contracts@newark.de.us) via email by the date and time indicated on the RFQ (if applicable). The subject line should read "RFQ Response for [product/service]."

2. TAXES

The price(s) quoted shall not include federal or state taxes. If applicable, the successful bidder shall provide the City with three (3) copies of the required tax exemption forms to accompany the bidder's invoice.

3. ACCEPTANCE/REJECTION OF QUOTES

In conjunction with the Purchasing Division, the department sending the RFQ will review each of the quotes submitted and select a vendor for the purchase or contractual service. Only proposals under \$50,000 (or under \$100,000 for "public works" projects) shall be considered through any open market or RFQ processes, as any purchase over this amount requires a formal bid process to be established. The City reserves the right to accept or reject any or all vendor submittals, or only accept or reject certain parts of vendor submittals. The City may also waive any irregularities or defects where the best interest of the City would be served.

4. UNIT PRICES

In the event of a conflict or error in extension from unit price to total amount, the unit prices shall prevail and shall be considered the correct bid figures. Vendors are cautioned to thoroughly review their quoted figures for errors prior to submitting their proposal.

5. INQUIRIES/REQUESTS FOR INFORMATION

All inquiries/requests for information regarding this contract must be submitted via email to the department sending the quote request and the Purchasing Division (contracts@newark.de.us) at least seventy-two (72)

hours before the quote deadline. Appropriate inquiries will be passed along to relevant staff for their review. Any answers deemed necessary will be provided at least twenty-four (24) hours before the quote deadline.

6. CYBER SECURITY RESPONSIBILITIES & REQUIREMENTS
(ONLY APPLICABLE FOR CYBER-RELATED PROJECTS)

- a. The awarded vendor shall, at a minimum, comply with all applicable security-related federal, state, and local laws.
- b. In general, the term “data breach” shall mean a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data or physical documents for the City of Newark that results in, or there is a reasonable basis to conclude results in:
 - i. The unauthorized acquisition of personally identifiable information (PII), or
 - ii. Access to PII that is for an unauthorized purpose, or in excess of authorization.
- c. The term “data breach” does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.
- d. Personally identifiable information (PII) is defined herein as information or data, alone or in combination, that identifies or authenticates a particular individual. Such information or data may include (without limitation): name, date of birth, full address, phone numbers, passwords, PINs, federal or state tax information, biometric data, other unique identification numbers (driver’s license numbers, SSNs, etc.), criminal history, citizenship status, medical information, financial information, usernames, answers to security questions, other personal identifiers, and/or information or data that meets the definition ascribed to the term “personal information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware or any other state.
- e. In the event of a data breach, the vendor shall:
 - i. Notify the City of Newark without unreasonable delay. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.
 - ii. Take all reasonable and necessary means to mitigate any injury or damage that may arise out of the data breach and shall implement corrective action as determined appropriate by the City. In the event of an emergency, the awarded vendor may take reasonable corrective action to address the emergency prior to City approval (the corrective action will not be considered final until approved by the City, however).
 - iii. Provide the City a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than three (3) business days following notice of the breach.
 - iv. Meet and confer with appropriate City representatives regarding required remedial action in relation to any such data breach without unreasonable delay.

- v. Reimburse the City for all costs and damages as a result of the data breach, including all costs associated with the investigation, response, and recovery from the data breach.
- f. Notwithstanding any other provision of this contract, there shall be no monetary limitation of the awarded vendor's liability for the vendor's data breach that results in any unauthorized public dissemination of PII.

7. LIABILITY INSURANCE

- a. The Contractor shall at all times maintain and keep in force such insurance as will protect him from claims under Worker's Compensation Acts, and also such insurance as will protect him and the owner from any such claims for damages for personal injuries, including death, which may arise from operations under this contract, whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. The City may require additional coverage based on the scope of work to be completed.
- b. The Contractor shall be required to provide Workers' Compensation (WC)/Employer's Liability (EL) coverage with limits of insurance not less than:

- \$500,000 Per Accident
- \$500,000 Per Illness, Employee
- \$500,000 Per Illness, Aggregate

The Contractor shall be required to provide Umbrella/Excess Liability coverage with limits of insurance not less than:

- \$1,000,000 Each Occurrence
- \$1,000,000 Aggregate

The Contractor shall be required to provide Commercial General Liability (CGL) coverage with limits of insurance not less than:

- \$1,000,000 Each Occurrence Limit
- \$1,000,000 Personal & Advertising Injury Limit
- \$2,000,000 Annual Aggregate Limit
- \$2,000,000 Products-Completed Operations Limit
- \$1,000,000 Business Auto Liability Limit (Owned, Hired, & Non-Owned Autos)

The Contractor, The City of Newark (Owner) and all other parties required of the Contractor shall be included as insured on the CGL, using Additional Insured Endorsements providing coverage as broad as the coverage provided for the named insured Subcontractor.

Subcontractors approved in association with the hiring of a Contractor shall be required to provide Commercial General Liability (CGL) coverage with limits of insurance in equal amount to those required of the Contractor.

- c. Contractors shall provide a valid COI regardless of ability to meet federal, state, and local personally identifiable information (PII) encryption requirements shall present a valid certificate of cyber liability insurance at the levels indicated below. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. **If there are no PII records housing requirements for this contract/RFP, no cyber liability insurance shall be required**; if the actual number of PII records housed by the awarded vendor exceed the anticipated number, it is the Contractor’s responsibility to ensure that sufficient coverage is obtained (see table below). In the event that the Contractor fails to obtain sufficient coverage, the Contract shall be liable to cover damages up to the required coverage amount.

Number of PII records housed by Contractor	Level of cyber liability insurance required (occurrence = data breach)
1 - 2,500	\$1,000,000 per occurrence
2,501 – 10,000	\$2,000,000 per occurrence
10,001 – 50,000	\$3,000,000 per occurrence
50,001 – 100,000	\$4,000,000 per occurrence
100,001 – 500,000	\$15,000,000 per occurrence
500,001 – 1,000,000	\$30,000,000 per occurrence
1,000,001 +	\$100,000,000 per occurrence

- d. A copy of the Certificate of Insurance must accompany each bid. The Contractor shall ensure that all insurances required remain valid for the entire term of the contract, inclusive of any term extension(s). The Prime Contractor’s attention should be directed to other sections of the contract documents in the event additional insurance is required based on the scope of work.

8. STANDARDS AND WARRANTY OF TITLE

No material, supplies, or equipment to be installed as part of the work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein or in any part thereof is retained by the seller or supplier. The contractor shall warrant good title to all material, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together by him to the City free from any claims, liens or charges. Neither the contractor nor any person, firm or corporation furnishing any material or labor covered by this contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the contractor for their protection or any right under any law permitting such persons to look to funds due the contractor in the hands of the City. The provisions of this paragraph shall be inserted in all the subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

All equipment will be unused in all component parts and will be the latest current production including all accessories. The specifications will be construed as the minimum required. When the manufacturer's standards exceed these, the standard units will be furnished. All material will be free of defects. Manufacturer's standard warranties shall apply.

9. GUARANTEE

The contractor hereby guarantees all the work for a period of one (1) year after the date of completion (or longer based on product warranties) and final acceptance thereof by the City as follows:

- (1) Against all faulty or imperfect materials and against all imperfect, careless, and/or unskilled workmanship.
- (2) The contractor agrees to replace with proper workmanship and materials, and to re-execute, correct or repair without cost to the City, any work which may be found to be improper or imperfect and/or which fails to perform as specified.
- (3) The guarantee obligations assumed by the contractor under these contract documents shall not be held or taken to be in any way impaired because of the specifications, indication or approval by or on behalf of the City of any articles, materials, means, combination of things used or to be used in the construction, performance and completion of the work or any part thereof.
- (4) No use or acceptance by the City of the work or any part thereof, nor any failure to use the same nor any repairs, adjustments, replacements, or corrections made by the City due to the contractor's failure to comply with any of his obligations under the contract documents, shall impair in any way the guarantee obligations assumed by the contractor under these contract documents.

10. EEO AND LICENSING

The contractor shall be licensed to do business in the State of Delaware and shall be registered as a contractor in the City of Newark and possess all other required licenses. The contractor shall also be a fair and equal opportunity employer.

11. PREFERENCE FOR DELAWARE LABOR

According to State law, any person, company, or corporation who violates the requirements of [Title 29 Section 6962](#) of the Delaware Code regarding preference for Delaware Labor shall pay penalty to the State Secretary of Finance equal to the amount of compensation paid to any person in violation of this Section. This regulation is waived if it conflicts with Federal requirements.

12. NONCOLLUSION

The bidder shall not, either directly or indirectly, enter into any agreement, participate in any collusion, or otherwise take any action in restraint of free competitive bidding in connection with this contract.

13. VENDOR REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS

- a. If this contract is funded through the State Revolving Loan Fund, a federal grant, or any other federal funding, the awarded vendor must be registered at www.sam.gov before contract agreements are signed. The awarded vendor must also show proof of SAM registration and good standing through the SAM portal before contract agreements are signed. SAM (System for Award Management) is the primary supplier database for the U.S. Federal Government.

The City of Newark shall not conduct business with vendors that are debarred or otherwise flagged/blacklisted if the project is funded using federal money. If a vendor is determined to be debarred at any point during the term of a contract, this will be seen as grounds for termination of the contract, and potentially grounds for termination from other contracts held with the City, if any.

- b. If this contract is funded through the State Revolving Loan Fund, a federal grant, or any other federal funding, the agreement must adhere to Build America, Buy America (BABA) Act provisions as outlined by the Federal Government.

14. INCREASE AND/OR REDUCTION OF ESTIMATED QUANTITIES

The contractor's attention is directed to the fact that the quantities indicated through this RFQ are approximate and may be increased or decreased by the City. Should there be an increase or a reduction in these quantities, these changes will in no way alter the unit prices quoted by or paid to the contractor.

15. INCREASE AND/OR REDUCTION OF ESTIMATED QUANTITIES

- A. The contractor's attention is directed to the fact that any quantities indicated in this contract are approximate and may be increased or decreased by the City. An increase or a reduction in these quantities will in no way alter the unit prices bid by or paid to the contractor.
- B. The City shall also have the right to delete any portion of this contract or to update specific quantities as needed. Regardless of any changes, deletions, or additions authorized by the City, all work done or purchases made under this contract shall be based on the unit prices stipulated by the contractor in his proposal.

16. BASIS OF PAYMENT

No invoice will be processed for payment until the goods and/or services have been delivered and verification is made that the specifications under this contract have been met. Progress payments, when requested, will be evaluated and approved for payment based on work completed to date. If applicable, upon written request from the Contractor, payment for material stored on site may be made at 50% of the material's invoice price; full payment will be made after the material is installed. Payment for all services complete or goods received will be made within thirty (30) days of final acceptance by the City.

Payment for these items shall be included in the unit prices for each item as described in the Proposal. All other items, methods, and materials necessary to complete the work as described above shall be incidental

to the bid item the is being completed under. Application and Certification for Payment shall be made on proper AIA Documents.

17. SHIPPING & FREIGHT QUOTED

The prices quoted are those for which the material will be furnished F.O.B. Destination and include all charges that may be imposed during the period of the contract.

Unless otherwise specified and agreed upon by both parties in writing, all material shall be designated F.O.B. Destination and have freight included in quotations.

18. ADVERTISEMENT

It is further agreed that any bidder/contractor submitting bids will not use the name of the City in any advertisement without first obtaining the written consent of the City Manager or their designee. All such requests should be submitted in writing to contracts@newark.de.us.

19. CONTRACTOR'S UNDERSTANDING

No verbal agreement or conversation with any officer, agent, or employee of the City of Newark, either before or after the execution of this contract, except as otherwise provided herein, shall affect or modify any of the terms or obligations contained herein.

20. LIST OF SUBCONTRACTORS' CERTIFICATION

- a. Each bidder shall execute and submit with their bid a list of subcontractors, including complete names and addresses, whose services the bidder intends to use in performing all work under the contract. Bids submitted without such a list, or with a list not completely or properly executed, are subject to rejection.
- b. Each bidder is required to notify all subcontractors that they are obligated to comply with the provisions of Federal and State law as they pertain to this project, and that they must submit evidence of such compliance upon notice or request. The bidder shall certify his compliance with this requirement on the list of subcontractors.
- c. After the contract has been awarded, the successful bidder shall not substitute another subcontractor for any subcontractor whose name was set forth on the list of subcontractors which accompanied his bid, without the written consent of the City.

21. INDEMNIFICATION

The contractor shall solely be responsible and liable for the accuracy and completeness of all work performed and shall agree to indemnify, defend and hold harmless the City of Newark, its officers, agents and employees, from and against any and all claims, actions, suits and proceedings arising out of, based upon or caused by

negligent acts, omissions or errors of or the infringement of any copyright of patent, by the contractor, its officers, agents, employees or subcontractors, in the performance of the contracted agreement.

22. OWNERSHIP OF MATERIAL

All documents prepared and submitted pursuant to this RFP or contract shall be property of the City upon submittal and will be subject to staff and public review and discussion in association with our public bidding and formal proposal process. Any information or documents deemed proprietary shall be so marked at time of submittal and limited to detail where the disclosure of contents could be prejudicial to competing offerors during the process of negotiation, and any commercial or financial information of a privileged or confidential nature. Marking sections of the proposal as proprietary/confidential shall only be done where absolutely necessary; final determination of confidential status (regardless of vendor designation) is at the sole discretion of the City of Newark.

23. TERMINATION OF AGREEMENT

This agreement may be terminated by the City upon thirty (30) days written notice if the contractor fails to perform satisfactorily in accordance with the terms and conditions of the contract. In the event this agreement is terminated, the contractor shall be paid for services satisfactorily rendered up to the termination date.

24. REGULATIONS AND EXCEPTIONS

Any and all exceptions which are taken to the specifications shall be noted on the Proposal form. The listing of an exception may be grounds for rejection. All equipment must meet all applicable federal or state regulations. Further, the bidder recognizes that the City of Newark is not in the business of preparing specifications, and any omissions in this document must be strictly addressed by the firm with the submittal of its proposal.

The application of lead paint as defined in Title 16, Chapter 30M of State Code and Chapter 7 of City Code as part of this contract is prohibited. The contractor will be subject to fines as outlined in State and City Code if it is determined that lead paint was applied in violation of State and City code.

Safety Data Sheet information for all paints applied to internal or external structures shall be provided to the City for review and approval prior to application. The contractor will be required to remove and remediate any lead paint to the satisfaction of the City, at no cost to the City. Prior to commencing removal and remediation efforts, the contractor shall provide a written remedial action plan which includes health safety protection requirements for both employees and the public for review and approval by the City and/or DNREC/DHSS. Any and all sample results that are generated as a result of improper application of lead paint shall be provided to the City within 5 working days of being received by the contractor. The contractor will also be required to replace all paint removed with non-lead paint to the satisfaction of the City, and at no cost to the City.

Failure to adequately remove, remediate, and replace lead paint applied in violation of State and City Code as outlined herein will be considered a breach of contract.

25. FORCE MAJEURE OCCURRENCE

Upon the occurrence of a force majeure event, the City of Newark shall immediately notify the awarded vendor. In this instance, the City shall be excused from any further financial or contractual obligations for as long as such circumstances prevail. As used in this document, a “force majeure occurrence” means acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics or pandemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; or other unusual event outside of the reasonable control of a party hereto that prevents a party to this Agreement from performing its contractual obligations.

26. SEVERABILITY

If any provision of this contract (general, special, technical, or other) shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

27. BIDDER'S QUALIFICATIONS

No contract will be awarded to any bidder who in the judgment of the City is not a responsible or fit bidder, or is not prepared with all the necessary experience, capital, organization, and equipment to conduct and complete the work for which the bidder proposes on the proposal form.

28. SAFETY REQUIREMENTS

The Contractor shall comply with the requirements and standards of the Occupational Safety and Health Act (OSHA) and all other state and local laws, ordinances, and codes governing all work associated with the executed contract.