

## **NARRAGANSETT BAY COMMISSION GENERAL TERMS AND CONDITIONS OF PURCHASE**

**Note:** The Narragansett Bay Commission may, from time to time, make amendments to the General Terms and Conditions when the Purchasing Officer determines that such amendments are in the best interest of Narragansett Bay Commission. Amendments shall be made available for public inspection at the Corporate Office but shall not require formal public notice and hearing. Copies of the Terms and Conditions shall be provided to any individual or firm requesting to become a registered bidder. Applicants shall be required, as part of the application process, to certify that they have read the General Terms and Conditions and understand that they apply to all Narragansett Bay Commission Purchases.

All Narragansett Bay Commission (hereinafter “NBC”) Purchase Orders, Contracts, Solicitations, Delivery Orders and Service Requests shall incorporate and be subject to specific requirements described in the Request or Contract, NBC Purchasing Rules and Regulations and the following General Terms and Conditions:

**1. GENERAL** - All purchase orders, contracts, solicitations, delivery orders and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms “bidder” and “contractor” refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with NBC, or with whom a contract is executed by NBC’s Chief Purchasing Officer (hereinafter NBC Purchasing Officer) or his/her designee, and the term “contractor” shall have the same meaning as “vendor”.

**2. ENTIRE AGREEMENT** – The NBC’s Purchase Order, or other NBC contract endorsed by NBC, shall constitute the entire and exclusive agreement between NBC and any contractor receiving an award. In the event of any conflict between the bidder’s standard terms of sale and these general terms and conditions or more specific provisions contained in the solicitation, the specific provisions of the solicitation shall govern. All communication between NBC and any contractor pertaining to any award or contract shall be accomplished in writing.

A. Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order of the offer to do work or to furnish any or all the materials, goods, equipment, supplies or services described therein shall bind the bidder and NBC. This acceptance shall bind the bidder to furnish and deliver in accordance with the conditions of said accepted proposal and detailed specifications and shall bind NBC to order from such

contractor (except in case of emergency). All materials, equipment, supplies or services specified and delivered shall be paid for at the original prices. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Order(s) issued by NBC.

B. No alterations or variations of the terms of the contract shall be valid or binding upon NBC unless submitted in writing and accepted by the Purchasing Officer. All orders and changes thereof must emanate from the Purchasing Office. No oral agreement or arrangement made by a contractor will be considered to be binding on the Purchasing Officer, and may be disregarded.

C. Contracts will remain in force for the contract period specified or until all articles or services ordered shall have been satisfactorily delivered or rendered, accepted and until all terms and conditions have been met, unless

1. Terminated prior to expiration date by satisfactory delivery of entire quantities, or
2. Extended upon written authorization of the Purchasing Officer and accepted by the contractor to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or
3. Cancelled by NBC in accordance with other provisions stated herein.

D. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his/her right, title or interest therein, or his/her power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Purchasing Officer.

E. If, subsequent to the submission of an offer or issuance of a Purchase Order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, unless the new entity agrees to accept all the bid or contract terms and conditions including price in writing within a reasonable time after the merger.

F. The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he/she has no knowledge of any outstanding and delinquent or otherwise unsettled debt owed by him/her to NBC, and agrees that later discovery by the Purchasing Officer that this warranty was given in spite of such knowledge, except where the matter is

pending in hearing or from any appeal there from, shall form reasonable grounds for termination of the contract.

**3. SUBCONTRACTS** – No subcontracts or collateral agreements shall be permitted, unless expressly consented to by NBC. Upon request, contractors must submit to the NBC’s Purchasing Office a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this request.

**4. RELATIONSHIP OF PARTIES** – The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he/she is not an employee, agent, or servant of NBC, and that he/she is fully qualified and capable in all material regards to provide the specified goods and /or services. Nothing herein shall be construed as creating any contractual relationship or obligation between NBC and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

**5. COSTS OF PREPARATION** – All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. NBC will not reimburse any offeror for such costs.

**6. SPECIFIED QUANTITY REQUIREMENT** – Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

A. NBC reserves the right to modify the quantity, scope of service, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of the contract.

B. NBC may not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, NBC may not accept quantities greater than ten per cent { 10% } of the specified quantity), or where the request or contract provides for awards for other than exact quantities.

C. Purchase orders or other contracts may be increased in quantity or extended in term without subsequent solicitation with the mutual consent of the contractor and NBC, where determined by the Purchasing Officer to be in NBC’s best interest.

**7. TERM AND RENEWAL** – Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that NBC’s commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at NBC’s sole option for successive terms, except where expressly specified to the contrary.

**8. DELIVERY**- Delivery must be made as ordered and in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days. The decision of the Purchasing Officer, as to reasonable compliance with the delivery terms, shall be final. Burden of proof of delay in receipt of order shall rest with the contractor. No delivery charges shall be added to invoices except when authorized on the purchase order. Items purchased on a price F.O.B. destination, does not relieve the contractor of responsibility for the delivery of goods to destination.

**9. FOREIGN CORPORATIONS** – In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business with NBC until it shall have procured a certificate of authority to do so from the Secretary of State.

**10. PRICING**- All pricing offered or extended to NBC is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by NBC except where the request or contract states otherwise. Offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

**11. COLLUSION**- Bidder or contractor warrants that he/she has not, directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of full competitive bidding.

**12. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES** – Bidder or contractor warrants that he/she has not paid and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of NBC for the purpose of obtaining any contract or award issued by NBC. Bidder or contractor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by NBC except as shall have been expressly communicated to the NBC Purchasing Officer in writing prior to acceptance of the contract or award in question. Subsequent discovery by NBC of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspensions or debarment of the bidder(s) or contractor(s) involved.

**13. AWARDS**- Awards will be made with reasonable promptness and by written notice to the successful bidder (only): bids are considered to be irrevocable for a period sixty (60) days following the bid opening unless expressly allowed in the Request, and may not be withdrawn during this period without the express permission of the Purchasing Officer.

- A. Awards shall be made to the bidders(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an approved equivalent basis) for items(s) in question or for the Request as a

whole, at the option of NBC. NBC reserves the right to determine those offers which are responsive to the Request or which otherwise serve its best interests.

- B. NBC reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and is ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposals are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, NBC may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that NBC is obliged to make any examinations before awarding a contract, and it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.
- C. Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by NBC may, at the option of NBC be 1) rejected as being non-responsive, or 2) set aside in favor of NBC's terms and conditions (with the consent of the bidder), or 3) accepted, where NBC Purchasing Officer determined that such acceptance best serves the interests of NBC. Acceptance or rejection of alternate or counter-offers by NBC shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurement.
- D. Bids submitted in pencil, or which do not bear an original signature, in ink, by an owner or authorized agent thereof, will not be accepted. No alteration, addition or erasure is to be made to the specification or proposal. Erasures, changes or markings over bid prices shall be initialed by bidder.
- E. Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
- F. The Purchasing Officer reserves the right to determine the responsibility of any bidder for a particular procurement.
- G. The Purchasing Officer reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, omissions and

to give consideration to past performance of the offerors where, in his/her judgment, the best interests of NBC will be served by so doing.

- H. The Purchasing Officer reserves the right to make awards by items, group of items or in the total low bid for all the items specified as indicated in the detailed specifications unless the bidder specifically indicates otherwise in his/her bid.
- I. Preference may be given to bids on products raised or manufactured in the State of Rhode Island, other things being equal.
- J. The impact of discounted payment terms shall not be considered in evaluating responses to any Request.
- K. The Purchasing Officer reserves the right to act, in the NBC's best interest, regarding awards caused by clerical errors of the NBC's Purchasing Section.
- L. All bids must be received on or before the time and date indicated on the quotation request. Late bids will not be accepted and will be filed. If no bids are received on or before the time and date indicated on the quotation request, then a late bid may be accepted if the price is reasonable as determined by the purchasing officer.
- M. Requests for modifications and/or withdrawal of bids received after bid opening will not be considered. In extreme cases where it is evident that a major error has occurred in the bid, the purchasing officer reserves the right to determine that an exception be made to the policy of bid withdrawals.

**14. SUSPENSION AND DEBARMENT**- The Purchasing Officer may suspend or debar any vendor or potential bidder, for good cause shown:

- A. A debarment or suspension against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for, or on behalf of, the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors (or where the contractor otherwise participated in, knew of, or had reason to know of the acts).
- B. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct

occurred in connection with the individual's performance of duties for, or on behalf of the contractor or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

- C. A vendor or contractor who knowingly engages as a subcontractor for a contract awarded by NBC to a vendor or contractor then under a ruling of suspension or debarment by NBC shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, or debarment or suspension, as may be judged to be appropriate by NBC Purchasing Officer.

**15. PUBLIC RECORDS**- Contractors and bidders are advised that all documents, correspondence and other submission to NBC Purchasing Section may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.

**16. PRODUCT EVALUATION**- In all specifications, the words "or approved equivalent" are understood after each article when manufacturer's name or catalog is referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise the bid will be construed as submitted on the identical commodities described in the detailed specifications. The Purchasing Officer reserves the right to determine whether or not the item submitted is the approved equivalent of the detailed specifications.

- A. Any objections to specifications must be filed by a bidder, in writing, with the Purchasing Officer at least ninety-six (96) hours before the time of bid opening to enable NBC Purchasing Section to properly investigate the objections.
- B. All standards are minimum standards except as otherwise provided for in the Request or Contract.
- C. Samples must be submitted to NBC Purchasing Section in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent such instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.
- D. All samples submitted are subject to test by any laboratory NBC Purchasing Officer may designate.

**17. PRODUCT ACCEPTANCE**- All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by NBC. NBC reserves the right to reject all non-conforming goods, and to cause their return for credit or replacement, at NBC's Option. Contract deliverables specified for procurement of services shall be construed to be work products, and subject to the provisions of this section.

- A. Failure by NBC to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the NBC's right to subsequently reject the goods in questions.
- B. Formal or informal acceptance by NBC of non-conforming goods shall not constitute acceptance of successive goods.
- C. Where the contractor fails to promptly cure the defect or replace the goods, NBC reserves the right to cancel the Purchase Order, contract with a different contractor, and invoice the original contractor for any difference in price over the original contract price.
- D. When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the NBC agency within forty-eight (48) hours of notification. Rejected items left longer than two (2) days will be regarded as abandoned and NBC shall have the right to dispose of them as its own property.

**18. PRODUCT WARRANTIES** – All product or service warranties normally offered by the contractor or bidder shall accrue to the NBC's benefit, in addition to any special requirements which may be imposed by NBC. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one (1) year unless otherwise specified, and the NBC may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

**19. PAYMENT** – Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

- A. Payment terms other than the foregoing may be rejected as being non-responsive.
- B. No partial shipments will be accepted, unless provided for by the Request or Contract.
- C. Where a question of quality is involved, payment in whole or in part



against which to charge back any adjustment required, shall be withheld at the direction of the Purchasing Officer. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive NBC from taking such discount.

- D. Payments for used portion of inferior delivery will be made by the NBC on an adjusted price basis.
- E. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to NBC for approval.

**20. THIRD PARTY PAYMENTS** – NBC recognizes no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s) except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the Purchasing Officer. Where an offer is contingent upon such payment(s) the offeror is obligated to serve affirmative notice in his bid submission.

**21. SET-OFF AGAINST PAYMENTS** – Payments due the contractor shall be subject to reduction by NBC equal to the amount of unpaid and delinquent debt owed to the NBC, except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal there from.

**22. CLAIMS** – Any claim against a contractor may be deducted by NBC from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay NBC the amount of such claim on demand. Submission of a voucher and payment there of, by NBC shall not preclude the Purchasing Officer from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

- A. The Purchasing Officer may assess dollar damages against a vendor or contractor determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by NBC, and make payment of such damages a condition for consideration for any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

**23. UNUSED BALANCES** – Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one NBC fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at NBC's sole option.

**24. MINORITY BUSINESS ENTERPRISES**

(1) Bidders must comply with R.I.G.L. Chapter 37-4.1-Minority Business Enterprise and applicable rules and regulations.

(2) Pursuant to the provisions of Title 37, Chapter 14.1 of the General Laws, and all Regulations, NBC reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- A. the offer is fully responsive to the terms and conditions of the Request, and
- B. the price offer is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service, and
- C. the firm making the offer has been certified by the RI Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise.

(3) Ten percent (10%) of the dollar value of the work performed against contract for construction exceeding \$5,000 shall be performed by Minority Business Enterprise where it has been determined that subcontract opportunity exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals, fifty percent (50%) of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE or WBE regular dealer, and one hundred percent (100%) of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Purchasing Officer.

**25. PREVAILING WAGE REQUIREMENT** – In accordance with Title 37, Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**26. EQUAL OPPORTUNITY COMPLIANCE AND AFFIRMATIVE ACTION** – Contractors of NBC are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, and 11375, and Title 28, Chapter 5.1 of the General Laws of Rhode Island. Affirmative Action plans shall be submitted by the contractor for review by NBC. A contractor’s failure to abide by the rules, regulations, contract terms and compliance

reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

**27. DRUG-FREE WORKPLACE REQUIREMENT** – In accordance with Executive Order No. 91-14, contractors who do business with NBC and their employees shall abide by NBC’s drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

**29. PROHIBITION OF WEAPONS** – All forms of weapons, including but not limited to firearms, ammunition, knives-dagger, dirk, stiletto, sword-in-cane, bowie knife, razor, bats clubs, swords, switchblades, blackjacks, slingshots, Billy, sand club, sandbag, metal knuckles, slap glove, bludgeon, stun-gun, “martial arts” weapons, explosives, any noxious liquid, gas or substance, acid, or fireworks present the possibility of danger in the workplace and undermine or threaten the safety, security, welfare and effective performance of NBC’s employees and visitors. It is the policy of NBC to strictly prohibit carrying, transporting, storing, using, possessing or controlling these types of items while on NBC premises. NBC premises include all property, offices, facilities, land, buildings, structures, fixtures, installations, automobiles, trucks and all other vehicles and equipment of any type, whether owned, leased, bailed or used by NBC. NBC premises shall also refer to all customers’ properties and any other work locations, or mode of transportation to and from those locations. NBC has zero tolerance for weapons on its premises. Violators to this policy will be subject to stringent disciplinary action.

**30. BUILDING AND SITE RESTRICTIONS**

A) **PARKING:** Vendor/Contractor shall make arrangements with the NBC Representative prior to off-loading tools and equipment at the job site. Vendor shall park only in spaces designated by the NBC Representative.

B) **RESTROOMS:** Restrooms shall not be used for washing of tools and equipment. Janitorial sink will be available. Sink and area must be cleaned after use.

C) **SECURITY:** Vendor/Contractor shall provide and up-date the list of all vendor personnel that will be working at NBC sites and complies with all security measures required by NBC.

D) **ACCESS:** Vendor/Contractor shall make prior arrangements with the NBC Representative for access to building(s) and site(s) for performance of the service or delivery of material.

**31. SAFETY** – Vendor shall provide all equipment and tools which shall be the appropriate type for the task to which its use has been assigned and shall be well maintained, calibrated and in proper working order before use in the performance of the service. Vendor shall, prior to commencing work, thoroughly examine and become familiar with the system(s) and associated facilities to ensure the service can be completed in an orderly and safe manner. Vendor shall maintain a safe work environment at all times. Vendor shall report immediately to NBC authorized representative the existence of unsafe condition(s), which will compromise the performance of the service.

**32. TAXES** – NBC is exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

**33. INSURANCE** – All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair or other type of service to be performed on NBC premises, buildings or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the State of Rhode Island as follows:

- A. **Commercial General Liability Insurance** –
- |                            |                                 |
|----------------------------|---------------------------------|
| General Aggregate          | \$2,000,000.00 annual aggregate |
| Each Occurrence            | \$1,000,000.00                  |
| Personal & Adv Injury      | \$1,000,000.00                  |
| Fire Damage (Any one fire) | \$50,000.00                     |
| Med Exp (Any one person)   | \$5,000.00                      |
- B. **Commercial Auto Insurance** –  
Combines Single Limit \$1,000,000 each occurrence
- Bodily Injury
  - Property Damage, and in addition non-owned and/or hired vehicles and equipment
- C. **Workers Compensation and Employer’s Liability Insurance** –
- |                       |              |
|-----------------------|--------------|
| Each Accident         | \$500,000.00 |
| Disease-Policy Limit  | \$500,000.00 |
| Disease-Each Employee | \$500,000.00 |

The Purchasing Officer reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting NBC as additional insured on a primary and non-contributing basis, to the NBC Purchasing Section, at least forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror’s bid.

**34. BID SURETY** – When requested, a bidder must furnish a Bid Bond, Bank or Certified Check, or substitute acceptable to NBC for three percent (3%) of bid, or for the NBC amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide a Bid Surety with the Bid may be cause for rejection of bid. The Bid Surety of any three (3) bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within forty-eight (48) hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instruction to do otherwise.

**35. PERFORMANCE AND LABOR AND PAYMENT BONDS** – A performance bond and labor and payment bond of up to one hundred percent (100%) of an award may be required by the Purchasing Officer. Bonds must meet the following requirements.

- A. Corporation: The Bond must be signed by an official of the corporation above his/her official title and the corporate seal must be affixed over his/her signature.
- B. Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are “Doing Business As (name of Firm)”.
- C. Individual: The Bond must be signed by the individual owning the business and indicate “Owner”.
- D. The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- E. The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his/her signature.
- F. Signatures of two (2) witnesses for both the principal and the Surety Company must appear on the Bond.
- G. A Power of Attorney for the official signing the Bond for the Surety Company must be submitted with the Bond.

**36. DEFAULT AND CANCELLATION** – A contract may be canceled or annulled at the contractor’s expense upon non-performance of contract, or breach by the contractor of any of his obligations. Failure of contractor to cure such non-performance or breach within ten (10) working days after the receipt of notice shall be sufficient cause for the cancellation of the contract in question, the cancellation of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements.

- A. Failure of a contractor to deliver or perform within the time specified, or within reasonable time as interpreted by the Purchasing Officer or failure to make replacement of rejected articles, when so requested, immediately or as directed by the Purchasing Officer, will cause the Purchasing Officer to purchase in the open market to replace those rejected or not delivered. The Purchasing Officer reserves the right to authorize immediate purchase in the open market against rejections on any contract when necessary. On all such purchases, the contractor, or his surety, agrees to promptly reimburse NBC for excess costs occasioned by such default. Should the cost be less, the contractor shall have no claim to the difference.

- B. A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in default of contract. The Purchasing Officer may contract the completion of work with another contractor and seek recourse from the defaulting contractor or his/her surety.
- C. If contractor consistently fails to deliver quantities or otherwise perform as specified, the Purchasing Officer reserves the right to cancel the contract and purchase the balance in the open market at the contractor's expense.
- D. In accordance with § 37-2-43, the Chief Purchasing Officer shall terminate a contract upon notification by the Director of the Department of Environmental Management that there has been a final adjudication or other resolution, as a result of which a fine of five thousand dollars (\$5,000) or more has been imposed, that a contractor has violated any state law or regulation pertaining to the protection of fresh water wetlands (chapter 1 of title 2), coastal wetlands, (chapter 23 of title 46), air quality (chapter 23 of title 23), water quality (chapter 12 of title 46), the installation of individual sewage disposal systems (chapter 17.1 of title 42), the handling and/or disposal of solid waste (chapter 19 of title 23) or hazardous waste (chapter 19.1 of title 23), whether or not such violation has any relation to the contract to be terminated.

**37. INDEMNITY** – The Contractor guarantees

- A. To save NBC, its agents and employees, harmless from any liability imposed upon NBC arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyright or uncopyrighted composition, secret process, patented or unpatented invention, article of appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.
- B. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinance, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.
- C. That the equipment offered is standard new equipment, latest model or regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

**38. CONTRACTOR'S OBLIGATIONS** – In addition to the specific requirements of the contract, construction and building repair, contractors bear the following standard responsibilities:

- A. To furnish adequate protection from damage for all work and to repair

damages of any kind, for which he/she or his/her workpeople are responsible, to the building or equipment, to his/her own work, or to the work of other contractors;

- B. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, and on completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;
- C. To store equipment, supplies and materials at the site only upon approval by NBC, and at his/her own risk;
- D. To perform all work so as to cause the least inconvenience to the NBC, and with proper consideration for the rights of other contractors and workmen;
- E. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work; and
- F. To ensure that his employees are instructed with respect to special regulations, policies and procedures in effect for any NBC facility or site, and that they comply with such rules.

**39. FORCE MAJEURE** – All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.