

Request for Proposals
Athletic Field Lawn Fertilization

BID #2020-0316-07



Town of Cumberland
45 Broad Street
Cumberland, RI 02864

Date Re-Issued: March 16, 2020

Date Due: March 26, 2020 at 10:00 AM

Town of Cumberland, Finance Department

45 Broad Street

Cumberland, RI 02864

Phone: 401-728-2400

SCOPE OF WORK

The Town of Cumberland seeks proposals for Athletic Field Lawn Fertilization for sixteen (16) fields identified below.

Each bidder is required to familiarize himself with all areas and access within the scope of work. All work must conform to Rhode Island State, Federal and local laws for the application of fertilizers, pesticides and herbicides or similar products to turf areas at schools and parks.

The successful bidder must supply Certificates of Liability for minimum of \$1,000,000 and Workers Compensation Insurances, and a certificate of insurance to conduct application of pesticides and herbicides prior to beginning contracted work.

The successful bidder must also supply a copy of Supervisory License of Applicator to complete work. Anyone unable to satisfy these requirements, or found to cause additional liability to the Town, will be terminated. The Town reserves the right to renegotiate for the completion of this work. Insurance policy will add Town of Cumberland as additional insured.

The following products must be purchased and applied the fields. It is the bidder's responsibility to verify all necessary quantities for proper application.

- Solu-Cal Enhanced Calcitic Lime (approx. 900 bags)
- Nature Safe 10-2-8 All Season Fertilizer (approx. 140 bags)
- Acelepryn Insecticide for grub control (approx. 64 bags)
- 25-5-12 Fertilizer (approx. 306 bags)
- Herbicide (approx. 22 gallons)
- Starter fertilizer (approx. 45 bags)
- Sport mixture grass seed (approx. 75 bags)

Athletic Fields Included in Scope of Work

Diamond Hill Fields	6 acres/263,000 sf	4097 Diamond Hill Rd
Bentley Baseball Complex	3.5 acres/153,000 sf	3579 Diamond Hill Rd
Tucker Field Complex	4.8 acres/210,000 sf	2600 Mendon Rd – opposite CHS
Cumberland Hill Fields	2.3 acres/100,000 sf	205 Manville Hill Rd
BF Norton Field	1.1 acres/50,000 sf	364 Broad Street
High Street Field	35,000 sf	555 High Street
Garvin Field	35,000 sf	1364 Diamond Hill Rd
Razze Field	35,000 sf	680 Nate Whipple Highway
Berkley Field	2 acres/95,000 sf	44 Martin Street
High School Fields	4 acres/176,000 sf	Farm Drive entrance for CHS
High School JV Field	2 acres/87,000 sf	Farm Drive entrance for CHS
Ashton Field	30,000 sf	130 Scott Road
St John Vianney Fields	2.5 acres/115,000 sf	3609 Diamond Hill Road
Pit Softball Field	1 acre/45,000 sf	Farm Drive entrance for CHS
Cumberland Hill Softball Field	30,000 sf	205 Manville Hill Rd
Tucker Softball Field	40,000sf	2600 Mendon Rd – opposite CHS

Field Application Schedule

All applications and visits performed require pre-notification to the Director of Parks and Recreation and/or agent with the date and time of contract work no less than 24 hours prior to the application. No contract application or post-emergent application may be applied between 8 AM Thursday and 8 PM Sunday unless approved in writing by a Town representative. Any contract application of herbicides or pesticides may only be completed under the site supervision of a supervisory-level license holder.

Timeframe	Product	Fields
March – 3 rd week	Solu-Cal	All
April – 2 nd week	28-5-12	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
April – 2 nd week	Nature Safe 10-2-8	Diamond Hill Fields
May – mid month	Starter Fertilizer	All
June – 2 nd week	28-5-12	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
June – 2 nd week	Nature Safe 10-2-8	Diamond Hill Fields
June – 3 rd week	Herbicide	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
July – 1 st week	Acelepryn Insecticide	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
August – 4 th week	28-5-12	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
August – 4 th week	Nature Safe 10-2-8	Diamond Hill Fields
August – 4 th week	Herbicide	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
September – 3 rd week	Solu-Cal	All
October – 2 nd week	28-5-12	All EXCEPT Diamond Hill, Razze, St John Vianney, and Bentley Fields
October – 2 nd week	Nature Safe 10-2-8	Diamond Hill Fields

SITE VISITS

The Town will conduct ONE site visit to enable bidders to gain familiarity with the site and scope of work. The pre-bid site visit is scheduled for March 10, 2020 at 8:30 AM.

Site visit will start at Cumberland Recreation Department located at 4097 Diamond Hill Road, Cumberland, RI

Regardless if a bidder participates in a site visit, submission of a proposal will constitute an acknowledgement that the respondent is aware of existing conditions at the Property.

RECEIPT AND OPENING OF PROPOSALS

Sealed proposals labeled "RFP# 2020-0316-07 "Athletic Field Lawn Fertilization" will be received in the Office of the Finance Director, Cumberland Town Hall, 45 Broad St., Cumberland, Rhode Island.

Bids Due: March 26, 2020 no later than 10:00 AM EST.

Bid Opening: Bids will be publicly opened and read at the bid opening to immediately follow the submission deadline.

FORM OF BID

Proposals shall be submitted in duplicate, on the form provided, with supplemental information, warranties, licenses, and other required documentation, literature and material to be provided, with the bid, on the bidders' own form.

SUBMISSION OF BIDS

1. Envelopes containing bids must be sealed and addressed to the Office of the Finance Director, Cumberland Town Hall, 45 Broad St., Cumberland, RI, 02864, and must be marked with the name and address of the bidder and name of the RFP.
2. The Finance Director will open bids immediately after the 2:00 p.m. deadline for submission in Town Council Chambers, 2nd Floor, 45 Broad Street, Cumberland, RI.
3. Any bidder may withdraw his bid by written request at any time prior to the advertised time for opening. Telephonic bids, amendments, or withdrawals will not be accepted.
4. Unless otherwise specified, no bid may be withdrawn for a period of ninety (90) days from time of bid opening.
5. Negligence on the part of the bidder in preparing the bid confers no rights for the withdrawal of the bid after it has been opened.
6. Proposals received prior to the time opening will be securely kept, unopened. No responsibility will be attached to an officer or person for the premature opening of a proposal not properly addressed and identified.
7. Any deviation from the specifications must be noted in writing and attached as part of the bid proposal. The bidder shall indicate the item or part with the deviation and indicate how the bid will deviate from specifications.

QUALIFICATION OF BIDDERS:

The owner may make such investigations as it deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish the Town with all such information and data for this purpose as may be requested.

All work must conform to Rhode Island State, Federal and local laws for the application of fertilizers, pesticides and herbicides or similar products to turf areas at schools and parks.

The successful bidder must supply Certificates of Liability for minimum of \$1,000,000 and Workers Compensation Insurances, and a certificate of insurance to conduct application of pesticides and herbicides prior to beginning contracted work.

The successful bidder must also supply a copy of Supervisory License of Applicator to complete work.

ADDENDA AND INTERPRETATIONS:

No interpretation on the meaning of the Plans, Specifications or other Contract Document will be made to any bidder orally. Every request for such interpretations should be in writing, addressed to the Finance Director, Cumberland Town Hall, 45 Broad St., Cumberland, RI, 02864, and to be given consideration must be received at least seven (7) days prior to the date fixed for the opening of the bids.

All questions pertaining to the specifications or proposal procedure should be first directed to the Finance Director. Where information from the Finance Director differs from information from any other source, the information from the Finance Director prevails. The Town is not responsible for information obtained from any other source.

AWARD OF BIDS:

The Town reserves the right to award in whole or in part.

HOLD HARMLESS:

The contractor shall be responsible for his work and every part thereof, and for all materials, tools, appliances, and property of every description used in connection therewith. The contractor agrees to indemnify and save harmless the Town of Cumberland, its employees and agents, against loss or expense by reason of the liability imposed by law upon the contractor, all sub-contractors, or owner for damage because of bodily injuries, including person or persons or on account of damage to property arising out of or in consequence of the performance of this work whether such injuries to persons or damage to property are due or claimed to be due to any negligence, including gross negligence, of a sub-contractor, the owner, the general contractor, his or their employees or agents, or any other person

Town of Cumberland
BID PROPOSAL

TO: The Town of Cumberland
Finance Department
45 Broad St.
Cumberland, RI 02864

To Whom It May Concern:

We, the undersigned, propose to furnish to the Town of Cumberland with the "Purchase and Application of Lawn Fertilizer for Sixteen Athletic Fields" per attached specifications dated February 28, 2020.

Price in words: _____

Price in figures: _____

Did you deviate from the specifications in any way: YES____ NO____?

(If yes, you must submit a detailed description of all deviations so that your product or service can be properly evaluated.)

Did you receive an addendum: YES_____ NO_____?

Delivery: _____ calendar days after receipt of order.

By: _____
Authorized Signature Date Company Name

_____ _____
Print Name & Title Address

_____ _____
Telephone/Email Town/State/Zip Code

Please submit bid proposal page and any brochures in DUPLICATE.

Appendix A

ANTI-KICKBACK ACKNOWLEDGMENT

ALL BIDDERS/OFFERORS MUST ATTEST TO THE FOLLOWING:

The vendor acknowledges, under the pains and penalties of perjury, that he/she has not been offered, paid, or solicited for any contribution or compensation, nor has he/she been granted a gift, gratuity, or other consideration, either directly or indirectly by any officer, employee or member of the governing body of the Town of Cumberland who exercises any functions or responsibilities in connection with either the award or execution of the project to which this contract pertains.

Further, the vendor acknowledges, under the pains and penalties of perjury, that he/she has not offered, paid, or solicited by way of any contribution or compensation, nor has he/she granted a gift, gratuity or other consideration either directly or indirectly to any officer, employee, or member of the governing body of the Town of Cumberland who exercises any functions or responsibilities in connection with either the award or execution of the project to which this project or contract pertains.

_____ Signature of Officer	_____ Date
_____ Title	_____ Company
_____ Title of RFP	

ORIGINAL: OCTOBER 2018

REVISED: N/A

Appendix B

TOWN OF CUMBERLAND

GENERAL TERMS AND CONDITIONS OF PURCHASE

The Town of Cumberland's Finance Office may, from time to time, make amendments to the General Terms and Conditions when the Town of Cumberland's Finance Director determines that such amendments are in the best interest of the Town of Cumberland. Amendments shall be made available for public inspection at the Purchasing Office located in Cumberland Town Hall but shall not require formal public notice and hearing. Copies of the Terms and Conditions shall be provided to any individual or firm requesting them.

TOWN OF CUMBERLAND'S PURCHASING OFFICE GENERAL CONDITIONS OF PURCHASE

All Town of Cumberland purchase orders, contracts, solicitations, delivery orders and service requests shall incorporate and be subject to the provisions of Rhode Island General Laws 8-15-4 and the Town of Cumberland purchasing rules and regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, the Cumberland Town Charter, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

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 the Town of Cumberland, or with whom a contract is executed by the Town of Cumberland's Finance Director, and the term "contractor" shall have the same meaning as "vendor".

2. ENTIRE AGREEMENT

The Town of Cumberland's Purchase Order, or other Town of Cumberland contract endorsed by the Town of Cumberland Finance Office, shall constitute the entire and exclusive agreement between the Town of Cumberland and any contractor receiving an award. In the event any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern.

All communication between the Town of Cumberland 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 by the Town of Cumberland Finance Director of the offer to do work or to furnish any or all the materials, equipment, supplies or services described therein shall constitute a contract between the bidder and the Town of Cumberland. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the Town of Cumberland on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Orders issued by the Town of Cumberland to the contractors.
- B) No alterations or variations of the terms of the contract shall be valid or binding upon the Town of Cumberland unless submitted in writing and accepted by the Town of Cumberland Finance Director. All orders and changes thereof must emanate from the Town of Cumberland Purchasing Office: no oral agreement or arrangement made by a contractor with a department or employee will be considered to be binding on the Town of Cumberland Finance Director, and may be disregarded.
- C) Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and thereafter until all terms and conditions have been met, unless:
 - i) terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
 - ii) extended upon written authorization of the Town of Cumberland Finance Director 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
 - iii) canceled by the Town of Cumberland 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 right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Town of Cumberland Finance Director.
- 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, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the Town of Cumberland Purchasing Office, and expressly accepted.
- F) The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the time of such action of any outstanding and

delinquent or otherwise unsettled debt owed by him to the Town of Cumberland, and agrees that later discovery by the Town of Cumberland Finance Director that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

3. SUBCONTRACTS

No subcontracts or collateral agreements shall be permitted, except with the Town of Cumberland's express written consent. Upon request, contractors must submit to the Town of Cumberland 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 is not an employee, agent, or servant of the Town of Cumberland, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between the Town of Cumberland 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. The Town of Cumberland 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) The Town of Cumberland reserves the right to modify the quantity, scope of service, date of delivery or completion, 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) The Town of Cumberland shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the Town of Cumberland will 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 solicit with the mutual consent of the contractor and the Town of Cumberland, where determined by the Town of Cumberland Finance Director to be in the Town of Cumberland'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 the Town of Cumberland's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the Town of Cumberland's sole option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for administrative convenience, but are otherwise subject to this provision, and in such cases the Town of Cumberland's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the Town of Cumberland's intent not to renew is served.

8. FOREIGN CORPORATIONS

In accordance with Title 7 Chapter 1.1 ("Business Corporations") of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

9. PRICING

All pricing offered or extended to the Town of Cumberland is considered 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 the Town of Cumberland, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

10. COLLUSION

Bidder or contractor warrants that he has not, directly or indirectly, entered into any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

11. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES

Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Town of Cumberland for the

purpose of obtaining any contract or award issued by the Town of Cumberland. 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 the Town of Cumberland, except as shall have been expressly communicated to the Town of Cumberland Finance Director in writing prior to acceptance of the contract or award in question. Subsequent discovery by the Town of Cumberland of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

12. 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 of ninety (90) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the Town of Cumberland Finance Director.

- A) Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the Town of Cumberland. The Town of Cumberland reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.
- B) The Town of Cumberland 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 are 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 proposal 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, the Town of Cumberland may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the Town of Cumberland 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 the Town of Cumberland may, at the option of the Town of Cumberland, be
 - i) rejected as being non-responsive, or
 - ii) set aside in favor of the Town of Cumberland's terms and conditions (with the consent of the bidder), or

iii) accepted, where the Town of Cumberland Finance Director determines that such acceptance best serves the interests of the Town of Cumberland.

Acceptance or rejection of alternate or counter-offers by the Town of Cumberland shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

- 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.
- 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 Town of Cumberland Finance Director reserves the right to determine the responsibility of any bidder for a particular procurement.
- G) The Town of Cumberland Finance Director reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgment the best interests of the Town of Cumberland will be served by so doing.
- H) The Town of Cumberland Finance Director reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.
- I) Preference may be given to bids on products raised or manufactured in the Town of Cumberland or 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 Town of Cumberland Finance Director reserves the right to act in the Town of Cumberland's best interests regarding awards caused by clerical errors by the Town of Cumberland Purchasing Office.

13. SUSPENSION AND DEBARMENT

The Town of Cumberland Finance Director 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 the Town of Cumberland to a vendor or contractor then under a ruling of suspension or debarment by the Town of Cumberland 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 the Town of Cumberland's Finance Director.

14. PUBLIC RECORDS

Contractors and bidders are advised that certain documents, correspondence, and other submissions to the Town of Cumberland's Purchasing Office may be voluntarily made public by the Town of Cumberland absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.

15. 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 nonresponsive.
- B) No partial shipments, or partial completion will be accepted, unless provided for by the Request or Contract.
- C) Where a question of quality is involved, or failure to complete a project by the specified due date, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the Town of Cumberland Finance Director. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the Town of Cumberland from taking such discount.

D) Payments for used portion of inferior delivery or late delivery will be made by the Town of Cumberland 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 the Town of Cumberland Purchasing Office for approval.

16. THIRD-PARTY PAYMENTS

The Town of Cumberland 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 Town of Cumberland's Finance Director. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

17. SET-OFF AGAINST PAYMENTS

Payments due the contractor may be subject to reduction equal to the amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

18. CLAIMS

Any claim against a contractor may be deducted by the Town of Cumberland from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the Town of Cumberland the amount of such claim on demand. Submission of a voucher and payment, thereof, by the Town of Cumberland shall not preclude the Town of Cumberland's Finance Director from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

A) The Town of Cumberland's Finance Director 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 the Town of Cumberland, 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.

19. CERTIFICATION OF FUNDING

The Director of Finance shall provide certification as to the availability of funds to support the procurement for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the end of the current fiscal year, such extensions are subject to both the availability of appropriated funds and a determination of continued need.

20. 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 fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the Town of Cumberland's sole option.

21. MINORITY BUSINESS ENTERPRISES

Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the Town of Cumberland 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 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 R.I. Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise.

22. 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.

23. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION

Contractors of the Town of Cumberland are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, 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 the State Equal Opportunity Office. 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.

24. DRUG-FREE WORKPLACE REQUIREMENT

Contractors who do business with the Town of Cumberland and their employees shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

25. TAXES

The Town of Cumberland 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.

26. INSURANCE

All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on Town of Cumberland premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

- A) Comprehensive General Liability Insurance
 - Combined Single Limit not less than \$1,000,000 each occurrence for bodily Injury and property damage.
 - i) Independent Contractors;
 - ii) Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations;
 - iii) Products and Completed Operations;
 - iv) Personal Injury (with employee exclusion deleted)

- B) Automobile Liability Insurance

Combined Single Limit not less than \$1,000,000 each occurrence for bodily Injury and property damage including non-owned and/or hired vehicle coverage.

OR

Bodily Injury, per person, \$500,000/ Bodily Injury, \$1,000,000 per accident/ Property Damage, \$500,000 per accident including non-owned and/or hired vehicle coverage.

C) Workers' Compensation Insurance
As required by the General Laws of Rhode Island.

D) Employers liability \$500,000

The Town of Cumberland shall be named as an additional insured on the vendor's Comprehensive General Liability Policy and Automobile Liability Policy.

The Town of Cumberland's Finance Director 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 the Town of Cumberland as an additional insured, to the Town of Cumberland Purchasing Office, 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.

27. BID SURETY

When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated 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 Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three 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 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

28. PERFORMANCE AND LABOR AND PAYMENT BONDS

A performance bond and labor and payment bond of up to 100% of an award may be required by the Town of Cumberland's Finance Director. 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 signature.
- F) Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- G) A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.

29. SUSPENSION, DEFAULT AND TERMINATION

A) Suspension of a Contract by the Town of Cumberland

The Town of Cumberland reserves the right at any time and for any reason to suspend all or part of this contract, for a reasonable period, not to exceed sixty days, unless the parties agree to a longer period. The Town of Cumberland shall provide the contractor with written notice of the suspension order signed by the Finance Director or his or her designee, which shall set forth the date upon which the suspension shall take effect, the date of its expiration, and all applicable instructions. Upon receipt of said order, the contractor shall immediately comply with the order and suspend all work under this contract as specified in the order. The contractor shall take all reasonable steps to mitigate costs and adverse impact to the work specified in the contract during the suspension period. Before the order expires, the Town of Cumberland shall either:

- i. cancel the suspension order;
- ii. extend the suspension order for a specified time period not to exceed thirty (30) days; or
- iii. terminate the contract as provided herein.

The contractor shall resume performance once a suspension order issued under this section is canceled or expires. If as a result of the suspension of performance, there is a financial or schedule impact upon the contract, an appropriate adjustment may be made by, or with the approval of, the Town of Cumberland's Finance Director. Any adjustment shall be set forth in writing. After a suspension order has been canceled or expires, the contractor shall provide any request for adjustment to the Town of Cumberland's Finance Director within thirty (30) days after resuming work performance.

B) Termination of a Contract by the Town of Cumberland

i. Termination for Default or Nonperformance

If, for any reason, the contractor breaches the contract by failing to satisfactorily fulfill or perform any obligations, promises, terms, or conditions, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the Town of Cumberland, the Town of Cumberland may terminate the contract, in whole or in part, the termination of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements by giving written notice to the contractor specifying the date for termination. The Town of Cumberland shall endeavor to provide such notice at least seven (7) calendar days before the effective date of the termination.

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. If contractor consistently fails to deliver quantities or otherwise perform as specified, the Town of Cumberland's Finance Director reserves the right to terminate the contract and contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety. In the event of a termination for default or nonperformance, in whole or in part, the Town of Cumberland may procure similar goods or services in a manner and upon terms it deems appropriate, and the contractor shall be liable for the excess costs incurred by the Town of Cumberland as a result of the contractor's default. The contractor, or its surety, agrees to promptly reimburse the Town of Cumberland for the excess costs, but shall have no claim to the difference should the replacement cost be less.

ii. Termination Without Cause

The Town of Cumberland may terminate the contract in whole or in part without cause at any time by giving written notice to the contractor of such termination at least thirty (30) days before the effective date of such termination. The notice shall specify the part(s) of the contract being terminated and the effective termination date.

Within thirty (30) days of the effective date of the termination of the contract the contractor shall compile and submit to the Town of Cumberland an accounting of the work performed up to the date of termination. The Town of Cumberland may consider the following claims in determining reasonable compensation owed to the contractor for work performed up to the date of termination:

- a. contract prices for goods or services accepted under the contract;
- b. costs incurred in preparing to perform and performing the terminated portion of the contract; or
- c. any other reasonable costs incurred by the contractor as a result of the termination.

The total sum to be paid to the contractor shall not exceed the total contract price, less any payments previously made to the contractor, the proceeds from any sales of goods or manufacturing materials, and the contract price for work not terminated.

iii. Contractor's Obligations in the Event of Termination

If the contract is terminated for any reason, or expires pursuant to its terms, the contractor shall transfer and deliver to the Town of Cumberland in the manner and to the extent directed by the Town of Cumberland:

- a. all finished or unfinished material prepared by the contractor; and
- b. all material, if any, provided to the contractor by the Town of Cumberland.

For the purposes of the contract, "material" shall include, but is not limited to, goods, supplies, parts, tools, machinery, equipment, furniture, fixtures, information, data, reports, summaries, tables, maps, charts, photographs, studies, recommendations, files, audiotapes, videotapes, records, keys, security badges, and documents.

If the contract is terminated for cause, the contractor shall not be relieved of liability to the Town of Cumberland for damages sustained because of any breach by the contractor. In such event, the Town of Cumberland may retain any amounts which may be due and owing to the contractor until such time as the exact amount of damages due the Town of Cumberland from the contractor has been determined by the Town of Cumberland Finance Director. The Town of Cumberland may also set off any damages so determined against the amounts retained.

Upon termination of the contract, the contractor shall stop performance on the date specified, terminate any outstanding orders and subcontracts applicable to the terminated portion of the contract, and shall incur no further commitments or obligations in connection with the terminated performance. The contractor shall settle all liabilities and claims arising out of the termination of subcontracts and order generating from the terminated performance. The Town of Cumberland may direct the contractor to assign the contractor's right, title and interest under terminated orders or subcontracts to the Town of Cumberland or a third party.

Terminations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Town of Cumberland Finance Director or his designee. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract, or where no specific termination clause is included, written notice shall be provided no later than thirty (30) days before the expiration of the contract.

30. INDEMNITY

The contractor guarantees:

- A) To save the Town of Cumberland, its agents and employees, harmless from any liability imposed upon the Town of Cumberland arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or 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, ordinances, rules and regulations of the Town of Cumberland and of the State of Rhode Island.
- C) That the equipment offered is standard new equipment, latest model of 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.

31. 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.