

## TERMS AND CONDITIONS

HHC 110-29 (R Dec 90)

**NEW YORK CITY HEALTH AND HOSPITALS CORPORATION**  
**125 Worth Street**  
**New York, New York 10013**

All quotations are subject to the following terms and conditions *UNLESS MODIFIED IN WRITING AND APPROVED BY THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION* (hereafter, the Corporation). The bid terms shall apply to all orders or agreements issued by the Corporation.

- 1. GUARANTEE**— The Contractor guarantees that all articles of equipment, including all parts thereof are of first class quality throughout and comply in all respects or are fully equal to standards called for in the Bid. The Contractor further guarantees all equipment, and all parts thereof, against any defects of workmanship, construction and materials. The Contractor guarantees to repair in first class condition or replace to the satisfaction of the New York City Health and Hospitals Corporation (the Corporation) within thirty (30) calendar days from date of written notice by the Corporation and without cost to the Corporation, any article that in the judgment of the Corporation has become defective within one (1) year from date of acceptance by the Corporation of final delivery of such article provided such defect is not proven to have been caused solely by negligence on the part of the Corporation. Should this clause become operative and the Contractor be required to repair or replace any equipment or any part so guaranteed, a new guarantee period of one (1) year shall become effective for these items so repaired or replaced dating from the time of acceptance by the Corporation of final delivery of such items. The original one (1) year guarantee will remain in effect on all items not defective. In the event of failure on the part of the Contractor to repair or replace in first class condition any such item within thirty (30) calendar days from date of notice, the Corporation, without limiting any other remedy available to it, may have the work done by others and charge the cost to money due to the Contractor, or if there be no money due, the Contractor agrees to pay the Corporation any costs occasioned thereby. This guarantee is in addition to, and not in substitution of any guarantee or warranty, expressed or implied, which the Contractor offers as part of the consideration for the purchase of any such article of equipment, workmanship, materials or supplies, or which are made applicable by law or by agreement by the Contractor to any other purchaser.
- 2. QUALIFICATIONS OF BIDDERS**— Bids will be accepted only from manufacturers, or their authorized distributors, who are actively engaged in the manufacture or sale of the commodities called for in the bid. The Corporation may require the Vendor to maintain sufficient stocks and complete lines of the items called for in the bid, at or near New York City so that overnight deliveries may be made in emergencies. The bidder's stock and facilities shall be made available for examination and inspection on demand by a representative of the Corporation at any time, either before award or during the life of the procurement.
- 3. NAME OF MANUFACTURER AND CERTIFICATE**— The bidder must furnish the name of the manufacturer of the items bid upon and manufacturer's certificate (HHC form PUR 17-01-013) attached to the bid must be properly executed and submitted with the bid. Vendor may not substitute manufacturer or product during period of performance or during term of contract, unless authorized by the Corporation. Failure to comply will be sufficient to remove vendor from all bid lists.
- 4. FORM OF BID**— Bids must be submitted on the forms furnished by the Corporation.
- 5. PLANT INSPECTION**— The Corporation reserves the right to inspect the manufacturing facilities of bidders before award is made to insure the ability and capability of the vendor to perform under the terms of the award. Such inspection shall not be construed to mean an award will be forthcoming.
- 6. PACKING, PACKAGING, MARKING**— Material shall be packed and packaged in accordance with standard commercial practice and in accordance with any applicable specifications and in such manner to insure it will not be damaged in transit. Each package delivered shall be marked with the order number, item number, brief description of item and place of delivery (floor and/or room number).
- 7. TIME**— Time is of the essence under this purchase order or agreement.
- 8. VENDOR FINANCIAL DATA**— The Corporation reserves the right to request financial and any other pertinent data it requires in order to determine the responsibility of a vendor prior to the award of a purchase order or contract. Under its regulations the corporation is required to award purchase orders or contracts to the lowest responsible bidders. To enable the Corporation to determine this responsibility, information concerning the vendor's operating facilities, business experience, financial position, and other pertinent information may be required by the Corporation.
- 9. PREVAILING RATES**— The Office of the Comptroller of the City of New York establishes Wage Rates and Supplemental Benefits pursuant to Section 220 and 230 of the Labor Law of the State of New York. There are established solely for laborers, workmen or mechanics employed by private contractors and building service employers pursuant to contracts involving public work, made and entered into between the City of New York and any Agency thereof. These Wage Rates and Supplemental Benefits are subject to change, and all schedules are published in the City Record and may be obtained from the Corporation upon request. The Prevailing Wage Rates and Supplemental Benefits to be paid are those in effect at the time the work is being performed. The provisions of the Mayor's Executive Order No. 89, dated July 21, 1977, and Executive Order No. 17 dated July 26, 1978, must be complied with when the prospective contractor submits his bid document for consideration.
- 10. VARIATION IN QUANTITY**— If the item to be procured hereunder is by its nature or trade practice subject to variation in quantity, an overrun or underrun may be permitted by the Corporation. The percent and applicability (by item or entire quantity) will be specified in the specifications or order.
- 11. INSURANCE REQUIREMENTS**— The Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with

the performance of this Contract by the Contractor, its agents, representatives, employees or subcontractors, as follows:

**Minimum Scope of Insurance:**

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Service Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). (Ed. 11/85).
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsements CA 2232 and CA 01112 (required if the contractor uses an automobile for business purposes in connection with this Agreement).

**Minimum Limits of Insurance**

The Contractor shall maintain limits no less than:

1. Comprehensive General Liability: \$500,000 combined single limit per accident for bodily injury and property damage.
2. Automobile Liability: \$500,000 combined limit per accident for bodily injury and property damage.

**Deductible and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by the Corporation. At the option of the Corporation, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Corporation, its officers, officials and employees or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages:
  - a. The Corporation, the City, its officers, officials and employees are to be covered as insureds with respect to the following: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Corporation, the City, its officers, officials and employees.
  - b. The Contractor's insurance coverage shall be primary insurance with respect to the Corporation, the City, its officers, officials, and employees. Any other insurance or self-insurance maintained by the Corporation, its officers, officials, and employees shall be in excess of and not contribute to the Contractor's insurance.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Corporation, its officers, officials, and employees.
  - d. The Contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Employers' Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Corporation, its officers, officials, and employees for losses arising from work performed by the Contractor for the Corporation.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 60 days' prior written notice by certified mail, return receipt requested, has been given to the Corporation.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a Best's rating of no less than A:X unless specific approval has been granted, to accept a company with a lower rating, by the Corporation's Office of Legal Affairs.

**Verification of Coverage**

Contractor shall furnish the Corporation, with certificates of insurance effecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the Corporation and are to be received and approved by the Corporation before work commences. The Corporation reserves the right to obtain complete, certified copies of all required insurance policies from the Contractor at any time.

**Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates for each subcontractor. The coverages for subcontractors shall be subject to all of the requirements stated herein.

12. **WORKERS COMPENSATION INSURANCE**– The Contractor shall procure and maintain until all work under the purchase order or contract is completed and accepted, Worker's Compensation insurance (with limits of \$500,000) and disability benefits insurance in accordance with the laws of the State of New York and shall furnish the Corporation with two (2) certificates of such insurance.
13. **AMBIGUITIES**– When a bidder desires an interpretation or clarification of any ambiguity in the bid and associated documents, he must write by registered mail to the Buyer (See Bid Request Page 1 for name) in sufficient time for the letter to reach the Buyer four (4) days prior to the time set for the bid opening. The Corporation's interpretation shall be final and will be made known to all prospective bidders.
14. **EXAMINATION OF DOCUMENTS**– Bidders are cautioned to examine all samples or documents when a bid stipulates such items are available for examination. Failure to do so shall not entitle the bidder to any relief from conditions imposed in the bid or resultant purchase order or agreement.
15. **PRICE FIXED ITEMS**– The provisions of the New York State Fair Trade Law (Feld-Crawford Act) and the Federal Price Discrimination Law (Robinson-Patman Act) do not apply to purchases made by the Corporation.
16. **"OR EQUAL" BIDDING**– When a bid standard or equal is specified, the bidder may offer an article which he certifies to be equal and must submit proof and expressly warrant that the article is equal in quality, performance, merchantability and other essentials to the bid standard.
17. **SAMPLES**– If samples are required of a bidder, he shall furnish them free of charge and when they are no longer required, he shall remove them at his own expense.
18. **F.O.B. DELIVERY POINT**– All prices bid must be F.O.B. delivery point, assembled, platform delivery, unless inside delivery is specified.
19. **FOREIGN GOODS**– If offering foreign merchandise, bidder shall show country of origin.
20. **NEW MERCHANDISE**– Deliveries must consist only of new and unused merchandise except, unless otherwise specified.

21. **LABELS**– The original, unmutated label or marking of the manufacturer must be securely affixed to all supplies which are customarily labeled or identified.
22. **CONTAINERS AND REELS**– Delivery containers and reels become the property of the Corporation.
23. **PRICING**– Bidder shall insert unit price and extension against each item. In case of discrepancy, the unit price shall govern. Lead pencil must not be used. When class bids are indicated, bidder must bid on every item in the class. A bidder desiring to bid "no charge" on an item in a class must so indicate; otherwise the bid for the class will be construed as incomplete.
24. **DISCOUNTS**– Trade discounts will be considered in determining the award. Cash discounts of 2% through 5% inclusive, offering a minimum of thirty (30) days for payment will also be considered.
25. **ITEM AND CLASS AWARDS**– Items may be combined and awarded as a group to achieve a saving in ultimate cost by reduction of the number of orders to be issued.
26. **TIE BIDS**– Tie bids will be decided by the Corporation.
27. **NON-CONFORMING BIDS**– A bid on any basis other than that indicated in the proposal will be considered non-conforming and may not be accepted.
28. **DELIVERY HOURS**– Delivery shall be made between 8:00 A.M. and 12 Noon and 1:00 P.M. and 3:30 P.M. Monday through Friday, except holidays, and at other times by special arrangement.
29. **DELIVERY TIME**– Delivery time shall be computed in calendar days.
30. **DELIVERY DELAY**– (a) If the vendor cannot make delivery by the due date because of any fault of the Corporation, he shall notify the Purchasing Director in writing before the due date and the Director may grant him an allowance time. (b) If the delayed delivery is occasioned through no fault of the Corporation or the vendor, the vendor shall notify the Purchasing Director before the due date and the Purchasing Director may grant him an extension of time, or the Corporation may, in their discretion, obtain the items elsewhere without liability to the Corporation or to the vendor.
31. **INSPECTION**– Delivery will be examined by a representative of the Corporation at the delivery point or at any other place he may select.
32. **MISTAKE IN BID**– A bidder may, within 48 hours after the opening of bids and before any award is made, serve notice that he has made an honest mistake and furnish documentary proof of such honest mistake. However, bid may not be withdrawn unless authorized by the Corporation.
33. **REJECTED GOODS**– (a) The Corporation may withhold acceptance of, or reject any goods which, upon inspection, are found not to conform to the specification requirements. Upon written notification of rejection, goods shall be removed immediately by the vendor, at the vendor's expense. (b) Special Life and Health Hazards-Any food, drug or other commodity found by the Corporation to be unwholesome or otherwise unfit for human consumption or use shall not be removed by the vendor until it has been examined by the Corporation. If condemned, the commodity shall be disposed of as provided by law. (c) Foodstuffs and Drugs- No written notice of rejection need be given on foodstuffs and drugs. Unless otherwise directed, the vendor, on oral notice from the Corporation, shall immediately remove rejected foodstuffs and drugs and replace them with conforming foodstuffs and drugs.
34. **DUPLICATE AND OVERSHIPMENTS**– When a vendor ships a duplicate order or over ships on any order, the vendor shall upon written request of the purchasing activity, remove such goods at the vendor's expense. If such goods are not removed within (30) days, the Corporation reserves the right to dispose of it as its own property.
35. **NON-DELIVERY OR REJECTION**– If the vendor fails to make delivery within the time specified or if the delivery is rejected by the Corporation, the Corporation may obtain the material from other sources under the buy-against procedure set forth herein. If the New York City Division of Quality Assurance Inspector determines that items delivered under this agreement are substandard to specifications set forth in the agreement, and the Corporation due to urgent circumstances must utilize the items, the Corporation reserves the right to require the vendor to reimburse the Corporation for that amount of the total invoices to be deducted as documented by the New York City Quality Assurance Office.
36. **BUY-AGAINST PROCEDURE**– Should the new purchase price exceed the order price, the Corporation shall charge the vendor the excess cost, and the cost of reletting the order. Should the new purchase price be less than the order price, the vendor shall have no claim to the difference and the reletting cost shall be charged against him. All such charges against a vendor shall be deducted from money that is due him, the vendor shall pay the Corporation the amount of charges.
37. **PAYMENT**– The Corporation will make every effort to pay invoices on a timely basis after proper delivery of goods. The Corporation will also avail itself of cash discounts for payment within prescribed times whenever possible. It is understood that the cash discount period will date from the receipt of the goods or from the date of the invoice, whichever is later. Penalties and/or interest charges will not be paid.
38. **ASSIGNMENTS**– No Assignments shall be valid without the written consent of an Officer of the Corporation.
39. **SALES AND EXCISE TAXES**– The Corporation is exempt from the payment of sales and excise taxes.
40. **LIMITATION OF ACTION**– No action arising out of a Purchase Order for any cause whatsoever shall be maintained against the Corporation by a vendor or anyone claiming under a vendor unless such action shall be commenced within one year and a day after the cause of action accrues.
41. **ADDITIONAL TERMS**– The offer expressly limits the acceptance to the terms of the offer, and to no other terms. None of the provisions of a customer's bid, purchase order or acknowledgement thereof (whether printed, stamped, typed or written) except those specifying the quantity and/or quality of the products ordered and shipping information, shall be considered applicable to the contract resulting from the bid and/or any subsequent shipments thereunder.
42. **WARRANTIES**– No warranty, whether expressed or implied, may be excluded, modified or limited in any way whatsoever.

43. **INSOLVENCY OF SELLER**– The Corporation in its discretion retains the right to request proof of solvency.
44. **LAW APPLICABLE**– The Uniform Commercial Code as adopted by the State of New York (L. 1962, c 553) shall be applicable to any dispute that may arise under this purchase order or contract.
45. **ACTIONS AGAINST OR BY THE CORPORATION- NOTICE: VENUE**– (1) In every action against the Corporation for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty (30) days have elapsed since the demand, claim or claims upon which such action is founded were presented to a Director or Officer of the Corporation and that the Corporation has neglected or refused to make an adjustment of payment thereof for thirty (30) days after such presentment. (2) All actions against or by the Corporation of whatever nature shall be brought in the State of New York Supreme Court, in the county in which the cause of action arose and, if the cause of action arose outside the State of New York, then the action shall be brought in the State of New York Supreme Court, New York County.
46. **DISCRIMINATION IN EMPLOYMENT**– The Contractor with the Corporation agrees:
- (a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, sub-contractor, nor any person acting on behalf of such contractor or sub-contractor; shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relate.
- (b) That no contractor, sub-contractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color or national origin.
- (c) That there may be deducted from the amount payable to the contractor by the Corporation under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract.
- (d) That this contract may be canceled or terminated by the Corporation, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.
- (e) The contractor agrees to comply with Mayoral Executive Order 50, dated April 25, 1980.
47. **NON-COLLUSIVE BIDDING CERTIFICATION**– 1. (a) By submission of this bid, each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit a bid for the purpose of restricting competition.
- The fact that a bidder (a) has published price lists, rates or tariffs covering items being produced, (b) has performed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a)(2).
2. Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.
48. **EXAMINATION OF GOODS BEFORE AWARD**– The Corporation reserves the right, before making an award, to conduct examinations to determine whether or not goods proposed to be furnished meet the specifications and requirements set forth in the bidding documents. If such examination shows that the specifications or requirements are not complied with, or that the goods proposed to be furnished do not meet the specifications or requirements called for, the Corporation may reject such bid and may award the purchase order or contract to the lowest responsible bidder. It is understood, however, that the Corporation is not obligated to make any such examination before an award. It is further understood that the making or waiving of such examination in no way relieves the vendor from fulfilling and meeting the specifications, requirements and conditions of the purchase order or contract.
49. The Corporation reserves the right to reject all bids when it deems to be in the best interest of the Corporation to do so.
50. The Corporation reserves the right to waive any informalities, errors and/or mistakes or take such other action in a bid when it deems that such waiver is in the best interest of the Corporation.
51. The vendor (contractor) hereby assigns, sells and transfers to the New York City Health and Hospitals Corporation all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procured by the New York City Health and Hospitals Corporation under this contract.
52. This written agreement, including the terms and conditions of HHC 110-29 and HHC 110-96 contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.
53. **LATE BIDS**–The Corporation reserves the right to consider late bids, provided they have been sent through the U.S. Postal Service and bear a U.S. Postal Service cancellation dated at least one (1) day prior to the bid opening date. Postage meter dating will not be considered.
54. **LATE DELIVERY CHARGES**–In case the Contractor shall fail to complete the delivery of said material hereunder, or any part thereof, in accordance with the annexed specifications, and within the time stated, the Contractor must pay to the corporation an amount equal to one-fifth (1/5) of one per cent (1%) of the contract value of the supplies so delayed (or alternatively, \$ ) for each and every day such delay exceeds the time allowed herein for that purpose. Such sum, in view of the difficulty of accurately ascertaining the loss which the Corporation will

suffer by reason of delay, and not by way of penalty; and the Comptroller of the Corporation shall and may deduct and retain the amount of said charges out of the moneys which may be due or become due under this agreement. In the event the Contractor fails to perform on the date set for performance then, and in the event, the Corporation shall have further right at any time after the date set for performance, to buy against in accordance with Section No. 36 of Terms and Conditions HHC 110-29.

55. **TOXIC SUBSTANCE DISCLOSURE**– Article 28 of the New York State Labor Law requires the prompt submission of health hazard information relating to toxic substances contained in products. If the product provided falls under the provisions of this Act, and upon request of the New York City Health and Hospitals Corporation, the successful bidder must furnish such information within 48 hours.