



City of Roanoke Invitation for Bid

Date: October 10, 2007

Bid Number: 08-10-03		Bid Opening Date: October 22, 2007		
Road De-icing Salt for Snow and Ice Removal		Bid Opening Time: 2:00 p.m.		
Legal Name of Bidder:				
Mailing Address:				
Terms:				
Delivery:				
Phone:		Fax:		E-mail:
Acknowledge each addendum received:	# Date	# Date	# Date	# Date
Printed name of authorized person submitting Bid:				
Signature:			Date:	
Issued by:	City of Roanoke Purchasing Division Noel C. Taylor Municipal Building 215 Church Ave SW, Room 202 Roanoke, VA 24011		Lisa Guevara, Senior Buyer Phone: 540-853-5646 Fax: 540-853-1513 Email: lisa.guevara@roanokeva.gov	

THIS PUBLIC BODY DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS

No Bid may be withdrawn within a period of sixty (60) days after Bid opening except for clerical errors, as set forth in part (i) of Section 2.2-4330(A), Virginia Code, 1950, as amended.

The City reserves the right to cancel or reject any or all Bids and to waive any informalities in any Bid.

This Invitation for Bid consists of these parts:

1. All Sections of the Invitation for Bid.
2. Bid Form (Attachment A).
3. Sample Contract (Attachment B).

**CITY OF ROANOKE, VIRGINIA
INVITATION FOR BID NO. 08-10-03**

SECTION 1. PURPOSE.

The purpose of this Invitation for Bid (IFB) is the procurement of Road De-Icing Salt for Snow and Ice Removal. The City of Roanoke invites any qualified Bidder to respond to this IFB by submitting a Bid for such work, service, and/or items consistent with the terms and conditions herein set forth.

SECTION 2. BACKGROUND.

NOT USED.

SECTION 3. SERVICES AND/OR ITEMS REQUIRED.

A description and/or listing of the services and/or items that the Successful Bidder will be required to provide to the City under this IFB are those that are set forth below and/or referred to in any way in the sample contract, any terms and conditions, and/or any attachments referred to in this IFB. Each Bidder should carefully read and review all such documents.

A minimum initial purchase of 500 tons of coarse road de-icing salt will be ordered by the City on or about November 1, 2007 and shall be delivered prior to December 1, 2007 to the City-owned salt pit located at 1805 Courtland Road NE, Roanoke, Virginia, 24012. The de-icing salt shall conform to the current Virginia Department of Transportation (VDOT) Highway Specifications for de-icing salt and shall be treated to prevent caking. Any additional orders after the initial purchase of 500 tons will be at no guaranteed minimum quantity. Order quantity will be based solely on the requirements of the City, based on weather conditions during the Contract term. The Successful Bidder shall guarantee availability of up to 5,000 additional tons of such salt as needed by the City. Delivery of all salt ordered after the minimum initial order shall be made within fourteen (14) calendar days of order placement. Verification of tonnage delivered will be done by certified weigh ticket. Verification of quality shall be made by authorized City personnel by visual inspection.

The Successful Bidder shall post and maintain for the life of any resultant Contract a Performance Bond, as described in Exhibit-1 to Attachment B (Sample Agreement).

SECTION 4. NOT USED.

NOT USED.

SECTION 5. TERM OF CONTRACT.

- A. The term of any resultant Contract will be for five (5) months, from November 1, 2007, through March 31, 2008, at which time it will terminate, unless sooner terminated pursuant to the terms of the Contract or by law or unless renewed as set forth in such Contract.
- B. All terms and conditions shall remain in force for the term of the Contract. Prices shall not be increased during the term of the Contract.

SECTION 6. PAYMENT FOR SERVICES.

Payment(s) to the Successful Bidder shall be made in accordance with the provisions of the resultant Contract, subject to final approval by the City.

SECTION 7. GENERAL INSTRUCTIONS TO BIDDERS.

- A. Sealed Bids, to be considered, must be received by the City of Roanoke in the Purchasing Division, 215 Church Avenue, S.W., Noel C. Taylor Municipal Building, Room 202, Roanoke, Virginia 24011, at or before 2:00 p.m., local time, on October 22, 2007, at which time all Bids received will be publicly opened and read. Bids received after 2:00 p.m. will not be accepted or considered. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, or if it is not working, such time shall be determined by the Purchasing official who is to open the Bids. The IFB and related documents may be obtained during normal business hours from the Purchasing Division (540) 853-2871, or from the City web site at www.roanokeva.gov/purchasing ... Current Bid/RFP Requests.

The sealed envelope shall be clearly marked on the front of that envelope with the notation and completed information as follows: **“Sealed Bid Number: _____**
Opening Date: _____ and Time: _____”.

FAXED OR E-MAILED BIDS ARE NOT ACCEPTABLE.

- B. **If you download this IFB from the City website, and intend to submit a Bid, you must notify Purchasing that you should be added to the list of entities having received a copy of the IFB and want to receive any addenda issued. The City is not responsible for any IFB obtained from any source other than the City, and may not accept Bids from those who download this IFB and fail to notify the City of their intent to submit a Bid. Contact Purchasing by phone at 540.853.2871, by fax at 540.853.1513 or by email at lisa.guevara@roanokeva.gov.**
- C. Payment terms and delivery date(s) must be shown on the submitted Bid, if applicable.
- D. All Bids are to be submitted in accordance with all terms, conditions, rules, regulations, requirements and specifications identified in and by this IFB.
- E. Bids are to be on the Form as provided with or as otherwise specified in this IFB. If a Bid Form is provided, no changes are to be made to the Bid Form. Any changes to Bid amounts must be initialed.
- F. All Bids shall be signed by a person on behalf of the responding Bidder who is appropriately authorized to do so. The printed name of that authorized person should be shown as well. Any Bid submitted should be in the complete legal name of the Bidder responding. No Bid will be considered from any Bidder not properly licensed as may be required by law.
- G. Bids that have been appropriately opened cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia, §2.2-4330(A)(i), which allows withdrawal of a Bid due to an error such as an unintentional

arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid. Withdrawal must be requested within two days of the Bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid.

- H. All Bids, appropriately received, will be evaluated by considering the requirements set forth in the IFB, the quality, workmanship, economy of operation, suitability for intended purpose, delivery, payment terms and price of product or service being requested in this Bid.
- I. Bids are to be submitted on the type, brand, make, and/or kind of product and/or service requested or its approved equal, to be solely determined by the City, unless otherwise specified. Should a Bid be for a product and/or service as an equal, the name, make, model and type of that which is being Bid must be clearly stated. The Bid must also be accompanied by descriptive literature of the product or service Bid to allow for evaluation. Failure to provide this information may result in the Bid being considered non-responsive and may not be considered.
- J. If an award is made for the item(s) and/or services requested, a notice of award will be made which will be posted to a file in the City's Purchasing Division, Room 202, telephone no. 540-853-2871, and notification of such award will be made available for Public view in the lobby of the Noel C. Taylor Municipal Building, 215 Church Ave., S.W., Roanoke, VA. 24011. Purchase Orders, when awarded to the Successful Bidder, will be issued and sent to the address shown on the Bidder's Bid response. Upon completion of the Purchase Order, payment will be made only to the Successful Bidder at the address as shown on the Purchase Order. If the remittance address is other than the address on the Bid, it must be clearly noted and explained in the Bid. Purchase Order(s) will be paid only when the items and/or services have been supplied to and approved by the City.
- K. All items, identified in this IFB, are to be quoted and provided **F.O.B. DESTINATION-INSIDE DELIVERY**, unless otherwise stated in this IFB. All furniture items, if any, are to be put together and set in place.
- L. The City reserves the right to cancel this IFB or reject any or all Bids, to waive any informalities in any Bid and to purchase any whole or part of the items and/ or services listed in the IFB.
- M. Each Bidder is to notify in writing the Purchasing Division if any of Bidder's owners, officers, employees, or agents, or their immediate family members, is currently or has been in the past year, an employee of the City of Roanoke or has any responsibility or authority with the City that might affect the procurement transaction or any claim resulting therefrom. If so, please provide the Purchasing Division with the complete name and address of each such person and their connection to the City of Roanoke. Each Bidder is advised that the Ethics in Public Contracting and Conflicts of Interests Act of the Code of Virginia, as set forth in this IFB, apply to this IFB. Such information should be provided in writing before the Bid opening date or may also be provided with the Bid response.
- N. **The attention of each Bidder is directed to VA Code Sections 54.1-1100 et seq. which requires certain licenses for contractors, tradesmen and others. Each Bidder is**

required to determine which license, if any, it is required to have under such sections. Each Bidder shall so state on the Bid Form, or in its response, if no Bid Form is provided, whether it has a VA license under such sections and, if so, the type of license and/or license number. Failure to include this information may result in the Bid being rejected as non-responsive.

- O. **Bid Submittals shall include:**
1. **Page 1, Invitation for Bid**
 2. **Page 10, The Bid Form (Unit Cost shall include all labor, material, delivery costs, overhead and profit.)**

Failure to do so may result in the Bid being determined as non-responsive.

Questions or concerns may be addressed by contacting the Purchasing Division at (540) 853-2871.

Reply To:

**City of Roanoke Purchasing Division
Noel C. Taylor Municipal Building
215 Church Avenue SW, Room 202
Roanoke, Virginia 24011**

- P. Ethics in Public Contracting. The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this IFB.
- Q. Conflict of Interests Act. The provisions, requirements, and prohibitions as contained in Sections 2.2-3100, et seq., of the Virginia Code are applicable to this IFB.
- R. The procurement provisions of the Code of the City of Roanoke (1979), as amended, Sections 23.2-1, et seq., as well as the City Procurement Manual, apply to this IFB, unless specifically modified herein. The City's Procurement Manual can be reviewed at the Purchasing office.
- S. The City may request additional information, clarification, or presentations from any of the Bidders after review of the Bids received.
- T. The City is not liable for any costs incurred by any Bidder in connection with this IFB or any response by any Bidder to this IFB. The expenses incurred by a Bidder in the preparation, submission, and presentation of the Bid are the sole responsibility of the Bidder and may not be charged to the City.
- U. General and/or technical questions regarding the Scope of Services and/or items required, or procurement questions under this IFB may be directed to Lisa Guevara, Senior Buyer at 540-853-5646 or lisa.guevara@roanokeva.gov.
- V. Each Bidder is required to state if it has ever been debarred by any federal, state, or local government. If so, please give the details of each such matter and include this information with Bidder's response.

SECTION 8. MISCELLANEOUS.

- A. Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the IFB shall belong exclusively to the City and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. The trade secrets or proprietary information submitted by the Bidder shall not be subject to public disclosure under the *Freedom of Information Act*, unless otherwise required by law or a court. **However, the Bidder must invoke the protection of Section 2.2-4342(F) of the Code of Virginia, in writing, either before or at the time the data or other material is submitted.** The written notice must SPECIFICALLY identify the data or materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary, or trade secrets, is NOT ACCEPTABLE and may result in REJECTION of the Bid.
- B. Any interpretation, correction, or change of the IFB will be made by an addendum. Interpretations, corrections or changes of this IFB made in any other manner will not be binding and Bidders must not rely upon such interpretations, corrections, or changes. The City of Roanoke Purchasing Division will issue Addenda. Addenda will be faxed or mailed to all who are listed as having received the IFB package.
- C. No Bidder shall confer on any public employee having official responsibility for a purchasing transaction any payment, loan, subscription, advance, deposit or money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.
- D. The City may make investigations to determine the ability of the Bidder to perform the work and/or provide the services and/or items as described in this IFB. The City of Roanoke reserves the right to reject any Bid if the Bidder fails to satisfy the City of Roanoke that it is qualified to carry out the obligations and requirements requested in this IFB.
- E. The Successful Bidder must comply with the nondiscrimination provisions of Virginia Code Section 2.2-4311, which are incorporated herein by reference.
- F. The Successful Bidder must comply with the drug-free workplace provisions of Virginia Code Section 2.2-4312, which are incorporated herein by reference.
- G. It is the policy of the City of Roanoke to maximize participation by minority and women owned and small business enterprises in all aspects of City contracting opportunities.
- H. The Successful Bidder shall comply with all applicable City, State, and Federal laws, codes, provisions, and regulations.
- I. Providers of any outside services and/or items shall be subject to the same conditions and requirements as the Successful Bidder in regards to law, code, or regulation compliance. The City reserves the right of approval for any subcontract work, including the costs thereof.

SECTION 9. EVALUATION FOR LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

To determine the lowest responsive and responsible Bidder with respect to this Bid, the following factors, among such others as will protect and preserve the interest of the City may be considered:

- A. Total extended Bid price as set forth on the Bid Form;
- B. The specified terms and discounts, if any, of the Bid;
- C. The ability, capacity and skill of the Bidder to perform the contract and/or provide the services and/or items required;
- D. Whether the Bidder can perform the Contract and/or perform the services and/or provide the items promptly, or within the time specified, without delay or interference;
- E. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- F. The quality of performance on previous contracts or services;
- G. The previous and existing compliance by the Bidder with laws and ordinances relating to other contracts, purchase orders, items and/or services provided by Bidder in other matters.
- H. The equipment and facilities available to the Bidder to perform the Contract and/or provide the services and/or items requested in the IFB;
- I. The sufficiency of the financial resources and ability of the Bidder to perform the Contract and/or provide the services and/or items requested in the IFB;.
- J. The quality, availability, and adaptability of the supplies, materials, equipment and/or services the Bidder can provide for the particular use and/or work requested in the IFB;
- K. The ability of the Bidder to provide future maintenance, parts, and service for the items requested in the IFB;

SECTION 10. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE.

Successful Bidder, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by successful Bidder, or any of its subcontractors, under any resultant Contract. The policies and coverages required are those as may be referred to in the sample contract and/or the terms and conditions attached to this IFB, but shall include workers' compensation coverage regardless of the number of employees, unless otherwise approved by the City's Risk Manager.

SECTION 11. NEGOTIATIONS WITH LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

If the Bid by the lowest responsive and responsible Bidder exceeds available funds, the City reserves the right to negotiate with the apparent low Bidder pursuant to §2.2-4318 Code of Virginia. The conditions and procedures under which such negotiation may be undertaken are that the appropriate City officials shall determine that the lowest responsive and responsible Bid exceeds available funds and notify such Bidder in writing of its desire to negotiate. Thereafter, negotiations with the apparent low Bidder may be held to obtain a contract within available funds involving discussions of reduction of quantity, quality, or other cost saving mechanisms. Any such negotiated contract shall be subject to final approval of the City, in the sole discretion of the City.

SECTION 12. BID AWARD.

If an award of a Contract is made, it will be made to the lowest responsive and responsible Bidder and notice of the award or the intent to award will be made by posting a notice of such award or announcement in the foyer area of the 2nd Floor of the Noel C. Taylor Municipal Building at 215 Church Avenue, S.W., Roanoke, Virginia 24011.

SECTION 13. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

SECTION 14. HOLD HARMLESS AND INDEMNITY.

Successful Bidder shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Successful Bidder's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under the Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Successful Bidder agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of the Contract.

SECTION 15. PROTESTS.

Any Bidder who wishes to protest or object to any award made or other decisions Pursuant to this IFB may do so only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.

SECTION 16. COOPERATIVE PROCUREMENT.

The procurement of goods and/or services provided for in this Contract is being conducted pursuant to Virginia Code Section 2.2-4304. **Therefore, the Contractor agrees that it will contract with Roanoke County, City of Salem, Town of Vinton, or any other public agency or body in the Western Virginia Area within 60 miles of the City of Roanoke who so desires, to permit those public agencies or bodies to purchase such goods and/or services at contract prices, in accordance with the terms, conditions, and specifications of this procurement.** The Contractor shall deal directly with each public agency or body seeking to obtain any goods and/or services pursuant to this Contract or from this procurement and in accordance with Virginia Code Section 2.2-4304. The City of Roanoke shall not be responsible or liable for any costs, expenses, or any other matters of any type to either the Contractor or the public agency or body seeking to obtain any goods and/or services pursuant to this cooperative procurement provision.

SECTION 17. INFORMATION ON CONTRACT/PURCHASE ORDER TO BE AWARDED.

The Sample Contract marked as Attachment B to IFB No. 08-10-03 contains terms and conditions that the City plans to include in any contract/purchase order that may be awarded, but such terms and conditions may be added to, deleted, or modified as may be agreed to between the City and the Successful Bidder. However, if a Bidder has any objections to any of the terms or conditions set forth in the Sample or any changes or additions thereto that the Bidder wants to discuss before submitting a bid, the Bidder should set forth such objections, changes, or additions in written correspondence to the Purchasing Division at least five (5) days before the bid opening date for this IFB. Otherwise, submission of a bid by a Bidder will obligate such Bidder, if it is the Successful Bidder, to enter into a

contract/purchase order containing the same or substantially similar terms and conditions as contained in such Attachment, and to comply with such terms and conditions. Also, such terms and conditions, together with the requirements of this IFB, shall be deemed to be a part of any resultant Contract/Purchase Order that may be issued by the City to the Successful Bidder.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

**ATTACHMENT A
to
IFB #08-10-03**

BID FORM

In compliance with the request for bids, and subject to all specifications, terms, and conditions herein, the undersigned offers to furnish and deliver to the City of Roanoke the chemical as noted below.

ROAD DE-ICING SALT:

Bidder shall provide the total delivered price **PER TON**. \$_____.

(The price per ton shall apply to the initial minimum order of 500 tons AND to any subsequent quantity ordered, up to 5500 tons total.)

The first delivery of 500 tons of Road De-icing Salt shall be purchased and delivered prior to December 1, 2007.

Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the bid, or irregularities of any kind, may be rejected by the City as being nonresponsive. No changes are to be made to the Bid Form. Any changes to a Bid Amount must be initialed by the person signing the Bid Form.

The attention of each Bidder is directed to VA Code sections 54.1-1100, et seq. which requires certain licenses for contractors, tradesmen, and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Complete the following:

Bidder ___ does have ___ does not have a Virginia Contractor's License. (Check appropriate block)

If Bidder has a Virginia Contractor's License, circle the class Bidder has and list the number. Licensed "Class A", "Class B", or "Class C" Virginia Contractor Number _____

If Bidder has another type of Virginia License, please list the type and number:

Type of license _____ and number: _____.

Bidder is a ___ resident or ___ nonresident of Virginia. (Check appropriate blank. See VA Code Sections 54.1-1100, et seq.

The undersigned hereby agrees, if this Bid is accepted by the City, to provide the services and/or items in accordance with this Invitation for Bid and to execute a contract for such services and/or items.

Legal Name of Bidder

Date

Authorized Signature

Print or Type Name and Title

ATTACHMENT B

to

IFB #08-10-03

SAMPLE CONTRACT

CITY OF ROANOKE, VIRGINIA
CONTRACT

This Contract is dated _____, 20____, between the City of Roanoke, Virginia, a Virginia municipal corporation, hereinafter referred to as the "City" or "Owner", and

(legal name and address of contractor)

hereinafter referred to as the "Contractor," {NOTE: Use one of the following if applicable.} {a _____ corporation.} {an Individual.} {a _____ Partnership.} {a _____ Limited Liability Company.}

WITNESSETH:

WHEREAS, Contractor has been awarded this Contract by the City for furnishing all equipment, materials, goods, labor, and services necessary for Road De-Icing Salt for Snow and Ice Removal and associated work in accordance with this Contract and the documents referred to herein, all such items or services also being referred to hereinafter as the Work or Project.

NOW, THEREFORE, THE CITY AND THE CONTRACTOR AGREE AS FOLLOWS:

SECTION 1. WORK TO BE PERFORMED AND DOCUMENTS.

For and in consideration of the money hereinafter specified to be paid by the City to the Contractor for the Work provided for in this Contract to be performed by the Contractor, the Contractor hereby covenants and agrees with the City to fully perform the services, provide any materials called for, construct, and complete the Work called for by this Contract in a good and workmanlike manner in accordance with this Contract and the documents referred to herein in order to fully and properly complete this Contract within the time stipulated, time being made of the essence for this Contract. It is also agreed by the parties hereto that the documents to this Contract consist of this Contract and the following documents listed below (Contract Documents), all of which are and constitute a part of this Contract as if attached hereto or set out in full herein, viz:

1. Performance Bond (Exhibit-1)
2. Invitation for Bid #08-10-03, which is hereby incorporated by reference.

The parties agree that if there are any differences between the provisions of the above referenced documents, the provisions of the City documents and this Contract will control over any Contractor supplied documents or information.

SECTION 2. CONTRACT AMOUNT.

The City agrees to pay the Contractor for the Contractor's complete and satisfactory performance of the Work, in the manner and at the time set out in this Contract, an amount for the actual total of road de-icing salt (based on a per ton basis) but the total amount for all such requests will not exceed \$_____, as provided for in this Contract and that this Contract amount may be increased or decreased by additions and/or reductions in the Work as may be authorized and approved by the City, and the Contract amount may be decreased by the City's assessment of any damages against the Contractor, as may be provided for in this Contract or by law, and the City retains the right of setoff as to any amounts of money the Contractor may owe the City. However, Contractor further acknowledges and agrees that any request for Contractor to deliver goods under this Contract is in the sole discretion of the City and that there is no guarantee of any minimum amount of goods that may be requested by the City.

SECTION 3. TERM OF CONTRACT.

The term of this Contract will be for five (5) months from November 1, 2007 through March 31, 2008, at which time it will terminate, unless sooner terminated pursuant to the terms of the Contract or by law.

SECTION 4. SCOPE OF WORK

A minimum initial purchase of 500 tons of coarse road de-icing salt will be ordered by the City on or about November 1, 2007 and shall be delivered prior to December 1, 2007 to the City-owned salt pit located at 1805 Courtland Road NE, Roanoke, Virginia, 24012. The de-icing salt shall conform to the current Virginia Department of Transportation (VDOT) Highway Specifications for de-icing salt and shall be treated to prevent caking. Any additional orders after the initial purchase of 500 tons will be at no guaranteed minimum quantity. Order quantity will be based solely on the requirements of the City, based on weather conditions during the Contract term. The Contractor shall guarantee availability of up to 5,000 additional tons of such salt as needed by the City. Delivery of all salt ordered after the minimum initial order shall be made within fourteen (14) calendar days of order placement. Verification of tonnage delivered will be done by certified weigh ticket. Verification of quality shall be made by authorized City personnel by visual inspection.

SECTION 5. TIME OF PERFORMANCE.

The Contractor shall commence the Work to be performed under this Contract on an as requested basis established and fixed for such commencement by written notice (which may be initially given verbally in an emergency situation) to proceed given by the City representative to the Contractor, and the Contractor covenants and agrees to fully construct, perform, and complete the Work and/or provide the goods called for by this Contract established by such notice. The Contractor further agrees that the Work shall be started promptly upon receipt of such notice and shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the Contract Documents and that Contractor will cooperate and coordinate with the other City contractors or employees doing other work or using the area where Contractor is working.

SECTION 6. PAYMENT.

The City agrees to pay Contractor for the Contractor's complete and satisfactory performance of the Agreement, in the manner and at the time set out in this Contract, amounts for the receipt of between 500 and 5500 tons of road de-icing salt as provided for in the Agreement and that this Agreement amount may be increased or decreased by additions and/or reductions in the quantity and type of items as may be authorized and approved by the City, and the Agreement amount may be decreased by the City's assessment of any damages against the Contractor, as may be provided for in this Assessment of by law. Road de-icing salt will be procured at the rate of \$_____ per ton with an initial minimum order of 500 tons (\$_____). In no event shall the total amount of this Agreement exceed 5500 tons (\$_____). The City retains the right to setoff as to any amounts of money Contractor may owe the City. A written progress report may be requested by the City to accompany payment request and, if so, such progress report shall detail the work completed. Also, sufficient documentation of all costs, expenses, materials supplied, and/or hours worked may be requested by the City and, if so, may be required prior to the processing of any such request for payment. Payment will only be made for work actually performed, services actually supplied, and/or materials or goods furnished to the City, all of which need to be approved and accepted by the City prior to such payment, unless otherwise provided for in the Contract documents. Once a payment request has been received by the City, the City will process such payment request. If there are any objections or problems with the payment request, the City will notify the Contractor of such matters. If the payment request is approved and accepted by the City, payment will be made by the City to the Contractor not more than 30 days after such request has been approved.

SECTION 7. PAYMENTS TO OTHERS BY CONTRACTOR.

The Contractor agrees that Contractor will comply with the requirements of Section 2.2-4354 of the Virginia Code regarding Contractor's payment to other entities and the Contractor will take one of the two actions permitted therein within 7 days after receipt of amounts paid to Contractor by the City. Contractor further agrees that the Contractor shall indemnify and hold the City harmless for any lawful claims resulting from the failure of the Contractor to make prompt payments to all persons supplying the Contractor equipment, labor, tools, or material in connection with the work provided for in the Contract. In the event of such claims, the City may, in the City's sole discretion, after providing written notice to the Contractor, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if the City determines it to be appropriate to do so.

SECTION 8. HOLD HARMLESS AND INDEMNITY.

Contractor shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Contractor's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Contractor agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

SECTION 9. COMPLIANCE WITH LAWS AND REGULATIONS.

Contractor agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements.

SECTION 10. INDEPENDENT CONTRACTOR.

The relationship between Contractor and the City is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Contractor shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. Contractor shall be responsible for causing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subcontractors. Contractor will be responsible for all actions of any of its subcontractors, and that they are properly licensed.

SECTION 11. REPORTS, RECORDS, AND AUDIT.

Contractor agrees to maintain all books, records and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. The City, its authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during such period, upon prior written notice to Contractor.

SECTION 12. DEFAULT.

If Contractor refuses or fails to perform any of the terms of this Contract, including poor services, work or materials, the City may, by written notice to Contractor, terminate this Contract in whole or in part. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default, and Contractor shall be liable for any damages to the City resulting from Contractor's default. The City further reserves the right to immediately obtain such work or services from other entities in the event of Contractor's default.

SECTION 13. NONWAIVER.

Contractor agrees that the City's waiver or failure to enforce or require performance of any term or condition of this Contract or the City's waiver of any particular breach of this Contract by the Contractor extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the Contractor and does not bar the City from requiring the Contractor to comply with all the terms and conditions of the Contract and does not bar the City from asserting any and all rights and/or remedies it has or might have against the Contractor under this Contract or by law.

SECTION 14. FORUM SELECTION AND CHOICE OF LAW.

By virtue of entering into this Contract, Contractor submits itself to a court of competent jurisdiction in the City of Roanoke, Virginia, and further agrees that this Contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

SECTION 15. SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall not be affected and all other terms and conditions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

SECTION 16. NONDISCRIMINATION.

- A. During the performance of this Contract, Contractor agrees as follows:
- i. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. Contractor in all solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- B. Contractor will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 17. DRUG-FREE WORKPLACE.

- A. During the performance of this Contract, Contractor agrees to (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SECTION 18. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

SECTION 19. ASSIGNMENT.

Contractor may not assign or transfer this Contract in whole or in part except with the prior written consent of the City, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Contractor from any of the covenants or undertakings contained in this Contract and the Contractor shall remain liable for the Contract during the entire term thereof.

SECTION 20. CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Contract or notice from the City to the Contractor that the City disputes the amount of Contractor's request for final payment. However, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Contractor. A written decision upon any such claims will be made by the City Manager or the City Manager's designee (hereafter City Manager) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the City Manager. The Contractor may not institute legal action prior to receipt of the City's decision on the claim unless the City Manager fails to render such decision within 120 days from submittal of Contractor's claim. The decision of the City Manager shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Va. Code. Failure of the City to render a decision within said 120 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the City's failure to render a decision within said 120 days shall be Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365 of the Va. Code has been established for contractual claims under this Contract.

SECTION 21. SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Contract shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 22. HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

SECTION 23. COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 24. AUTHORITY TO SIGN.

The persons who have executed this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the party for whom they are signing.

SECTION 25. NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To City: City of Roanoke
Department of Transportation – Streets and Traffic
Attn: David Dooley, Maintenance Superintendent
1802 Courtland Avenue
Roanoke, Virginia 24012

Facsimile: (540) 853-1270

Copy to: City of Roanoke
Purchasing Division
Attn: Senior Buyer
Noel C. Taylor Municipal Building Room 202
Roanoke, Virginia 24011

Facsimile: (540) 853.1513

If to Contractor: _____

Facsimile: _____

SECTION 26. PROTECTING PERSONS AND PROPERTY.

The Contractor expressly undertakes, both directly and through its subcontractors, to take every reasonable precaution at all times for the protection of all persons and property at the location of the Work or in the vicinity of the Work or that may be affected by the Contractor's operation in connection with the Work. The Contractor will maintain adequate protection of all Contractor's Work to prevent damage to it and shall protect the City's property from any injury or loss arising in connection with this Contract and to protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Contractor agrees to be responsible for the entire Work and will be liable for all damages to the Work, including, but not limited to, damages to any property of the City or to any property in the vicinity or adjacent to the Work. All damage with respect to the Work caused by vandalism, weather, or any other cause, other than resulting from the sole negligence of the City, shall be the responsibility of the Contractor. Furthermore, any damage to concrete curbs, gutters, sidewalks, or any existing facility, whether owned by the City or others that may occur during the Work shall be repaired or replaced by the Contractor, at Contractor's sole expense, as directed by and to the satisfaction of the City.

SECTION 27. WARRANTY OF MATERIAL AND WORKMANSHIP.

The Contractor warrants that, unless otherwise specified, all material and equipment used in the work under this Contract shall be new, in first class condition, and in accordance with the Contract documents. The Contractor further warrants that all workmanship shall be of the highest quality in accordance with the Contract and shall be performed by persons qualified in their respective trades. This warranty of material and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations under this Contract, or that may arise by law.

Contractor agrees that Contractor shall repair or replace, at Contractor's sole expense, and to the satisfaction of the City, any work, material, equipment, or part of the Work that is found by the City to be defective or not in accordance with the terms of this Contract.

SECTION 28. SUSPENSION OR TERMINATION OF CONTRACT BY CITY.

- A. The City, at any time, may order Contractor to immediately stop work on this Contract, and/or by seven days written notice may terminate this Contract, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract whether completed or in process (unless otherwise directed by the notice).
1. If the termination or stop work order is due to the failure of the Contractor to fulfill any of its Contract obligations, the City may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the City for any damages allowed by law, and upon demand of City shall promptly pay the same to City .
 2. Should the Contract be terminated or work is stopped not due in any way to the fault of the Contractor, the Contractor shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by the City and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.
 3. The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and City may pursue any and all such rights and remedies against Contractor as it deems appropriate.

SECTION 29. ETHICS IN PUBLIC CONTRACTING.

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Va. Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Contract.

SECTION 30. ENTIRE CONTRACT.

This Contract constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

WITNESS:

(Full Legal Name of Contractor)

By _____

Printed Name and Title

Printed Name and Title

(SEAL)

CITY OF ROANOKE, VIRGINIA

WITNESS:

Name/Title

By _____
(City Manager or authorized City representative)

Printed Name and Title

Printed Name and Title

Approved as to form:

Appropriation and Funds Required
for this Contract Certified:

City Attorney

Director of Finance

Approved as to Execution:

Account # _____

City Attorney

Date _____

**EXHIBIT 1
TO SAMPLE CONTRACT**
reference: IFB #08-10-03

CITY OF ROANOKE, VIRGINIA
CONTRACTOR'S PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

that _____

(Insert full name or legal title and address of Contractor)

as Principal, (hereinafter referred to as "Contractor"),

and _____

(Insert full name or legal title and address of Surety)

Telephone: _____ Fax: _____

as Surety (hereinafter referred to as "Surety"), are held and firmly bound unto the City of Roanoke, Virginia, a municipal corporation, 215 Church Avenue, S.W., Noel C. Taylor Municipal Building, Room 350, Roanoke, Virginia 24011, as Obligee (hereinafter referred to as "City" or "Owner"), in the amount of _____

Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents to the terms of this bond.

WHEREAS, Contractor has entered into a Contract with the City dated _____, 20____, incorporating certain specifications and drawings prepared by:

(Insert full name or legal title and address)

(which Contract, specifications, drawings, and other Contract Documents are hereinafter referred to collectively as the "Contract") for a fully functional and properly operating project, namely _____

_____ which Contract is expressly incorporated herein by reference and made a part of this bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall promptly and faithfully perform the Contract, in strict conformity with each and every requirement of the Contract, then this obligation shall be null and void; otherwise, this Performance Bond shall remain in full force and effect and is subject to the following conditions:

- a. Any alteration which may be made in the terms of the Contract, including, without limitation, the amount to be paid or the work to be done under it, or the giving by the City of any extension of time for the performance of the Contract or any other forbearance of any nature whatsoever on the part of either the City or the Contractor to the other shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors, or assigns from their liability hereunder, and notice of such alteration, extension, or forbearance is hereby expressly waived by Surety.
- b. IT IS NOT INTENDED BY ANY OF THE PROVISIONS OF ANY PART OF THIS BOND TO CONFER A BENEFIT UPON ANY OTHER PERSON OR ENTITY NOT A PARTY TO THIS PERFORMANCE BOND OR TO AUTHORIZE ANY PERSON OR ENTITY NOT A PARTY TO THIS BOND TO MAINTAIN A SUIT PURSUANT TO THE TERMS OR PROVISIONS OF THIS BOND OTHER THAN THE CITY OR ITS SUCCESSORS OR ASSIGNS.
- c. The Surety hereby submits itself to a court of competent jurisdiction in Roanoke, Virginia, and agrees that any suit or action hereunder shall be brought only in a Virginia court of competent jurisdiction in the City of Roanoke or in the United States District Court for the Western District of Virginia, Roanoke Division, and not elsewhere.
- d. Any suit under this bond must be instituted within one (1) year after (i) completion of the Contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
- e. The provisions of this bond shall be governed by and interpreted to be consistent with the laws of the Commonwealth of Virginia.

SIGNED AND SEALED this ____ day of _____, 20____, in the presence of:

WITNESS:

_____ CONTRACTOR

By: _____ (Seal)

_____ (Type Name and Title)

WITNESS:

_____ SURETY

By: _____ (Seal)
Attorney-in-Fact

_____ (Type Name and Title)

(Attorneys-in-fact affix seal and attach original or certified copy of current power of attorney.)