

**TOWN OF COHASSET
COHASSET DEPARTMENT OF PUBLIC WORKS
INVITATION FOR BIDS**

**MISCELLANEOUS CONSTRUCTION EQUIPMENT RENTAL and LABOR
CONTRACT # 2022-03R**

August 24, 2022

**BIDS DUE:
September 13, 2022 10:00am**

*Late Bids will be rejected

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SAMPLE TOWN OF COHASSET CONTRACT

(LEGAL NOTICE)

Section 1 PROCUREMENT SCOPE

The Town of Cohasset invites sealed bids to provide rental equipment, operators and laborers to provide infrastructure construction under M.G. L. Ch. 30, s. 39 and M.G.L. Ch. 149, s.27. Construction includes, but will not be limited, to roadway, sitework, drainage, and seawall construction.

The Town of Cohasset intends to award multiple contracts from this solicitation in order to ensure that a variety of equipment is available to provide backup for any and all Town projects. No guarantee of work is being made when a contract is awarded as a result of this solicitation.

1.1 Authority

Invitation for Bid procedures and award of the contract shall be in accordance with Massachusetts General Law, Chapter 30, section 39 and Massachusetts General Law, Chapter 149, plus all applicable Federal, State and Local laws and regulations.

1.2 Withdraw, Modify and Amend Bids

Bidders who wish to withdraw, modify or amend their bid must do so in writing utilizing electronic mail to the Town of Cohasset, Contracts & Procurement Manager, Michelle Leary mleary@cohassetma.org, no later than the time and date set forth herein for the receipt of the bids. All such withdrawals, modifications or amendments must so state in the subject line of the email correspondence. Any withdrawal, modification or amendment arriving after the date and time set forth for accepting responses will not be considered. After the opening of the bids, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the Town of Cohasset or fair competition. Minor informalities will be waived at the discretion of the Town of Cohasset.

1.3 Notice of Contract Award

The Town of Cohasset is soliciting bids to provide the services set for in Section 4, Scope of Services. It is the Town's intent to award multiple contracts to the lowest responsive and responsible bidders offering the lowest grand totals as set forth in their respective Bid Forms. Contracts shall be awarded within 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids. Multiple contracts will be awarded to the most responsive and responsible bidders, offering the lowest price. In the event that one contractor is unable to provide the requested services under the contract, The Town shall request the services of the second, most responsive and responsible bidder offering the second lowest price. If that bidder is unable to provide such services, the contract shall go to the third most responsive and responsible bidder offering the third lowest price and so forth

Nothing in this Notice of Award is to be considered a waiver of the Town's rights against a prospective Contractor who fails to execute a contract when it is awarded.

1.4 Bid Security

Each bid must be accompanied by a certified check of the bidder or a bid bond duly executed by the bidder as principal and having surety thereon a surety company approved by the Town, in the amount of \$5,000, payable to the "Town of Cohasset", and must be filed with the original bid.

Within 30 days, Saturdays, Sundays and legal holidays excepted, after the formal opening of the bids, such deposit will be returned within seven working days after the execution of the contract by the successful bidder.

1.5 Bid Bonds

The successful bidder is required to furnish a performance bond in the amount of \$10,000.

Should the successful bidder fail or refuse to execute and deliver the contract with the Performance Bond within the required seven working days after he/she has received notice of the acceptance of this bid, he/she shall forfeit to the Owner as liquidated damages for such failure or refusal, the security deposit with his/her bid.

1.6 Familiarity with Requirements

Bidders are to thoroughly familiarize themselves with the requirements of this Invitation for Bids. Ignorance of the requirements will not relieve the bidder from any obligations or liabilities of any contract(s) issued as a result of this Invitation for Bids.

1.7 Independent Party

Under this Invitation for Bids, the successful bidder declares itself to be at all times acting and performing as an independent party and nothing in this Invitation for Bids or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Bidder and the Town of Cohasset.

1.8 Conflict of Interest

No officer or employee of the Town of Cohasset shall participate in any decision relating to any contract which would affect their financial or personal interest or the interest of any corporation, partnership, sole proprietorship or association in which they are directly or indirectly interested.

1.9 Political Activity Prohibited

None of the services to be provided by any bidder shall be used for any partisan political activity or to further the election of any candidate for public office.

1.10 Assignment by Contractor

The successful bidder or contractor shall not assign in whole or in part or otherwise transfer any interest in any contract without the written consent of the Town of Cohasset, provided however, that the present and prospective claims for money due owing to the Contractor from the Town of Cohasset or any other Buyer may be assigned to a bank or trust company, or to a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) without such consent so long as notice of such assignment is promptly furnished to the Town of Cohasset. Any complete or partial assignment of the contractor's or successful bidder's interest in any such contract shall require the assignee, at the Town of Cohasset's discretion, to supply such further information as the Town of Cohasset deems necessary to comply with the Town of Cohasset's rules and regulations governing contracts for services. Any such assignment, in whole or in part, shall also be expressly made subject to all defenses, set-offs or counter claims which would have been made available to the Town of Cohasset against the successful bidder in the absence of such assignment.

1.11 Subcontracting

None of the services to be provided by the contractor pursuant to any contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership, or any other such entity without the prior written approval of the Town of Cohasset. All intended subcontracts shall be provisions, which are functionally identical to and consistent with the language of this Invitation for Bids.

1.12 Choice of Law

Any contracts awarded as a result of this Invitation for Bids shall be construed under the laws of the Commonwealth of Massachusetts. The successful bidder and agents thereof agree to bring any federal or state legal proceedings arising from any such contract in which the Town of Cohasset is a party in a court of competent jurisdiction, within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights any party may have to intervene in any action in any court or wherever pending in which the other is a party.

1.13 Notices

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when sent via electronic mail (e-mail), given in person to either party or deposited in the U.S. Mail, postage prepaid and addressed to the persons indicated in any contract or as specified by any amendment hereto.

1.14 Severable Sections Do Not Affect Entire Contract

If any provision of the Invitation for Bids or any subsequent contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under the provision. The remainder of the Invitation for Bids and any subsequent contract shall remain in full force and effect and enforceable to the fullest extent provided by law.

1.15 Contract Performance

The failure of any party to insist in any one or more situations, upon performance of any of the terms or provisions of any part of this Invitation for Bids or resulting contract shall not be considered as a waiver or relinquishment of the right of either party to future performance of any such term or provision, and the rights and obligations of the parties to such future performance shall continue in full force and effect.

1.16 Liquidated Damages for Failure to Enter into a Contract

The successful bidder, upon its failure or refusal to execute and deliver the contract, bonds and certificates of insurance required within seven days after receipt of notice of the Award of the Bid, shall forfeit to the Town of Cohasset, as liquidated damages for such failure or refusal, the security deposited with its bid, provided that the amount forfeited shall not exceed the difference between its bid price and the bid price of the next lowest, responsive and responsible bidder. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the bidder, its bid deposit shall be returned.

1.17 Liquidated Damages for Failure to Perform Under Terms of the Contract

Should the successful bidder fail to commence or diligently perform according to the terms of the contract, the successful bidder agrees to pay the Town of Cohasset, as liquidated damages, Two Hundred Fifty Dollars (\$250.00) per calendar day that the successful bidder fails to commence or diligently perform the work in accordance with the contract documents and/or is in violation of the contract. Liquidated damages assessed under this provision shall be deducted from any payment(s) due to the successful bidder.

1.18 Funding & Fiscal Year Appropriation

Appropriations for expenditures by the Town of Cohasset, and authorizations to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year for the Town of Cohasset begins on July 1st and ends on June 30th of the following year. The obligations of the Town of Cohasset under any contract resulting from this Invitation for Bids for any subsequent fiscal year following the fiscal year in which the initial contract is awarded is subject to the appropriations to the Town of Cohasset of funds sufficient to discharge its obligations, which accrue in such subsequent fiscal year, and to the authorization to spend such funds for the purposes of the Invitation for Bids. In the absence of such appropriation or authorization, any contract resulting from this Invitation for Bids shall be terminated immediately without liability for damages, penalties or other charges arising from early termination. Expenditures for contracted services, which will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated and authorized for the said fiscal year.

1.19 Procurement Calendar

The Town of Cohasset is soliciting bids that will result in multiple contracts. The schedule of events for this solicitation, subject to amendment by the Town of Cohasset is:

IFB Released:	Wednesday, August 24, 2022 @ 9:00am
Questions Submitted:	Thursday, August 31, 2022 @ 12:00 pm
Questions Answered:	Tuesday, September 2, 2022 @ 5:00 pm
Bids Submitted:	Tuesday, September 13, 2022 @ 10:00 am
Contract Award:	October 1, 2022

1.20 Duration of Contract

The initial term of this contract is from October 1, 2022 to June 30, 2023. The Town of Cohasset reserves the right to extend all contracts awarded for an additional two years, in one year increments, July 1, 2023 through June 30, 2025. The Town of Cohasset may cancel this contract at any time after the initial term with a 90 day written notice to the Contractor. The Contractor may cancel the renewal of this contract upon providing 120 day notice prior to the contract expiration for the Town of Cohasset.

END OF SECTION

Section 2 General Bid Information

2.1 Required IFB sections

The Bidder must provide in its bid, a reply to the particular specifications included in the Invitation for Bids.

2.2 Minority/Women Owned Business Enterprise, Service Disabled Veteran Owned Business

In accordance with the M/WBE's and the SDVOB Plan for the Town of Cohasset, all qualified Minority Business Enterprises (MBE), Women Owned Business Enterprises (WBE) and Service Disabled Veteran Owned Business (SDVOB) enterprises are strongly encouraged to submit bids in response to this Invitation for Bids. For the purpose of this IFB, the terms MBE, WBE and SDVOB shall mean a vendor who is certified as an MBE, WBE or SDVOB through the Supplier Diversity Office of the Commonwealth of Massachusetts at the time the Vendor's bid is submitted.

All minority and service disabled veteran owned businesses are encouraged to apply for certification. For Further information on MBE/WME and SDVOB certifications, contact the Supplier Diversity Office, Commonwealth of Massachusetts Operational Services Division at 617-720-3300.

2.3 The Contract Award

Based upon the bids received, the contract will be awarded to the most responsive, responsible bidders, offering the best price. The determination of "best price" will take into consideration the references, experience, and the projected annual cost for each term of the contract including price changes, if any. The Town will also consider its time requirements and administrative disruption.

2.4 ADA, Regulatory, Compliance and Standards

Bidders are expected to provide services and commodities that are in compliance with Section 504 of the Federal Rehabilitation Act of 1973, the American with Disabilities Act of 1990, the Telecommunications Act of 1996, and all successor federal and related legislation throughout the term of any contract resulting from this solicitation.

2.5 Indemnification

Any successor, in exchange for entering into an agreement or contract resulting from this Invitation for Bids shall indemnify and hold harmless the Town of Cohasset and all persons acting for or on behalf of either of them from all suits and claims against them, or either of them, arising from or occasioned by the use of any service, material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such service, material, equipment or apparatus, or any part thereof, in any suit is held to constitute infringement, the successful bidder, within a reasonable time will, at its expense, and as the Town of Cohasset may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus or remove the material, equipment or

apparatus and refund the amounts paid therefore. Said indemnification includes reasonable attorney's fees related thereto.

Furthermore, any successful bidder in exchange for entering into any agreement or contract resulting from this Invitation for Bids agrees to indemnify and hold harmless, release and forever discharge the Town of Cohasset as well as their officers, agents and employees as well as their successors and assigns from any and all manner of actions, suits, claims, demands, judgements, damages and liability in law and equity which may arise or result from performance under this contract. This includes any discrimination, labor or employment claims against the successful bidder and the Town of Cohasset and any and all manners of legal action brought against the successful bidder and/or the Town of Cohasset. Said indemnification includes reasonable attorney's fees related thereto.

2.6 Federal, State and Local Laws

The successful bidder will comply with all applicable Federal, State and Local laws and regulations.

2.7 Tax Exempt

Purchases made by municipalities and government are exempt from Federal Excise Taxes and Massachusetts Sales Taxes and bid prices must show exclusion of such taxes. Tax exemption certificates will be furnished as required.

2.8 Insurance

The successful bidder, in addition to any insurance by State or Local law, shall maintain in force during the term of any contract(s) issued as a result of this Invitation for Bids, the following insurance issued by an insurance company licensed to do business in the Commonwealth of Massachusetts. Failure to provide or maintain such insurance shall be grounds to reject a bid or execute a contract.

- a. Public Commercial Liability Coverage in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Automobile Liability Insurance coverage in the amount of \$500,000.00 per person, \$1,000,000.00 per occurrence. Property Damage Insurance in the amount of \$250,000.00.
- b. Worker's Compensation Insurance in the amounts required by Massachusetts Law.
- c. Evidence of such insurance must name the Town of Cohasset as the additional insured as well as the successful bidder.
- d. An Insurance Certificate giving evidence if the insurance must be delivered to the Town of Cohasset within seven business days by the successful bidder receiving the award of this Invitation for Bids.

2.9 Confidentiality

The successful bidder will comply with all provisions of Executive Order No. 11246 of September 24, 1975, and the successful bidder acknowledges that in performance of any contract resulting from the Invitation for Bids, it may require or have access to “personal data” and become a “holder” of personal data as defined by M.G.L. c. 66A. The successful bidder shall comply with all laws and regulations relating to confidentiality and privacy, including but not limited to any rules and regulations of the Town of Cohasset. The successful bidder shall at times recognize the Town of Cohasset’s ownership of personal data and the exclusive right and jurisdiction of the Town, and “data subjects” (as defined in Chapter 66A) to control the use of personal data. The successful bidder shall immediately notify the Town of Cohasset both orally and in writing if any personal data in its possession is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the Town of Cohasset. The successful bidder shall cooperate with the Town of Cohasset in taking all steps it deems advisable to enjoin, misuse, regain possession and/or otherwise protect the Town of Cohasset’s rights and data subjects’ privacy. The successful bidder shall allow access to any personal data held in their possession solely to those employees of the Town of Cohasset who require such information in the performance of their occupational responsibilities. All personal data held by the successful bidder shall be delivered to the Town of Cohasset within 14 calendar days after termination of any contract resulting from this Invitation for Bids. The successful bidder agrees to take reasonable steps to insure the physical security of such data under its control, including, but not limited to, fire protection, protection against smoke and water damage, alarm system, locked removal of manually held data, passwords, access logs, badges or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data, limited terminal access, access to input documents and design provisions to limit use of personal data. The successful bidder agrees that it will inform each of its employees having any involvement with their personal data or confidentiality. The Town of Cohasset shall have access at all times to any data maintained pursuant to any contract resulting from this Invitation for Bids, without the consent of the data subject. The successful bidder shall use personal data, and material derived from such data, only as necessary to the performance of the subject contract, Failure of the successful bidder to comply with the requirements of this section may be grounds for terminating any contract resulting from this Invitation for Bids.

2.10 Force Majeure

Neither the Town of Cohasset, nor the successful bidder shall be liable to the other, nor deemed to be in breach of any contract resulting from this Invitation for Bids for failure or delay in rendering performance rising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to, Acts of God or the public enemy, wars, fires, flood, epidemics, quarantine restrictions, strikes, unforeseen freight embargos or unusually severe weather. Dates and times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other party promptly of the existence and nature of such a delay. It is agreed that since the performance dates of the subject contract are of the essence and important to the implementation of essential Town of Cohasset work, continued failure to perform for periods aggregating 45 or more calendar days, even for causes beyond

the control of the successful bidder, shall afford the Town of Cohasset the right to terminate any contract resulting from this Invitation for Bids without assessment of termination costs or penalties.

2.11 Equal Opportunity

During the performance of this contract, the successful bidder agrees as follows:

- a. The successful bidder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry. The successful bidder will take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry.
- b. The successful bidder will comply with all provisions of Executive Order No. 11246 of September 24, 1975 and all of the rules, regulations and relevant orders of the Secretary of Labor.

2.12 Termination

The bidders for this Invitation for Bids should note that the Town of Cohasset reserves the right to terminate any contract resulting from this Invitation for Bids in whole or in part, by written notice:

- **WITHOUT CAUSE:** Either party may terminate the subject contract by giving written notice to the other party at least 60 calendar days prior to the normal contractual effective date of termination as stated or such other period as is mutually agreed upon in advance by the parties.
- **FOR CAUSE:** If, in the opinion of the Town of Cohasset, the successful bidder fails to fulfill its obligations, the Town of Cohasset may terminate any contract resulting from this Invitation for Bids by giving 30 days written notice to the successful bidder at any time. The subject contract shall be terminated immediately in the event of fraud or program abuse.
- **EMERGENCY:** The Town of Cohasset may terminate or suspend any contract resulting from this Invitation for Bids up to 60 calendar days by providing written notice to the successful bidder, stating the grounds for the Town of Cohasset's action, in the form of U.S. Mail, hand carried letter, or other appropriate written means if the Town of Cohasset determined that immediate action is necessary to protect Town, State and/or Federal funds or property, or to protect persons from injury. Such termination or suspension shall be effective upon receipt of notice of either suspension or termination by the successful bidder. In the case of a suspension under this paragraph, the notice of suspension shall be accompanied by instructions from the Town of Cohasset specifying requisite actions by the successful bidder to remove the suspension, proposed timetable for meeting those requirements and a description by the Town of Cohasset of allowable activities and costs, if any, during the suspension period. Failure by the successful

bidder to remedy the stated deficiencies according to the timetable prescribed by the Town of Cohasset shall be cause for immediate termination.

- **Elimination or Reduction of Funding:** In the event of a reduction of funding for any reason, the Town of Cohasset may terminate any contract resulting for this Invitation for Bids by providing notice of termination in a reasonable time. The Town of Cohasset may provide a conditional notice of termination with a proposed amendment to the subject contract. Any such notice shall provide that the subject contract will terminate unless the successful bidder submits to the Town of Cohasset a properly signed copy of the Amendment, or such modification form of amendment as may be agreeable to the Town of Cohasset, within 20 calendar days after the date of the conditional notice of termination, or such other time as it is otherwise specified in the conditional notice.
- **Office's Remedies:** Upon termination for Cause or for Emergencies: Notwithstanding the terms contained in this section, in the event of termination, the successful bidder shall not be relieved of liability to the Town of Cohasset by virtue of any breach of any contract resulting from this Invitation for Bids by the successful bidder. In the event of termination pursuant to this section, the Town of Cohasset may withhold any payments to the successful bidder for the purpose of set-off until such time as the exact amount of damages due to the Town of Cohasset from the successful bidder is determined. In addition to and notwithstanding the above, the successful bidder covenants and agrees that in the event of termination of any contract resulting from this Invitation for Bids, the successful bidder shall pay to the Town of Cohasset as damages: (a) such sum as, at the time of termination, the Town of Cohasset reasonably determines that is, shall require to compensate a subsequent contractor to complete the delivery of service and (b) the sum, reasonably determined by the Town of Cohasset, which will compensate the Town of Cohasset for all the direct and indirect costs resulting from delay in the delivery of services upon the successful bidder's default. The successful bidder further covenants and agrees with the Town of Cohasset that the successful bidder shall pay all of the Town of Cohasset's costs and expenses (including Attorney's Fees) incurred or paid in obtaining and enforcing any court order favorable to the Town of Cohasset for any obligation of the successful bidder under any contract resulting from this Invitation for Bids.

2.13 Obligation in the Event of Termination

Upon termination of any contract resulting from this Invitation for Bids, all documents finished or unfinished, data, studies and reports prepared by the successful bidder pursuant to the subject contract shall become the property of the Town of Cohasset. Copies of finished and unfinished documents, data, studies and reports generated as a necessary part of performing the subject contract shall be delivered to the Town of Cohasset upon reasonable request and shall be retained by the successful bidder for future use. The Town of Cohasset shall promptly pay the successful bidder for all services performed and for all costs and un-cancelable commitments reasonably incurred in performance of the subject contract to the effective date of termination, provided the

successful bidder is not in default of the terms of the subject contract and submits to the Town of Cohasset properly completed invoices with supporting documentation covering services no later than 45 days after the effective date of termination, and that the successful bidder make every reasonable effort to minimize or recover costs incurred.

2.14 Ownership of Furnishings & Equipment

Unless otherwise provided by law or a federal grant award, title to all furnishings and equipment provided by the Town of Cohasset or that the awarded bidder provides under the terms of this Invitation for Bids and paid with public funds, shall vest in and be retained by the Town of Cohasset. Upon completion of performance of the awarded bidder's contract, the awarded bidder shall return such furnishings and equipment in its possession in the same condition as at the commencement of any contract resulting from the Invitation for Bids, normal wear and tear excepted.

2.15 Anti-Boycott Warranty

During the term of any contract resulting from this Invitation for Bids, neither the successful bidder nor any "affiliated company" as hereafter described, shall participate in or cooperate with an international boycott, as defined in section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage on conduct declared to be unlawful by Sections 2 and 4 of Chapter 151 E of the Massachusetts General Laws. As used herein, an "affiliated company" shall be any business entity or which at least 51% of the ownership interests are directly or indirectly owned by the successful bidder or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful bidder.

End of Section

Section 3 Bid Information

3.1 Bidder Communication

Bidders are prohibited from communicating directly with any employee of the Town of Cohasset except as specified in this Invitation for Bids, and no other individual Town of Cohasset employee or representative is authorized to provide any information or respond to any questions or inquiries concerning this Invitation for Bids. Bidders may contact the person identified on the cover sheet of this Invitation for Bids in the event this Invitation for Bids is incomplete.

3.2 Reasonable Accommodation

Bidders with disabilities or hardships that seek reasonable accommodation, which may include receipt of the Invitation for Bids information in an alternative format, must communicate such requests in writing, via electronic mail (e-mail) to the contact person. Requests for accommodation will be addressed on a case by case basis. A bidder requesting accommodation must submit the written request, via e-mail, which describes the bidder's disability and the requested accommodation to the contact person for the Invitation for Bids. The Town of Cohasset reserves the right to reject unreasonable requests.

3.3 Public Records

All bids and information submitted in response to this Invitation for Bids are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, Section 10 and Chapter 4, Section 2, Subsection 26. Any statements in the bidder's bid inconsistent with these statutes will be disregarded.

3.4 Brand Name or Equal

Unless otherwise specified in this Invitation for Bids, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Invitation for Bids to any manufacturer or proprietor or to constitute an endorsement of any good or service, and the Town of Cohasset must consider clearly identified offers if substantially equivalent goods and services are submitted in response to such reference.

3.5 Publicity

Any bidder awarded a contract under this Invitation for Bids is prohibited from selling or distributing any information collected or derived from the contract, including lists of participating or eligible departments, employee names, telephone numbers, e-mail addresses, addresses or any other reports or information except as specifically authorized under this contract.

3.6 Costs

Costs for services that are not specifically identified in the bidder's response and identified as part of a contract, will not be compensated under any contract awarded pursuant to this Invitation for Bids.

3.7 Required Bid Attachments

All Bidders are required to complete, sign and return at a minimum the following documents:

Town of Cohasset **MISCELLANEOUS CONSTRUCTION EQUIPMENT RENTAL and LABOR Bid Cover Sheet**

Town of Cohasset **MISCELLANEOUS CONSTRUCTION EQUIPMENT RENTAL and LABOR Bid Submission Materials Sheet**

Town of Cohasset **MISCELLANEOUS CONSTRUCTION EQUIPMENT RENTAL and LABOR for General Bid for years One, and two one-year extensions.**

Certificate of Non-Collusion (Included in language located on the Form for General Bid)- By signing the attached Non-Collusion Statement, the bidder is declaring the fact that its bid was formulated without collusion with any person, representative, agent or party submitting a competing bid. No bid will be accepted without the signed Non-Collusion Statement attached to the original bid.

Vote of Corporation (If Bidder is a Corporation)- If the Bidder is a Corporation, a vote of the Corporation approving participation in this Invitation for Bids process must be signed by the Corporate Officers with the Corporate Seal Affixed and attached to the original Invitation for Bids.

If the Bidder is a Corporation, the names and addresses of the Corporate Officers and the State and Date of Incorporation must be included. The bidder must state if the corporation is publicly held or privately held. If the Corporation is publicly held, the exchange on which it is traded and the symbol under which it is traded is required.

Sole Proprietorship (If Bidder is a Sole Proprietor) If the Bidder is a Sole Proprietorship, a partnership or any other legal business entity, the names and addresses of the officers must be included, the parent state of business and the numbers of years this entity has been in business. In short, a complete business profile must be included in the bid.

3.8 Submitted Bids

The Town of Cohasset shall be under no obligation to return any bids or materials submitted by the bidder in response to this Invitation for Bids. All materials submitted by bidders become the property of the Town of Cohasset and will not be returned to the bidder. The Town of Cohasset has the right to use any ideas, concepts or configurations that are presented in the bidder's bid whether or not the bid is selected for contract award.

3.9 Clarification of Bid

The Town of Cohasset is not required to seek clarification of bids; therefore, the bidder should be as clear as possible in all of its responses to this Invitation for Bids.

3.10 Evaluation and Award of Contract

All pricing must remain constant for the entire term of the contract, as well as any possible extension offered. Bids will be evaluated and awarded based upon the most responsive and responsible bid offering the best price.

3.11 Rejection of Bidder's Bid

A Bidder's bid may be rejected by the Town of Cohasset if the bidder's bid:

- Fails to adhere to one or more of the requirements
- Fails to submit its bid to the required address on or before the Invitations for Bids responses are due
- Fails to submit a bid in accordance to the format and instructions specified or to supply the minimum information requested in the Invitation for Bids.
- Fails to meet unconditionally or is unable to demonstrate competence to meet the requirements of this Invitation for Bids.
- Misrepresents its equipment, systems or services or provides demonstrably false information in its response, or fails to provide material information
- Violates the restrictions on contracts with the Town of Cohasset employees and representatives
- Refuses or is unable to or fails to provide clarification requested by the Town in a reasonable time frame.

3.12 Invitation for Bids Cancellation

The Town of Cohasset retains the right to cancel this Invitation for Bids, or any portion thereof, at any time prior to the execution and approval of a contract. If this Invitation for Bids is cancelled, all responses received to this Invitation for Bids will be rejected. All expenses related to the preparation of responses to this Invitation for bids remain the responsibility of the bidder.

3.13 No Guarantee of Purchase

The Town of Cohasset makes no guarantee that any purchases will take place from any contract resulting from this Invitation for Bids, nor does the Town of Cohasset guarantee any minimum quantity for purchase from any contract resulting from this Invitation for Bids. Any estimated or past procurement volumes referenced in this Invitation for Bids are included only for the convenience of the bidders, and not to be relied upon as any indication of future purchases.

The bidder may not place, as a condition for providing the cost levels proposed, any minimum purchase requirements.

3.14 Prime Contractors and Subcontractors

Prior approval of the eligible entity is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial program and reporting requirements and are held to the same reimbursable cost standards as the successful bidder.

The Town of Cohasset requires a single point of contact for any contract resulting from this Invitation for Bids. Subcontractors may be used, but the successful bidder, as prime contractors, shall be responsible for meeting all of the terms of any contract resulting from this Invitation for Bids and must accept full responsibility for any subcontractor's performance.

Bidders must provide a list of subcontractors, a description of each subcontractor's responsibility in regard to this contract and signed letters of agreement between the bidder as the prime contractor, and its subcontractor(s) identifying their responsibilities and their relationship to the prime contractor. The prime contractor must notify each individual account (eligible entity) in writing, the name of their subcontractor both initially and when a subcontractor is changed. If a subcontractor has filed for Chapter 11 Bankruptcy or Chapter 7 Bankruptcy, the prime contractor also must notify the Town of Cohasset. The notification must be written and must be within one week of the events noted above.

3.15 Prevailing/Minimum Wages

Prevailing/Minimum Wage Rates as determined by the Commissioner of the Division of Occupational Safety of the Executive Office of Labor and Workforce Development under the provisions of Massachusetts General Laws Chapter 149, section 26 to 27D, as amended, apply to any repairs/construction in this project. It is the responsibility of the bidder, before the bid opening, to request, if necessary, any additional information on Prevailing/Minimum Wage Rates for those trades' people who may be employed for the proposed work under this contract.

3.16 OSHA Ten Hour Certification Requirements

All employees of the Contractor who work at the jobsite must have received OSHA Ten Hour Safety Training, and have proof at the job site, of being certified by OSHA as having received this training. The Contractor must provide written proof (copy of OSHA card each employee is required to carry is preferred) of this certification for every employee with submission of the first certified payroll report for each employee.

3.17 Written Inquiries

Bidders may submit written inquiries concerning any part or attachment of this Invitation for Bids. Written inquiries regarding issues outside of the scope of this Invitation for Bids will not be considered.

All inquiries must be submitted by the required date and time, to the contact listed in the cover page of this Invitation for Bids.

Any change to this submission date and/or time will be made by notice sent electronically to all bidders. The bidder is responsible for confirming receipt of its written inquiries with Michelle Leary, Contracts and Procurement Manager, Town of Cohasset at mleary@cohassetma.org.

The Town of Cohasset will provide written responses via electronic mail (e-mail) to all written inquiries received by the required due date. Responses will not identify the inquiry by bidder.

3.18 Instructions for Submission of IFB Responses

Each Invitation for Bid response must be sealed, labeled and submitted to the address listed on the cover page of this document.

Paper Submission- the bidder must submit **one (1) original response and two (2) copies** to the Invitation for Bids, marked 'ORIGINAL". The envelope must be clearly marked "**TOWN OF COHASSET BID FOR MISCELLANEOUS CONSTRUCTION EQUIPMENT RENTAL AND LABOR.**"

3.19 Deadline for Submission

All responses to this Invitation for Bids are due at the address listed on the cover page and no later than the date and time listed in the Procurement Calendar (Section 1.19).

End of Section

Section 4 Scope of Services

4.1 General Overview

The Town of Cohasset Department of Public Works is soliciting the rental of construction equipment, operators and laborers for short term maintenance and infrastructure related projects to include, but not be limited to, roadway, drainage, and seawall construction.

The intent of this Invitation for Bids is to have available to Cohasset DPW the appropriate equipment and qualified personnel to operate them on an hourly basis and to respond to the needed Town location within a specified time frame. The Invitation for Bids also seeks the bidder to provide pricing by the hour for laborers as needed to perform the discipline specific work typically related to roadway, drainage, seawall and town infrastructure. The awarded contractor(s) shall be paid for labor as a multiplier of the prevailing wage as determined by the Commonwealth of Massachusetts Department of Labor Standards, under the specific description of the work to be performed.

4.2 Summary of Work

The contractor(s) shall furnish all labor and equipment. The contractor(s) are required to employ sufficient skilled and supervisory labor and equipment as may be considered necessary by the Director of Public Works or their Representative to permit or enable the contractor to expeditiously execute the work in a uniform rate of progress which will permit the completion of the work within the time limits which may be specified.

The contractor(s) shall make available the necessary equipment to complete maintenance or repair work on the Town's infrastructure as directed and scheduled by the Director of Public Works or their Representative. Additionally, there may be a request for a specific piece of equipment to complete a specific task necessary to address a particular scope of work. It is expected that all equipment and labor provided will be furnished on an hourly basis according to the bid schedule. It is anticipated that the town will furnish all material to complete a task. The Town may need the contractor(s) to mobilize specialized equipment (not listed on the bid schedule). Such equipment will be paid for at a negotiated rate.

4.3 Term of Contract

The Town of Cohasset is soliciting pricing for one year, with the possibility of two annual extensions. This contract shall begin October 1, 2022 and will terminate on June 30, 2023. The Town of Cohasset reserves the right to extend the contract for two additional years, on an annual basis July 1, 2023 to June 30, 2025.

Terms of the contract shall include the following:

- a. Four hours minimum on machine rental and labor
- b. Bid price at an hourly rate to include operator, fuel and other associated costs other than mobilization

- c. Trailer service to and from any job site is not to be included in the hourly rate; this cost is considered in the mobilization clause
- d. Mobilization (trailer into and out of work area) will be paid at the rates indicated on the submitted bid sheet.

4.4 Exclusivity

This contract will be non-exclusive. The Town of Cohasset reserves the right to do work of the type covered by this contract with town employees or other contractors.

4.5 Contract Award

The Town of Cohasset will award multiple contract(s) to the lowest, responsive and responsible bidders based upon the grand total bid. All bidders must meet the terms of the specifications. The Town of Cohasset reserves the right to award this contract in whole, or on an item by item basis, depending on which method is in the best interest of the Town of Cohasset.

The Town of Cohasset reserves the right to waive any minor informality and to accept or reject any and all bid proposals or portions thereof, to the satisfaction to the Town.

4.6 Fuel and Fuel Escalation

The contractor will assume responsibility for fueling operator equipped equipment during the rental period. Delivery of fuel by the contractor(s) to the work site may be required and must be at no additional charge to the Town of Cohasset. The price of fuel shall be determined by the current MassDOT market index and will be added to the invoice as a separate item billed, or credited in cost per gallons. The contractor(s) are required to submit fuel price updates to the Town of Cohasset.

4.7 Additional Items

The Town of Cohasset reserves the right to add related items to this contract during the term of the contract upon agreement by both parties as to the price. Approval of any additional items must be in writing and signed off by the Director of Public Works.

The successful bidder(s) will be compensated for additional items (services not specified under line item pricing) at the hourly rates as listed on the bid sheet.

4.8 Location of Work

Service and commodities may be required or deliverable anywhere in the Town of Cohasset. Prospective contractors are to understand that work may be required anywhere in the Town of Cohasset and shall bid accordingly.

4.9 Quality of Work

The contractor shall complete the work as directed by the Director of Public Works or their representative in a workman like manner in accordance with the any/all standard specifications according to the Commonwealth of Massachusetts Guidelines for the type of work being completed.

If work is not completed in a workman like manner that is satisfactory to the Director of Public Works or their representative, then the town can terminate the contract without obligation of recourse.

4.10 Equipment/Personnel

The Town of Cohasset reserves the right to inspect the equipment to perform work under this contract of all bidders to determine the bidder's ability to perform the services required. If, in the opinion of the Department of Public Works any bidder does not have adequate facilities and/or proper equipment to service this contract, the bidder may be subject to rejection.

Equipment must be in good, safe and serviceable operating condition. Operators must be experienced, qualified and possess the proper licenses, if necessary. All equipment must be properly registered and insured. (See Section 2.8) Any maintenance costs associated with the machinery will be the equipment owner's responsibility.

In the event that the Contractor receives notice from the Town of Cohasset that the equipment is not in good, safe and serviceable condition and fit for use upon its arrival; the contractor shall have the obligation to put the equipment in good, safe and serviceable condition within a reasonable length of time. If this cannot be done by the time use of the equipment is required by the Town of Cohasset, then the contractor will provide a different but similar piece of equipment to the Town of Cohasset for its use. **The Town of Cohasset will not be responsible for any rental charges while the equipment is down and not operating due to maintenance by the contractor.**

The contractor will accept full responsibility for providing licensed, qualified experienced operators/laborers and construction supervisors (when needed) that can perform the work required. The Town of Cohasset will not accept responsibility for any equipment or other damage for failure caused by the contractor's failure to provide equipment, operators and laborers capable of performing the tasks specified. Although the Town of Cohasset will provide general supervision, the Town of Cohasset will not be responsible or liable for operator/laborer negligence.

4.11 Supervision and Inspection

The contractor further agrees that the work shall be at times under the immediate supervision of the Director of Public Works or their representative, who shall at times have free access to all parts of the work and all places where materials for the same are prepared, and shall have every facility made available for the proper inspection of workmanship executed for the work under this contract. It is

expressly understood and agreed that the inspection of the work by the Director of Public Works or their representative will in no way diminish the responsibility of the contractor, or release them from the contractor's obligation to perform and deliver to the town sound and satisfactory work. It is further agreed that the contractor shall obey orders of the Director of Public Works of their representative and by all persons employed on the work.

4.12 Police Details/ Utility Company Notifications

The contractor shall be responsible for all Police Details and utility company, dig safe notifications if it is determined by the Director of Public Works that the services are necessary.

4.13 Storage of Equipment

The contractors will be required to store their equipment in a location which will not interfere with the normal operations of other contractors or employees of the town, and in a manner which will afford them maximum protection. The town will not guarantee the security nor be responsible or loss, damage or theft of stored equipment in a town facility or on a town street. The contractor will replace any items due to loss, damage or theft at their own expense. It shall be the contractor's responsibility to protect and secure their own property and equipment at all times.

At the end of each project, a list of all town owned materials in the possession of the contractor will be sent to the Director of Public Works or their representative, to a designated area as ordered by the Director of Public Works, or their representative.

4.14 Rental Period of Equipment

The rental period for equipment shall begin on the date and time of acceptance of the equipment by the Town of Cohasset and shall end at the time and date if the town's verbal notification to the contractor that the equipment is no longer needed. If the contractor chooses to delay picking up the equipment, thereby leaving it on the Town of Cohasset's property for an additional day or more beyond the required time frame negotiated for the piece of equipment, the contractor may do so as long as it is mutually agreed upon between the two parties. However, there will be no additional charge for the equipment to the Town of Cohasset once the contractor is notified that the equipment is no longer needed.

4.15 Protection of Property

The Contractor will properly protect from any damage all trees, plantings, lawns, hedges, fences, sidewalks, drives, curbs, street pavements. Pavement markings, traffic control devices, utility facilities, and or other facilities within, and contiguous to, the project area, Any negligent damage to said facilities caused by the contractor's employees, sub-contractors, storage of material, and/or equipment, will be

restored to its original condition,. The contractor shall pay the cost at their sole expense of any such work or materials required in the repairing or replacement if said items or facilities. This restoration work must be entirely completed, to the satisfaction of the Director of Public Works or their representative, before the final payment to the contractor is approved.

4.16 Clean- up of Premises and Equipment

The contractor will not allow waste material or rubbish caused by work under this contract to accumulate in or about the premises, but will promptly and thoroughly remove rubbish and excess tools from the site including the immediate work area. Upon final completion, the contractor shall leave the site thoroughly cleaned and ready for use. The contractor is also responsible for the clean- up of all spilled equipment fluid, to the satisfaction of the town.

Should there be a dispute regarding this requirement, the Town of Cohasset may remove the rubbish and do such clean-up as deemed necessary and charge back to the responsible contractor all costs associated with said clean-up.

4.17 Town Supplied Materials

The Town of Cohasset will normally provide or contract for the delivery of all principal materials to be used in all projects. If the town is unable to provide an item in such that it causes an undue delay to the project, the contractor shall make every effort to provide the item in an expeditious manner so to keep the project running. At the town's option, the town will replace the provided item in kind as soon as possible or will pay for the item at the contractor's cost plus a ten percent mark- up as a convenience fee.

4.18 Contractor Responsible until Work is Completed

The contractor agrees to personally supervise the faithful performance of the work, and that they shall keep it under the contractor's exclusive control. In case of an absence, the contractor will designate a competent representative to continue such supervision of the work, uninterrupted and such representative shall receive orders and instruction as appropriate from the Director of Public Works or their representative.

The contractor further agrees to assume charge if and be responsible for the entire work until completed and accepted by final payment.

4.19 Construction Documents: Drawings and Technical Specifications

Should any project require drawings or technical specifications, it will be the contractor's responsibility to comply with the drawings and technical specifications associated with each project. Failure to comply may result in a delay of payments, back charging for corrective remedial work, and/or cancellation of the contract.

4.20 Labor Harmony

By executing this contract, the contractor hereby certifies that (1) that contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work. The contractor shall procure materials from such sources and shall manage its own forces and the forces of its subcontractors and any sub-subcontractors in such a manner as will result in harmonious labor relations on the site. The contractor shall cause persons to be employed in the work who will work in harmony with others so employed. Should the work be stopped or materially delayed in the Awarding Authority's reasonable judgment due to a labor dispute, the Town of Cohasset shall have the right to require the contractor to employ substitutes acceptable to the Town of Cohasset.

4.21 Materials Safety Data Sheets

The Contractor must supply all applicable MSDS forms as requested by the Town of Cohasset. Pursuant to M. G. L. Ch. 111f, s. 8, 9, 10, any Contractor who receives a contract resulting from this Invitation for Bids agrees to submit a Material Safety Data Sheet for each toxic or hazardous substance or mixture containing such substance when deliveries are made. The Contractor agrees to comply with all requirements set forth in the pertinent laws.

END OF SECTION

Town of Cohasset

Construction Equipment Rental and Labor Bid Cover Sheet

Name of Bidder:

Address:

City/State/Zip Code:

TO: Chief Procurement Officer
Town of Cohasset
41 Highland Ave.
Cohasset, MA 02025

The undersigned submits this bid for providing contracted services necessary to meet the specifications for **Construction Equipment Rental and Labor** for the Town of Cohasset as advertised _____, which is to be opened and read at the Office of The Town Manager on _____, and declares that it is made without collusion with any other person, firm, or corporation making any other proposal, or who otherwise would make a proposal, and agrees to provide all labor, materials, equipment and supervision necessary in strict accordance with the specifications which consist of this bid form and all attached documents and instructions.

Bidders must label the envelope containing the bid "**TOWN OF COHASSET CONSTRUCTION EQUIPMENT RENTAL and LABOR**" and submit it to the Office of the Town Manager no later than _____

The Town Manager, Acting as the Awarding Authority for the Town of Cohasset reserves the right to reject and or all bids, or any part of any bid, and/or to waive any minor informality, which, in the opinion of the Awarding Authority, is in the best interest of the Town of Cohasset.

Bidder should check the bid carefully, as he/she will be held to his/her proposal.

Signature of Bidder

Title

Phone # _____

Town of Cohasset
CONSTRUCTION EQUIPMENT RENTAL and LABOR
Bid Submission Materials

Bidder Information

Bidder's attention is called to Chapter 268A of the General Laws. In connection with this statute, bidder is required to submit the following information and any other information deemed necessary by the bidder.

Give full names and residences of all the persons and parties interested in the foregoing proposal. Give first and last names in full; in case of corporations, give names of President, Treasurer and Manager; and in case of firms, give names of the individual members,

Please furnish the following information regarding the Bidder:

(1) If a Sole Proprietorship:

Name of Owner _____
Business Address _____ Telephone _____
Home Address _____ Telephone _____

(2) If a partnership:

Full names and addresses of all partners

<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>
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Business Address _____ Telephone Number _____

(3) If a Corporation:

Full Legal Name _____ Telephone Number _____

Full Names and addresses of President, Treasurer and Manager

<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>
-------------	----------------	-------------------------

State of Incorporation _____

Principal Place of Business _____

Qualified in Massachusetts _____ Place of Business in Massachusetts _____

(4) Give the following information regarding Surety Company:

Full Legal Name of Surety Company _____
 State of Incorporation _____ Admitted in Massachusetts? YES or NO _____
 Principal Place of Business _____
 Place of Business in Massachusetts _____ Telephone _____

The undersigned offers the following information relative to the facilities and experience to demonstrate its ability to perform the work, and to comply with the terms and the conditions of this Contract:

EXPERIENCE: The bidder has performed the following similar work (all information must be accurate and complete) and has provided the following references:

Location	Date	Type of Job	Reference	Address	Phone Number

TOWN OF COHASSET
FORM FOR GENERAL BID- CONSTRUCTION EQUIPMENT RENTAL and LABOR

To the Awarding Authority:

- The undersigned proposes to furnish labor, tools, equipment, transportation and supervision necessary for CONSTRUCTION EQUIPMENT RENTAL and LABOR for the Town of Cohasset, in accordance with the Contract Documents for the contract price specified below.
- This Bid includes addenda number(s)_____
- All unit items are to include overhead, profit, transportation and all other charges

The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club or other organization, entity or group of individuals.

(Signature/Title of individual)

(Name of Business)

All bids shall remain open for 30 days, not including Saturdays, Sundays and holidays, after the date of the bid opening.

If a Notice of Award is granted, and three unsigned copies of the contract are delivered to the awarded bidder within 30 days after the date of receipt of such notification, the awarded bidder shall execute and return all copies of the contract to the Town of Cohasset. The premiums for all bonds required shall be paid by the Contractor, and shall be included in the contract price. The undersigned further agrees that the bid security accompanying this bid shall become the Town's property if the awarded bidder fails to execute the contract as stated.

CERTIFICATE OF CORPORATE AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____
(Name of Corporation)

held on _____ at which all of the Directors were present or waived notice, it was voted
(Date)

that _____
(Name) (Officer/Title)

of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract obligation in this company's name on its behalf of such _____, under seal of the company shall be valid and
(Officer)

binding upon this company.

A TRUE COPY,

ATTEST: _____
(Signature/Title)

Place of Business: _____

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)

that _____ is duly elected _____
(Officer Name) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Full Legal Name of Business

Telephone Number

State of Incorporation*

Principal Place of Business

Qualified in Massachusetts

Place of Business in Massachusetts

Signature

**If state of incorporation is Massachusetts, insert MASSACHUSETTS on State of Incorporation line and disregard other parts of the form.*

Subscribed and sworn before me

(Corporate Seal)
If applicable (i.e., not necessary for sole proprietorship or partnership)

This _____ day of _____, 20____

(Notary Seal)
Notary Public

My Commission Expires _____

Certifications

Statements below shall be duly dated and signed with an original signature or the Bid or Proposal will be rejected.

TAXES PAID: Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that, to the best of my knowledge and belief, all Massachusetts State Tax Returns and all Massachusetts State Taxes required under law have been paid, and I have complied with the reporting of employees and contractors, and withholding and remitting of child support.

INDEMNIFICATIONS: The undersigned agrees to indemnify, pay on behalf of, defend and hold harmless the Town of Cohasset and its officers, attorneys, employees and agents from any and all claims, demands, suits, actions, costs, liabilities, penalties, judgements whatsoever, including reasonable attorney's fees, which may be imposed upon, incurred by, or asserted against the Town by reason of (a) any failure on the part of the Contractor to comply with any provision or term required to be performed or complied with by the Contractor under this Contract, or (b) for the death, injury, or property damage suffered by any person on account of or based upon the act, omission, fault, negligence or misconduct or any person whomsoever other than the Town of Cohasset. The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought hereon, and the defense thereof with counsel acceptable to the Town or counsel selected by an insurance company which has accepted liability for any such claim.

COMPLIANCE: The undersigned is in compliance with all of the provisions, and shall remain in full compliance with the provisions for the life of any Contract resulting from this solicitation. Bidder is qualified to perform any such Contract and possesses, or shall obtain, all requisite licenses and/or permits to complete performance; shall maintain all unemployment, worker's compensation, and professional and personal liability insurance policies sufficient to cover its performance under any such Contract; and shall comply with relevant prevailing wage rates and employment laws. To the best of its knowledge and belief has paid all local taxes, tax titles, utilities, motor vehicle excise taxes, and water and wastewater bills in Massachusetts as required by Law.

Authorized Signature

DEBARMENT: The undersigned further certifies under the penalty of perjury that said undersigned is not presently debarred from doing public construction work in the Commonwealth of Massachusetts, under the provisions of M.G.L. Ch.29, s.29F, or any other applicable debarment provisions of any other chapter of the Massachusetts General Laws or any rule or regulation promulgated thereunder.

Authorized Signature

WARRANTIES/GUARANTEES

All prospective bidders on Items/Equipment/Services that carry Warranties and/or Guarantees shall include with their sealed bids a copy of the Warranties and/or Guarantees, as well as a copy of the Warranties and/or Guarantees on the items being bid, if applicable. Warranty starts after the date of acceptance by the using department. Please complete the following and specify if the Warranty/Guarantee is for more than the contractually required one-year period.

Authorized Signature

ADDITIONAL ATTACHMENTS

CONFLICT OF INTEREST

BID FORM

WEEKLY CERTIFIED PAYROLL REPORT FORM

PREVAILING WAGES

SAMPLE TOWN OF COHASSET CONTRACT

Town of Cohasset
Conflict of Interest Law
Compliance Statement and Requirements for Vendors

On July 1, 2009, the Legislature enacted Chapter 28 of the Acts of 2009 which made changes to the Massachusetts General Laws Ch. 268A and Ch. 268B, the Massachusetts' Conflict of Interest Law. The Town Clerk has been designated as the Municipal Liaison to the State Ethic Commission and responsible for the facilitation of Cohasset's obligation to comply with the changes in the law.

The Town has a requirement for compliance, which is to make sure that all municipal elected officials, board and commission members, and employees, **including vendors** are provided copies of the Summaries of Ethics Laws.

Enclosed is a packet that should be copied and provided to **each** one of your employees who are **assigned** to work in **Cohasset**; including yourself. At the end of the summary is an acknowledgement of receipt of the summary. **The acknowledgements must be submitted along with any purchase order or contract with the Town of Cohasset.** All documents pursuant to this new law will be kept on file in the Town Clerk's Office.

The Procurement Officer will contract you directly, if there is a determination that you or your staff should undergo the Conflict of Interest Online Training Program.

If you have any questions, feel free to contact the Cohasset Town Clerk at 781-383-4100, ext. 106 as soon as possible.

Summary of the Conflict of Interest Law for Municipal Employees

This summary of the Conflict of Interest Law, General Laws Chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, www.mass.gov//stateethicscommision, 617-371-9505 or in writing to

State Ethics Commission
Legal Division
One Ashburton Place, Room 619
Boston, MA 02108

Municipal Counsel may also provide advice.

The Conflict of Interest Law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service as described below. The sections referenced below are sections of M.G.L.c.268A.

When the Commission determines that the Conflict of Interest Law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he/she gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for Conflict of Interest Law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts. Town meeting members and charter commission members are not municipal employees under the conflict of interest law.

II. On-the-job Restrictions

(a) **Bribes:** Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his/her official actions. Giving, offering, receiving or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his/her office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) **Gift and gratuities:** Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (see sections 3, 23(b)(2) and 26).

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment, event tickets, golf gift baskets and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of Violation: *A town Administrator accepts reduced rental payments from developers.*

Example of Violation: *A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.*

Regulatory exemptions: There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of conflict of interest, and may in fact advance the public interest. The Commission has created exceptions permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel related expenses when doing so in advances a public purpose. Another commonly used exemption permits municipal employees to accept payment of costs involved in attendance at education and training programs. Other exemptions are listed on the Commission's website.

Example where there is no violation: A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of firefighting equipment that the town may purchase. The Chief fills out a disclosure form and obtains prior approval from his appointing authority.

Example where there is no violation: A town treasurer attends a two day annual school featuring multiple substantive seminars on issues relevant to Treasurers. The annual school is paid for in part by banks that do business with town treasurers. The treasurer is only required to make a disclosure if one of the sponsoring banks has official business before him/her in the six months before or after the annual school.

(c) **Misuse of position:** Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. 9 See Sections 23(b)(2) and 26).

A municipal employee may not use his/her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee

may not use his/her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation: A full time town employee writes a novel on work time, using his/her office computer, and directing her secretary to proofread the draft.

Example of Violation: A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

Example of Violation: A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am/" and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19).

A municipal employee may not participate in any particular matter in which he/she or a member of his/her immediate family (parents, children, siblings, spouse and spouse's parents, children and siblings) has a financial interest. He/She may also not participate in any particular matter in which a prospective employer or a business organization of which he/she is a director, officer, trustee or employee has a financial interest. Participation includes discussing as well as voting on a matter and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interest which is remote, speculative or not sufficiently identifiable does not create conflicts.

Example of violation: A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

Example of a violation: A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

Example of a violation: A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where otherwise not required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which he/she has a financial interest. He/she need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if he/she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his/her services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation: An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is not violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

(e) False claims: Presenting a false claim to your employer for a payment of benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26).

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation: a public works director directs his secretary to fill out time sheets to show him present at work on days when he was skiing.

(f) Appearance of conflict: Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23 (b)(3)).

A municipal employee may not act in a manner that would cause a reasonable person to think that he/she would show favor toward someone or that he/she can be improperly influenced. Section 23 (b)(3) requires a municipal employee to consider whether his/her relationship and affiliations could prevent him/her from acting fairly and objectively when she performs her duties for a city or town. If he/she cannot be fair and objective because of a relationship or affiliation, he/she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his/her appointing official.

Example where there is no violation: A developer who is a cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor his/her cousin. The chair files a written disclosure with his/her appointing authority explaining his/her relationship with his/her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23 (b)(3).

(g) Confidential Information: Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23 (c)).

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information that acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (section 23 (b)(1)).

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his/her municipal job.

Example: A police officer may not work as a paid private security guard in the town where he/she serves because the demands of his/her private employment would conflict with his/her duties as a police officer.

(b) Divided loyalties: Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as an agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17).

Because cities and towns are entitled to the individual loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as an agent includes contacting the municipality in person, by phone, or in writing, acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his/her own personal interests, even before his/her own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he/she works for the permitting agency, or an agency which regulates the permitting agency.

Example of violation: A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

Example of violation: A planning board member represents a private client before the board of selectman on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than other municipal employees.

The status of "special" municipal employees has to be assigned to a municipal position by vote of the board of selectmen, city council or similar body. A position is eligible to be designated as a "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working

hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as “special” and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically “special”; selectmen in larger towns cannot be “specials”.

If a municipal position has been designated as “special”, an employee holding that position may be paid by others, act on behalf of others, and act as an attorney for others with respect to matters before the municipal boards other than his/her own, provided that he/she has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his/her official responsibility.

Example: A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his/her private law practice, on a matter that he/she has not participated in or had responsibility for, as a school committee member. There is no conflict. However, he/she may not appear before the school committee or the school department on behalf of a client because he/she has official responsibility for any matter that comes before the school committee. This is still the case even if he/she has recused himself/herself from participating in the matter in his official capacity.

Example: A member who sits as an alternate in the conservation commission is a special municipal employee. Under town b-laws, he/she only has official responsibility for matters assigned to him/her. He/she may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him/her, and he/she will not participate in it.

(c) Inside track: Being paid by your city or town, directly or indirectly, under some second arrangement in addition to you job is prohibited, unless an exemption applies. (See Section 20).

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an “inside track” to further financial opportunities.

Example of violation: Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

Example of violation: A selectman buys a surplus truck from the DPW.

Example of violation: A full time secretary for the Board of Health wants to have a second paid job working part-time for the town library. She will violate section 20 unless she can meet the requirements of an exemption.

Example of Violation: A city councilor wants to work for non-profit that receives funding under a contract with his/her city. Unless he/she can satisfy the requirements of an exemption under Section 20, he/she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover serving as an unpaid volunteer in a second town position, housing-related benefits, public safety positions, certain

elected positions, small towns, and other specific situations. Please call the Ethics Commission Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban: After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation: A former school department employee works for a computer contractor under a contract that she helped to draft and oversees for the school department.

(b) One year cooling off period: For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

Example: An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

A former municipal employee who participated as such in general legislation on expanded gaming and related matters may not become an officer or employee of, or acquire a financial interest in, an applicant for a gaming license, or a gaming licensee, for one year after his public employment ceases.

(C) Partners: Your partners will be subject to restrictions while you serve as municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the Conflict of Interest Law. If a municipal employee participated in a matter, or if he/she has official responsibility for a matter, than his/her partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

Example: While serving on the city's historic commission, an architect reviewed an application to get landmark status for a building. His/her partners at his/her architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that goes before the commission, his/her partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

Example: A former town counsel joins a law firm as a partner. Because he/she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after his/her job with the town ended.

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, <http://www.mass.gov/ethics> contains further information about how the law applies in many situations. You can also contact the Commissioner's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

Town of Cohasset
Conflict of Interest Law

Compliance Statement and Requirements for Vendors

ACKNOWLEDGEMENT OF RECEIPT

I, _____,
(First and last name)

an employee at _____,
(name of vendor)

Hereby acknowledge that I received a copy of the summary of the Conflict of Interest law for municipal employees, revised November 14, 2016, on _____.
(date)

The Town has a requirement for compliance, which is to make sure that all vendors are provided copies of the Summary of the Conflict of Interest Law for Municipal Employees (including Vendors).

VENDORS should copy the Summary of the Conflict of Interest Law and provide it to each one of the employees who are assigned to work in Cohasset.

Each employee shall complete the "Acknowledgement of Receipt" and the Vendor shall return the acknowledgement-only-(not the summary) to the Cohasset Procurement Office

The "Acknowledgement of Receipt" must be submitted along with any purchase order or contract with the Town of Cohasset.

BID TABULATION SHEET						
Bid Solicitation						
CONSTRUCTION EQUIPMENT RENTAL AND NON-ROUTINE CONSTRUCTION SERVICES						
REGULAR CONTRACT (October 1, 2022-June 30, 2023)						
Rates						
Item	Description	Equipment Year or Newer	Mobilization Cost	Rate/	Estimated	Item Total
				Hour	Quantities	
Large Excavator – Track	(45,000-60,000 lb.)	2000	1.5 Times Hourly Rate		65	
Medium Excavator - Track	(35,000-45,000 lb.)	2000	1.5 Times Hourly Rate		600	
Excavator w/ hoe-ram	(45,000-60,000 lb.) w/4,000-6,000 Hoe-Ram	2000	1.5 Times Hourly Rate		60	
Mini Excavator	(12,000 lb.)	2000	1.5 Times Hourly Rate		175	
Highway Wheeled Excavator - Rubber Tires	Gradall 3100 (44,000 lb.) or equal	2000			145	
		2000				
Medium Pay loader	(25,000 lb.)	2000	1.5 Times Hourly Rate		350	
Backhoe	Case 580 or equal	2000	1.5 Times Hourly Rate		150	
Tractor Trailer		xxxxxxxxxx			200	
Tri-axle Dump Truck		xxxxxxxxxx			200	
10-wheel Dump Truck		xxxxxxxxxx			345	
6-wheel Dump Truck		xxxxxxxxxx			200	
Road Grader	(35,000-40,000 lb.)	1985	1.5 Times Hourly Rate		405	
Mini Road Grader	(12,000 lb.)	1985	1.5 Times Hourly Rate		60	
Vibratory Soil Compactors	Cat CS-563C or	1990	1.5 Times Hourly Rate		114	
	similar 10 ton min.		1.5 Times Hourly Rate			
Small Bulldozer	Cat D3 or equal	1990	1.5 Times Hourly Rate		45	
Medium Bulldozer	Cat D5 or equal	1990	1.5 Times Hourly Rate		60	
Trench Box	Size 4' X 8'	xxxxxxxxxx	xxxxxxxxxxxxxx		4	
				/per day		
General Labor	(To Be Paid at the Trade Prevailing Wage x 1.6)	xxxxxxxxxx	xxxxxxxxxxxxxx			
Construction Supervisor		Xxxxxxxxxxx	xxxxxxxxxxxxxx	/per hour		

MASSACHUSETTS WEEKLY CERTIFIED PAYROLL REPORT FORM



Company's Name:		Address:		Phone No.:		Payroll No.:													
Employer's Signature:		Title:		Contract No.:	Tax Payer ID Number	Work Week Ending:													
Awarding Authority's Name:		Public Works Project Name:		Public Works Project Location:		Min. Wage Rate Sheet Number													
General / Prime Contractor's Name:		Subcontractor's Name:		"Employer" Hourly Fringe Benefit Contributions															
Employee Name & Complete Address	Work Classification:	Employee is OSHA 10 certified (?)	Appr. Rate (%)	Hours Worked							Project Hours (A) All Other Hours	Hourly Base Wage (B)	Health & Welfare Insurance (C)	ERISA Pension Plan (D)	Supp. Unemp. (E)	Total Hourly Prev. Wage (F)	(B+C+D+E)	(A x F)	Check No. (H)
				Su.	Mo.	Tu.	We.	Th.	Fr.	Sa.							Total Gross Wages		

Are all apprentice employees identified above currently registered with the MA DLS's Division of Apprentice Standards? YES NO
 For all apprentices performing work during the reporting period, attach a copy of the apprentice identification card issued by the Massachusetts Department of Labor Standards / Division of Apprentice Standards. No apprentices are identified above

NOTE: Pursuant to MGL c. 149, s. 27B, every contractor and subcontractor is required to submit a **true and accurate** copy of their certified weekly payroll records to the awarding authority by first-class mail or e-mail. In addition, each weekly payroll must be accompanied by a statement of compliance signed by the employer. Failure to comply may result in the commencement of a criminal action or the issuance of a civil citation.

Page _____ of _____

Date Received by Awarding Authority / /
--

SAMPLE CONTRACT

Contract No. _____

**Town of Cohasset
Contract for Services**

This agreement (the "Agreement") is made and entered into by and between the Town of Cohasset (herein the TOWN), a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, and

[NAME]
[ADDRESS]
(hereinafter the CONTRACTOR)

For mutual consideration the Parties hereby agree as follows:

ARTICLE I. DEFINITION

This CONTRACT as used herein shall consist of this Agreement, and the "contract documents" which include, but are not limited to the following identified items and all documents and forms submitted therewith, or attached hereby:

- Attachment A: Scope of Services and/or other bid package materials
- Attachment B: Additional Contract terms and Conditions
- Attachment C: Certificate of Non-Collusion, Tax Compliance Certification, Statement of Corporate Authority
- Attachment D: Summaries of Laws regarding State Ethics- Acknowledgement of Receipt
- Addenda through #

ARTICLE II. AMOUNT AND TERM

Pursuant to the terms and conditions stated in the Contract, this TOWN agrees to pay an amount not to exceed \$ _____, and the Contractor agrees to perform the services detailed in the Contract. The Contract shall commence on or about _____ (the "Commencing Date") unless earlier terminated pursuant to Article IV, TERMINATION, and shall terminate no later than _____, unless a written amendment to renew or extend this contract is executed in accordance with the provisions of this CONTRACT.

ARTICLE III. PERFORMANCE

The Contractor agrees to provide all goods and/or services set forth in the Invitation for Bid/Request for Proposal Documents, Scope of Service, and the Contractor's proposal for " _____", and/or as outlined in Attachment A- SCOPE OF SERVICES.

ARTICLE IV. TERMINATION

- i) WITHOUT CAUSE. The TOWN may terminate this CONTRACT in sixty (60) calendar day notice, or may suspend this CONTRACT for up to sixty (60) calendar days upon receipt of notice, when in the best interest of the TOWN, by providing notice to the CONTRACTOR, which shall be in writing and shall be deemed delivered and received when given in person to the CONTRACTOR, or when received by fax, express mail, certified mail return receipt requested. Regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the CONTRACTOR.

- ii) **FOR CAUSE.** If the CONTRACTOR is deemed by the TOWN to be in default of any term or condition of this CONTRACT, the TOWN may terminate this contract on thirty (30) day notice by providing notice to the CONTRACTOR, which shall be in writing and shall be deemed delivered and received when given in person to the CONTRACTOR, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the CONTRACTOR. If the TOWN is determined by the CONTRACTOR to be in default of any term or condition of this CONTRACT, the CONTRACTOR may terminate this contract on thirty (30) day notice by providing notice to the TOWN, which shall be in writing and shall be deemed delivered and received when given in person to the TOWN, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the TOWN.
- iii) **FOR DEFAULT.** Events of default under this CONTRACT shall include, but are not limited to the following: a) any material misrepresentation made by the CONTRACTOR to the TOWN; b) any failure to perform any of its obligations under this CONTRACT including, but not limited to the following: (i) failure to commence performance of this CONTRACT at the time specified in this CONTRACT due to a reason or circumstance within the CONTRACTOR'S reasonable control; (ii) failure to perform this CONTRACT with sufficient personnel and equipment or with sufficient material to ensure that completion of this CONTRACT within the specified time due to a reason or circumstance within the CONTRACTOR'S reasonable control; (iii) failure to perform this CONTRACT in a manner reasonably satisfactory to the TOWN; (iv) failure to promptly re-perform with reasonable time the services that were rejected by the TOWN as unsatisfactory or erroneous; (v) discontinuance of the services for reasons not beyond the CONTRACTOR'S reasonable control; (vi) failure to comply with a material term of this CONTRACT, including, but not limited to the provision of insurance or failure to comply with nondiscrimination provisions; (vii) any other acts specifically and expressly stated in this CONTRACT as constituting a basis for termination of this CONTRACT, and (viii) failure to comply with any and all requirements of state law, and/or regulations, and TOWN Ordinances, and/or regulations.

ARTICLE V. REMEDIES OF THE TOWN

The TOWN hereby retains all remedies in law and equity, including but not limited to, the right to deduct the cost of any substitute contract or performance for expenses, losses, all damages, and the right to withhold from payment any amounts for expenses, losses, and damages from sums due, or which become due.

ARTICLE VI. REMEDIES OF THE CONTRACTOR

If the CONTRACTOR, due to any act or omission for which the City is legally responsible, sustains damages other than loss, non-conformance or non-performance, the CONTRACTOR may request within 30 days of the alleged act or omission from the TOWN, a sum equal to the amount of such damages sustained by the CONTRACTOR, which amount may be determined by the TOWN in writing, at the TOWN'S discretion, provided that the CONTRACTOR has provided all signatories of this Agreement, a detailed, written statement of such damages and cause thereof within said 30 day period.

ARTICLE VII. ASSIGNABILITY

The CONTRACTOR shall not assign, subcontract or in any way transfer any interest, rights or obligations in this CONTRACT without the prior written consent of the TOWN MANAGER. In the event of such assignment, the TOWN reserves the right to deal with any assignee, subcontractor or transferee directly, and the CONTRACTOR agrees to remain bound by all terms and conditions of this contract in accordance with its original tenor and in no way shall the CONTRACTOR be relieved of its responsibilities and obligations under this contract. The provisions of this contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the CONTRACTOR and any public body or bodies succeeding the interests of the TOWN.

ARTICLE VIII. INDEMNIFICATION

The CONTRACTOR shall assume the defense, indemnify and hold harmless the TOWN, the TOWN'S agents and employees, from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgements of every nature and description brought or recovered against them by reason of acts, in actions, omissions, negligence, reckless or intentional misconduct of the said CONTRACTOR, its agent(s), officers, employees or subcontractors in the execution of the work or in guarding the same. Unless otherwise provided by law, the TOWN may elect, at its sole discretion, to indemnify the CONTRACTOR for claims arising in tort if it is determined that the CONTRACTOR performed its obligations under this contract pursuant to the direct supervision and control of the TOWN or its designated agent(s).

ARTICLE IX. WORKER'S COMPENSATION AND OTHER INSURANCE

The CONTRACTOR shall provide insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the CONTRACTOR who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this contract shall be deemed a material breach of this contract, shall operate as an immediate termination thereof and the CONTRACTOR shall indemnify the TOWN for all losses, claims and actions resulting from the failure to provide the insurance required by this article.

The CONTRACTOR shall furnish to the TOWN evidence of such insurance prior to the execution of this contract, and before the same, shall be binding on the parties thereto, except if specifically waived in Attachment B, "Additional Contract Terms and Conditions."

Prior to commencement of any work and until completion of its work under this contract, the CONTRACTOR shall maintain the following insurance coverage, at its cost, from insurance acceptable to the TOWN, giving evidence of such coverage to the TOWN prior to execution of this contract, a copy of such insurance coverage to be attached herewith:

1. Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned and hired automobiles in connection with its operations with a combined single limit of \$1,000,000.00. The comprehensive automobile liability insurance may be provided through primary and excess or umbrella insurance policies.
2. CONTRACTOR'S equipment coverage (or a certification of self-insurance satisfactory to the TOWN) must be provided on an "All Risk" basis, covering physical damage to all tools and equipment, including automotive equipment owned, rented, or used by the CONTRACTOR.

3. Commercial General Liability Insurance coverage, which may be provided through primary and excess umbrella liability policies, for limits of \$1,000,000.00 general aggregate, and \$500,000.00 per occurrence.

All required insurance must be endorsed to name the TOWN as Additional Insured. All required insurance shall be endorsed to waive the insurer's rights of subrogation against the TOWN. All policies and certificates of insurance must contain language the insurance shall not be cancelled, materially changed or non-renewed without at least a thirty (30) day advanced written notice to the TOWN. The CONTRACTOR, under this contract, shall not allow its subcontractors to begin work until similar insurance has been so obtained and certificates of insurance have been approved by the CONTRACTOR.

ARTICLE X. CORPORATE CONTRACTOR

If the CONTRACTOR is a corporation, the CONTRACTOR shall endorse the Certificate of Corporate Authority for the CONTRACTOR'S signatory (ATTACHMENT C), or shall otherwise provide a form similar in nature and substance acceptable to the TOWN at the TOWN'S sole discretion.

If the CONTRACTOR is a non-profit corporation, the CONTRACTOR shall provide satisfactory proof of present status as a non-profit corporation. Such proof shall be in the form of certification from the Massachusetts Secretary of State's Office and/or from the Internal Revenue Service and shall provide the Federal Tax Identification Number of the non-profit corporation. This contract shall not be enforceable against the TOWN unless and until the CONTRACTOR complies with this Article. Failure to inform the TOWN in writing of revocation or other loss of non-profit status shall be deemed a material breach of this contract and operate as an immediate termination thereof.

ARTICLE XI. SUBJECT TO APPROPRIATION

The obligations of the TOWN under this contract shall be subject to appropriation. In the absence of appropriation this contract shall be immediately terminated without liability for damages, penalties or other charges.

In the event any portion of this agreement is to be funded with alternate funding, including but limited to, state, local, federal or private grant funding, the obligations of the TOWN under this contract shall be subject to the formal award of such state, local or private grant.

ARTICLE XII. DOCUMENTS, MATERIALS, ETC.

Any materials, reports, information, data, etc. given to, assembled or prepared by the CONTRACTOR under this contract are to be kept confidential and shall not be made available to any individual or organization by the CONTRACTOR (except agents, servants or employees of the CONTRACTOR) without the prior written approval of the TOWN. The CONTRACTOR understands that he/she/it may acquire or have access to "personal data" otherwise kept by the TOWN. The CONTRACTOR shall comply with the provisions of Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this contract shall not be subject to copyright, except by the TOWN, in the United States, or any other country. The TOWN shall have unrestricted authority to, without payment of any royalty, commission or additional fee of any type or nature, publicly disclose, reproduce, distribute, and otherwise use, and authorize others to use in whole or in part, any reports, data or other materials prepared under this contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the TOWN shall vest in the TOWN at the termination of this contract the CONTRACTOR shall at times, during or after termination of this contract, obtain the prior written approval of the TOWN before making any statement bearing on the work performed or data collected under this contract to the press or issue any material for publication through any medium.

ARTICLE XIII. AUDIT, INSPECTION, RECORDKEEPING

At any time during normal business hours, and as often as the TOWN may deem it reasonably necessary, there shall be made available in the office of the CONTRACTOR for the purpose of audit, examination, and/or to make excerpts of transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this agreement.

Further, the CONTRACTOR agrees to make its work papers, records and other evidence of audit available to the TOWN for a period of three years after final payment under this contract. The TOWN shall be entitled to reproduce any or all of such documents at its own expense, for which provisions shall be made at such time.

ARTICLE XIV. PREVAILING WAGES AND WEEKLY PAYROLL RECORDS REPORT

In accordance with Massachusetts General Law c. 149, s. 27B, a true and accurate record must be kept of all individuals employed on a public works construction project for which prevailing wage rates are applicable.

In addition, every CONTRACTOR and subcontractor is required to submit, on a weekly basis, a copy of their weekly payroll records to the TOWN. Once collected, the TOWN is also required to preserve said records for three years.

ARTICLE XV. CONFLICT OF INTEREST

i) TOWN: No officer, member or employee of the TOWN and no members of its governing body who exercise any function or responsibility in review or approval of the undertaking or carrying out of this contract shall participate in any decision relating to the contract which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she has a direct or indirect pecuniary interest. None of the services to be provided by the CONTRACTOR shall be used for any partisan political activity or further the election or defeat of any candidate for political office in the TOWN. Compliance with this section shall be material to the contract.

ii) CONTRACTOR: CONTRACTOR agrees that his/her/its agents, servants, and employees have neither presently nor during the period of this contract, any interest direct or indirect which would impair, detract or conflict in any manner or degree with the performance of services required under this contract. The CONTRACTOR, his/her/its agents, servants and employees further stipulate that in the performance of this contract, no person having any such interest shall be employed. Conflicts of Interest include but are not limited to (a) immediate family relationships with officials of the TOWN; (b) instances where the CONTRACTOR, his/her/its agents, servants or employees during the period of this

contract was connected as an officer, employee or member of the governing body of the TOWN; and (c) instances where the CONTRACTOR has an interest in any TOWN department, its agents, servants or employees or parcels of land within the TOWN. Compliance with this section shall be material to the contract. The CONTRACTOR, his/her/its agents, servants and employees must disclose any and all such interest in writing to the TOWN.

ARTICLE XVI. PAYMENT

The TOWN agrees to make all reasonable efforts to pay to the CONTRACTOR the sum set forth in any invoice which has been approved by the Town Manager or his/her authorized designee within thirty (30) days of receipt of such invoice at the Office of the Town Accountant. Each invoice shall detail the work completed and be sent to the Town within 30 days of the work being completed.

Subject to pending statutory appeal rights, the TOWN hereby reserves the right and the CONTRACTOR hereby agrees that the TOWN may deduct from the sum(s) otherwise payable under this contract any outstanding taxes, fines, fees, and/or other municipal charges prior to disbursement to the CONTRACTOR.

ARTICLE XVII. CONFLICT

In the event there is a conflict between these Articles and Attachment A, Attachment A shall supersede these Articles.

ARTICLE XVIII. WAIVER AND AMENDMENT

The provisions contained in this contract may be modified only by the express written consent of the parties. Any amendments must be made only by written amendment executed by all signatories to the original agreement, prior to the effective date of the amendment.

The failure of any party to insist on the strict performance of any term, covenant or condition to this contract, at any time or in any one or more instances, or its failure to take advantage of any of its rights, or any course of conduct or dealing, shall not be construed as a waiver or a relinquishment of any such rights or conditions at any future time, and shall in no way act, as a waiver by any party of a breach of another party, or have any effect on the continuance of or the full force and effect of any or all of the provisions of this contract. The waiver of any provisions must be in writing and executed by all signatories to this agreement prior to the force and effect of any such waiver.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, or in any manner, limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different manner.

ARTICLE XIX. CERTIFICATION

IN WITNESS WHEREOF, THE CONTRACTOR CERTIFIES, UNDER THE PAINS AND PENALTIES OF PERJURY, THAT THE CONTRACTOR IS IN COMPLIANCE WITH EACH OF THE FOLLOWING:

- a. TAXES: Pursuant to M.G.L. c. 26C, s. 49A, the CONTRACTOR has filed all state tax returns and complied with all laws of the Commonwealth of Massachusetts relating to taxes.
- b. DEBARMENT: The CONTRACTOR is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions.

- c. AMERICANS WITH DISABILITIES ACT: The CONTRACTOR is aware of the Americans with Disabilities Act which prohibits discrimination based upon disability and shall meet any relevant standards, and/or conditions set out in the bid/proposal documents, bid/proposal specifications, and/or Attachment A-SCOPE OF SERVICES.

ARTICLE XX. FORUM AND CHOICE OF LAW

This contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its conflicts of law provisions. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts or the federal district court sitting in the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. Each of the parties hereto irrevocably consents to and waives any objection to the exercise of personal jurisdiction by the state and federal courts of the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any other legal rights of the parties.

ARTICLE XXI. TAXES

The CONTRACTOR shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable pursuant to this contract, which may be assessed against the CONTRACTOR or the TOWN which are directly attributable to the CONTRACTOR'S activities under this contract (the "TAXES"). The CONTRACTOR shall pay all taxes directly to the taxing authority before delinquency and before any fine; interest or penalty shall become due or be imposed by operation of law for their nonpayment.

ARTICLE XXII. NOTICES

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "NOTICE") shall be in writing and shall be deemed to have properly given when delivered in hand, or deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described herein or when delivered by messenger or overnight mail service to the correct addressee. Unless otherwise specified, Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

All notices shall be sent to the persons and addresses listed below. The CONTRACTOR and the TOWN shall, at any time and from time to time, have the right to specify as their proper addresses for the purposes of this contract and address or addresses giving fifteen (15) days written notice thereof to the other party.

All Notices shall be forwarded to:

FOR THE TOWN
Christopher G. Senior
Town Manager
41 Highland Ave.
Cohasset, MA 02025
With a copy to:
Brian Joyce
Director, Department of Public Works
41 Highland Ave.

ARTICLE XXIII. CONSIDERATION

The parties mutually agree to enter into this contract for good and valuable consideration.

ARTICLE XXIV. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

The CONTRACTOR represents and warrants: (i) the CONTRACTOR has all the requisite corporate power and authority to enter into this CONTRACT and to perform the obligations of the CONTRACTOR; (ii) that this contract has been duly and validly authorized, executed and delivered by the CONTRACTOR; (iii) the execution and delivery of this contract does not violate or conflict with any other agreement, license or obligation; (iv) the CONTRACTOR is duly organized, legal and validly existing in good standing in the Commonwealth of Massachusetts; (v) that the CONTRACTOR is duly qualified and authorized to do business in the Commonwealth of Massachusetts; (vi) the CONTRACTOR is in compliance and is current with any payments under all federal, state and local tax laws; (vii) the CONTRACTOR will obtain any and all permits which may be necessary to perform the obligations of this contract; (viii) the CONTRACTOR will timely perform its obligations required by this contract.

ARTICLE XXV. THIRD PARTY BENEFICIARIES

This contract shall not be construed to create any third party beneficiary rights in favor of any other parties or any right or privilege for the benefit of any other parties.

ARTICLE XXVI. ENTIRE CONTRACT

This contract constitutes the entire Agreement of the parties hereto with respect to the subject matter hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

ARTICLE XXVII. LIABILITY OF MUNICIPALITY

The TOWN shall not be liable to the CONTRACTOR for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless expressly specified herein.

ARTICLE XXVIII. HEADINGS

Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this contract or any of its provisions.

ARTICLE XXIX. DAYS

Any reference to "days" in this contract shall be deemed to mean business days (Monday through Friday, excluding generally recognized holidays) except where specific reference is made to calendar days.

ARTICLE XXX. SURVIVAL

The parties agree that the provisions of ARTICLE II- AMOUNT AND TERM; ARTICLE III-PERFORMANCE; ARTICLE V-REMEDIES OF THE TOWN; ARTICLE VI- REMEDIES OF THE CONTRACTOR; ARTICLE VII- ASSIGNABILITY; ARTICLE VIII-INDEMNIFICATION; ARTICLE IX- WORKER'S COMPENSATION AND OTHER

INSURANCE; ARTICLE XI-SUBJECT TO APPROPRIATION; ARTICLE XII-DOCUMENTS, MATERIALS, ETC.; ARTICLE XIII-AUDIT, INSPECTION, RECORDKEEPING; ARTICLE XIV;WEEKLY PAYROLL RECORDS REPORT; ARTICLE XVI-PAYMENT; ARTICLE XVIII-WAIVER AND AMENDMENT; ARTICLE XIX-CERTIFICATION; ARTICLE XX- FORUM AND CHOICE OF LAW; ARTICLE XXI-TAXES; ARTICLE XXIV-REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR; ARTICLE XXVII-LIABILITY OF THE MUNICIPALITY; ARTICLE XXX-SURVIVAL AND ARTICLE XXXI-SEVERABILITY shall survive the expiration or any earlier termination of this contract.

ARTICLE XXXI. SEVERABILITY

If any provision of this contract is held to be illegal, invalid or unenforceable, the remaining terms shall not be affected and shall remain in full force and effect. The Agreement shall be interpreted as if the illegal, invalid or unenforceable provision had not been included in it and the invalid or unenforceable provision shall be stricken and shall be replaced by a mutually acceptable provision which being valid and enforceable comes closest to the intention of the parties with respect to the invalid or unenforceable provision.

ARTICLE XXXII. ADVICE AND COUNSEL

The CONTRACTOR hereby acknowledges and agrees that the CONTRACTOR has read this Agreement in its entirety and that the CONTRACTOR has had the opportunity to consult legal and financial advisors of their choosing regarding the execution, delivery and performance of their obligation, hereunder.

ARTICLE XXXIII. COUNTERPARTS

This contract may be executed in counterparts.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF the parties have hereto and three other identical instruments set forth their hands the day and the year first written above.

THE CONTRACTOR

Company Name

Status (Corporation/Non-corporate)

Signature & Title

Print Name & Title

Date

Taxpayer Identification Number

Department Head

TOWN MANAGER

Christopher G. Senior

Procurement & Contract Manager

I CERTIFY THAT FUNDS HAVE
BEEN ENCUMBERED IN THE
AMOUNT OF \$_____

ATTACHMENT A

SCOPE OF SERVICES

INSTRUCTIONS FOR DEPARTMENT AND CONTRACTOR: Please attach for reference purposes a copy of all bid/proposal documents, including but not limited to: (i) invitations/instructions for bidders/proposers; (ii) general and specific conditions; (iii) detailed description of all types of goods and/or services that will be provided pursuant to this CONTRACT, not otherwise provided in any bid/proposal instructions, specifications, conditions or other documents.

ATTACHMENT B

ADDITIONAL CONTRACT TERMS AND CONDITIONS

INSTRUCTIONS FOR DEPARTMENTS: Please specify any additions or modifications to the terms and conditions (not to conflict with the public procurement laws of Town bylaws or regulations)