# TOWN OF FREMONT FIRE DEPARTMENT

**REQUEST FOR PROPOSALS FOR A**

**PUMPER TANKER (FIRE APPARATUS)**

Mary K. “Kathy” Parsons, Clerk-Treasurer

P.O. Box 602
205 N Tolford St.
Fremont, IN 46737
(260) 495-7805

fremontct@townoffremont.org

Please carefully read this entire Request for Proposals (“RFP”) packet, as many of the processes, instructions, rules, and specifications have been recently modified.

Proposals must be received by 12:00 p.m. noon local time on Thursday, November 30, 2022. Submitting a proposal indicates acceptance of all RFP terms and conditions.

**EXECUTIVE SUMMARY:** The Town Council of the Town of Fremont, Indiana, on behalf of its Fire Department,is soliciting proposals for the construction and delivery of a new fire pumper tanker apparatus (“Project”). The Town will look to incorporate the provisions of this RFP (including the Specifications) into a final contract.

Thank for your attention and cooperation!

/s/ Kathy Parsons,

Town of Fremont Clerk-Treasurer

# NOTICE TO OFFERORS

Notice is hereby given that the Town of Fremont, Indiana, by and through its Town Council, makes a Request for Proposals (“RFP”) for a pumper tanker fire apparatus in accord with the terms of the RFP package:

Owner will receive Proposals at the Office of the Clerk-Treasure 205 N Tolford St.
Fremont, IN 46737 or by email at fremontct@townoffremont.org until 12:00 p.m. noon on Thursday, November 30, 2022.

Detailed general instructions, rules, and Apparatus specifications are in the full RFP packet, which may be obtained at the office of identified above during regular business hours (8:00 a.m. - 3:00 p.m.). All such requirements and terms are hereby incorporated into this Notice by reference.

/s/ Kathy Parsons,

Town of Fremont Clerk-Treasurer

[**Instructions to Publisher:** Attached is a notice on behalf of the Town of Fremont of a Request for Proposals for the purchase of a pumper tanker.  Please have it published **twice** in the Herald Republican at least one week apart **as soon as possible**, with a guaranteed publication date for the final publication on or before Thursday, November 23, 2022. Please bill the Town of Fremont.]

**TABLE OF CONTENTS**

[TOWN OF FREMONT FIRE DEPARTMENT 1](#_Toc117267125)

[NOTICE TO OFFERORS 1](#_Toc117267126)

[INSTRUCTIONS TO OFFERORS 1](#_Toc117267127)

[1. Definitions. 1](#_Toc117267128)

[2. Procurement Process. 5](#_Toc117267129)

[3. Proposal Contents. 7](#_Toc117267130)

[4. Submission Requirements. 9](#_Toc117267131)

[5. Proposals. 10](#_Toc117267132)

[6. Proposal Bond. 10](#_Toc117267133)

[7. Selection Criteria. 11](#_Toc117267134)

[8. Post-Award Requirements. 12](#_Toc117267135)

[9. Project Times. 12](#_Toc117267136)

[10. Design. 13](#_Toc117267137)

[11. Progress Inspections. 14](#_Toc117267138)

[12. Delivery. 14](#_Toc117267139)

[13. Supplies. 15](#_Toc117267140)

[14. Personnel. 16](#_Toc117267141)

[15. State Law Provisions. 16](#_Toc117267142)

[16. Assurances. 16](#_Toc117267143)

[17. Price Provisions. 18](#_Toc117267144)

[18. Payment Provisions. 20](#_Toc117267145)

[19. Public Disclosure. 21](#_Toc117267146)

[20. Breach / Termination. 21](#_Toc117267147)

[21. Liquidated Damages. 22](#_Toc117267148)

[22. Dispute Resolution. 23](#_Toc117267149)

[23. Owner’s Rights. 24](#_Toc117267150)

[24. Protest Procedures. 25](#_Toc117267151)

[25. Miscellaneous. 25](#_Toc117267152)

[PROPOSAL FORM 27](#_Toc117267153)

[INDIANA LAW AFFIDAVIT 28](#_Toc117267154)

# INSTRUCTIONS TO OFFERORS

### Definitions.

Whenever the following terms are used throughout this RFP, they shall have such meanings herein ascribed to them unless the context clearly indicates or requires a different meaning. Owner has final authority in deciding the meaning of these terms.

* “Agreement” means the final mutually executed form of the contractual negotiations and understandings between Owner and Winning Offeror with respect to the subject matter of this RFP, as amended from time to time.
* “Apparatus” means the requisitioned pumper tanker that is the subject of this RFP.
* “Applicable Law” includes all laws, constitutions, codes, ordinances, rules, regulations, orders, awards, authorizations, judgments, injunctions, writs, decrees, applicable ethical standards, and any respective amendments thereto, of any government or quasi-government entity having jurisdiction over the Project.
* “Bidder,” as used in the Specifications, refers to the “Offeror.”
* “Change Directive” means a binding directive to Contractor issued on or after the Effective Date, signed by the Project Manager within the scope of his or her authority, that unilaterally orders an addition, deletion, or revision to the Project.
* “Change Order” means a Written amendment to the Contract Documents signed by authorized representatives of both Parties.
* “Contract Documents” refers to and includes the following documents, as applicable, and further includes all exhibits, appendices, attachments, schedules, maps, drawings, and mutually-signed addenda thereto:
	+ the Agreement;
	+ this RFP, including the Instructions to Offerors and the Specifications;
	+ the Notice of Award;
	+ the completed Proposal Form;
	+ the engineering Plans;
	+ the manufacturer equipment and Supplies installation and use instructions;
	+ the Indiana Law Affidavit; *and*
	+ the Qualification to Do Business in Indiana form.
* “Contract Price” means the sum of all item subtotals on the Winning Offeror’s Proposal Form to be paid by Owner to Contractor, except as may be modified by any proposed discount, the Agreement, any Change Order, Change Directive, breach, amendment, or judicial order.
* “Contractor” means the Winning Offeror with whom Owner has executed an Agreement; the term also includes, except to the extent such use would be clearly inappropriate, the Contractor’s applicable subcontractors of whatever tier; their collective suppliers, consultants, third-party laborers, and other agents; their respective parent and subsidiary companies; and their respective owners, partners, directors, officers, employees, agents, representatives, successors, and assigns of all of the foregoing.
* “Contractor’s Project Representative” means the Person designated on the Proposal Form to represent the Winning Offeror (in the capacity as a Contractor) in a binding manner on a daily basis throughout the Project.
* “Cure Period” means the time period allotted under the Contract Documents after which a Breach will give rise to the non-breaching Party to a right to terminate the Agreement.
* “Deadline” means the time fixed in the Notice to Offerors for opening the Proposals and beyond which time newly received Proposals must generally be returned unopened.
* “Defective,” with respect to Work or Supplies, means Work or Supplies that are insufficient, unsatisfactory, or faulty such that they:
	+ do not conform to the Contract Documents;
	+ do not meet the requirements of any applicable inspection, reference standard, test, or approvals referred to in the Contract Documents; *or*
	+ have been damaged prior to Project Manager’s recommendation for final payment.
* “Effective Date” refers to, except as otherwise indicated in the Contract Documents, the date when the Agreement was last signed and delivered to all Parties.
* “Force Majeure Event” means any event that causes any failure of or delay in the performance of the Contract Documents for the period that such failure or delay:
	+ is beyond Contractor’s reasonable control;
	+ materially affects performance of any obligation under the Contract Documents; and
	+ could not have been reasonably foreseen or provided against;

such as war, floods, earthquakes, epidemics, and certain labor disputes as described above but not including failure or delay resulting only from general economic conditions or other general market effects.

* “IC” stands for the Indiana Code, the official state legislative code of the State of Indiana, and then refers to the applicable chapter or section thereof.
* “Invoice” means a claim or bill submitted for payment to Owner that constitutes an itemized list of Supplies that have been delivered to Owner pursuant to, and in accordance, with a purchase order.
* “Liquidated Damages” means the amount agreed upon by Owner and Contractor in accord with the Contract Documents and Applicable Law (not to be construed as a penalty) that will be paid to compensate Owner for uncertain or unquantifiable loss incurred for Contractor’s failure to timely complete the Project.
* “Lump Sum” means an amount equal to the Contract Price that covers all Work and all Supplies necessary to complete the Project in accord with the RFP.
* “NFPA” stands for National Fire Protection Association.
* “Notice of Award” means the Written notice provided by Owner to the Winning Offeror stating that the Winning Offeror has been selected by Owner to enter into the Agreement; in a case where the Agreement has been executed without such notice, the term instead refers to the Agreement.
* “Notice to Offerors” means the notice that Owner caused to be published in a locality newspaper and/or sent directly to selected Offerors in accord with Applicable Law that introduced, among other things, the Project, the procurement process, the RFP, and the Deadline.
* “Notice to Proceed” means a Written notice given by Owner to Contractor that fixes the dates within which Contractor must commence the Work or else be in breach.
* “Offeror” means a person submits a conforming Proposal in response to this RFP or a person who is invited by Owner to do so.
* “Owner” means the individual or entity under whose authority this RFP was issued and for whom the Project is to be performed.
* “Owner Delay” means any termination or suspension in the commencement, prosecution, or completion of the Work initiated by Owner that is not attributable to Contractor.
* “Party” means either Contractor or Owner, as indicated (“Parties” refers to both).
* “Person” means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity.
* “Plans” means the graphic and pictorial portions of the Contract Documents drafted by Contractor that show the design, design criteria, location, and dimensions of the Apparatus and the Work, generally including sections, details, schedules, diagrams, and other data.
* “Post-Award Requirements” means the furnishing of all documents that are required to be submitted to Owner after the Notice of Award in accord with the Proposal and the RFP, as may have been modified by any subsequent negotiations.
* “Project” means the enterprise identified by Owner in the Notice to Offerors that is to be accomplished by the Contractor, including the study, design, planning, construction, testing, commissioning, and start-up in accord with the Contract Documents; the term includes, and is the result of, performing or providing all Work, Supplies, equipment, and Submittals necessary therefor.
* “Project Manager” means the person designated by Owner for representing Owner’s interests throughout the Project and for administering and supervising the procurement process and subsequent contract; the term includes any other agent of Owner to whom such authority has been delegated.
* “Proposal” means either an offer in response to this RFP that is submitted by an Offeror to Owner to complete the Project or the amount required for completion thereof.
* “Proposal Bond” means a bond or certified check made payable to Owner in accord with Applicable Law to protect Owner from loss against a former Winning Offeror where such Person has failed to comply with the procurement process or to fulfill a contract.
* “Proposal Form” means the form prepared by Owner as part of the RFP on which an Offeror submits, among other things, its proposed Lump Sum Contract Price, substitutions, and exceptions that, to the extent accepted by Owner, form part of the Agreement.
* “RFP” stands for “Request for Proposals” and refers to this solicitation, which is comprised collectively of the title pages, the Notice to Offerors, the Instructions to Offerors, the Specifications, and the Proposal Form, and includes any exhibits, appendices, attachments, schedules, maps, drawings, and addenda related thereto.
* “Specifications” is the part of the RFP consisting of physical characteristics, functional characteristics, appearance, quality, scope, and requirements for the Supplies, equipment, Submittals, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
* “Submittal” means any Written document prepared by Contractor that the Contract Documents explicitly or implicitly requires Contractor to submit to the Project Manager and/or Owner, or that is otherwise explicitly designated as a “Submittal” in the Contract Documents; the term includes any approvals, shop drawings, samples, product data, Contractor-delegated designs, sustainable design information, information on special procedures, testing plans, test results, source quality-control testing and inspections, quality-control testing and inspections, records of delivery of Supplies and equipment, operations and maintenance data, and photographic documentation, etc.; provided, however, that the term does not include any Contract Documents, Change Order, Change Directive, Invoice, notice, or request for interpretation or clarification.
* “Supplies” means the Apparatus and all other goods, products, materials, tools, software, tangible property, intellectual property (other than Contract Documents and Submittals), and other items that have been purchased or provided by Contractor pursuant to the Contract Documents and that are contemplated therein to become the property of Owner.
* “Target Date of Delivery” means the scheduled date for delivery of the Apparatus, plus any extension thereof by Change Order or Change Directive.
* “Town” means the Town of Fremont, Indiana and includes:
	+ the political subdivision within the State of Indiana;
	+ the Town Council, including officers and agencies thereof; *and*
	+ the corporate area of that political subdivision.
* “Winning Offeror” means the Person to whom Owner has given, but only to the extent Owner has not retracted, a Notice of Award with respect to this RFP.
* “Work” means the design, procurement, manufacture, delivery, installation, training, maintenance, inspection, and repair of the Supplies and other services required or fairly implied by the Contract Documents.
* “Written” means any visible representation of words, letters, or figures, whether printed, in electronic form, or otherwise, that is intended to convey meaning.

### Procurement Process.

1. Owner/Project. With this Request the Proposals (“RFP”), the Town Council of the Town of Fremont, on behalf of the Town of Fremont, seeks proposals from prospective offerors to supply a new pumper tanker fire apparatus, as further described in this RFP.
2. Administration. The Town Clerk-Treasurer (“Project Manager”) will administer the procurement process and this RFP on behalf of Owner and serve as Owner’s representative. The Project Manager may be contacted at:

Office of the Clerk-Treasurer

Kathy Parsons, Clerk-Treasurer

P.O. Box 602

205 N Tolford St.

Fremont, IN 46737

ph: (260) 495-7805

f: (260) 495-2446

fremontct@townoffremont.org

1. Proposal Documents. Offerors may contact the Project Manager for a copy of the RFP. The Project Manager will try to make the documents available on the Town website at: <https://townoffremont.org/>. A fee will be charged to recover the costs of any printout or USB drive provided to any Offeror.
2. Questions. Each Offeror may submit a question by phone or email to the Project Manager concerning this RFP or the procurement process at any time. Questions relating to the Specifications should reference the page and item concerned. The Project Manager may answer all inquiries privately but will limit responses to existing or accessible public knowledge. The Project Manager may defer technical questions to the Town’s Fire Chief.
3. Addenda. Should the Project Manager determine that a clarification is necessary or helpful, the Project Manager will provide an addendum to this RFP to all known Offerors. If an Offeror has received this RFP from a source other than the Project Manager, the Offeror must ensure that no addenda have been sent before submitting an Offer.
4. Suggestions. Each Offeror who believes the terms of the RFP, including the Specifications, can be improved may suggest amendments no later than seven (7) days before the Deadline. If the Project Manager should accept the suggestion, the Project Manager will release an addendum that revises the RFP.
5. Concerns. Each Offeror who has concerns regarding the form or content of the RFP, the Specifications, or the award of the Agreement should direct the concern to the Project Manager as soon as possible in order to maximize the Offeror’s potential remedies. In doing so, the Offeror must provide a detailed description of the specific grounds for the concern, any supporting legal or factual documentation, and any specific relief requested.
6. Good Faith. Owner will act in good faith at all times throughout the procurement process. All Offerors will be accorded fair and equal treatment and equivalent information.
7. Costs. Each Offeror will be responsible for all of its costs (e.g., travel, equipment, and presentation materials) associated with the RFP, any Proposal, or contract negotiations.
8. Deadline. The Notice to Offerors indicates the Deadline. All Proposals must be received at the address indicated on or before the Deadline or else will be returned without consideration unless an unfair competitive advantage would not result. No Proposal will be announced or made available for public inspection until an award has been made.
9. Negotiations. In order to allow for Owner to obtain best and final offers from, responsible Offerors, Owner may, at Owner’s sole discretion, conduct interviews and discussions with Offerors who have submitted a Proposal by the Deadline. In conducting negotiations, information derived from Proposals submitted by competing Offerors will be used, but the identity of the Offeror providing the information will not be disclosed to others.
10. Selection. Owner will consider each Proposal based on criteria provided in this RFP. Owner may award a contract based on the initial Proposals, without further negotiations. Owner shall not be deemed to have conclusively selected an offer for a solicitation until the Agreement has been successfully negotiated and signed by all parties. A register of Proposals will be prepared and be made open for public inspection after contract award.
11. Contract. Owner will collaborate with the Winning Offeror to execute the Agreement. For more details, see the “Post-Award Requirements” section. If final contract negotiations should break down with the Winning Offeror, Owner may cancel the procurement process or select another Offeror.

### Proposal Contents.

1. Required Contents. Each Proposal must include:
	1. a completed Proposal form clearly identifying:
		1. the Offeror’s full legal name and physical address for notice purposes;
		2. the identity and regular and emergency contact information for Contractor’s Project Representative;
		3. the Lump Sum price, in words and numbers; *and*
		4. all other requested information;
	2. a brief statement of the company history;
	3. a minimum of **three** references and/or letters of recommendation;
	4. a Proposal Bond or other acceptable evidence of financial responsibility, as required by this RFP; *and*
	5. statement of all litigation, arbitration, administrative claims, or regulatory proceedings to which the Offeror has been a party during the past five (5) years and their resolution;
2. Apparatus-Related Submission Requirements.
	1. Specs Validation. Each Proposal must contain a returned copy of the Specifications in the same page order, with a checkmark in the respective columns next to each item.
		1. Offeror must place a checkmark in the “YES” column next to each respective item for which Offeror agrees to comply in full.
		2. Offeror must place a checkmark in the “NO” column next to each respective item for which Offeror excepts, however minor.
		3. For each exception, the page number and section of the Specifications that contains the language excepted to must be provided on a separate sheet, along with the full reasons for making the exception.
		4. Where the Offeror proposes an alternative construction method, the Offeror must provide drawings, photographs, or similar renditions.
		5. For each item with a checkmark in the respective “NO” column, it will nevertheless not be treated as an exception, and the Offeror will be bound to comply with such item, if no explanation for the exception has been provided to Owner.
		6. Failure to submit exceptions in this format will add a considerable time to the Proposal review process, which may render the Proposal unresponsive.
	2. Plans. Each Proposal must contain a set of draft Plans consisting of a detailed description of the entire Apparatus and equipment as proposed.
		1. The draft Plans must include size, location, type, and model of all component parts being furnished.
		2. The draft Plans must include a detailed drawing consisting of views of the driver side, passenger side, and rear of the Apparatus, including all principal dimensions (height/width/length).
		3. Detailed information must be provided on the materials used to construct all facets of the Apparatus body. Pictures or brochures that represent the quality of the Work are also encouraged.
		4. Any Offeror who fails to submit detailed construction Plans will be considered non-responsive, which may render its Proposal unresponsive.
	3. Weights. Each Proposal must contain a computer-generated weight and balance analysis for the Apparatus. It must address individual and combined axle weights and include an analysis on the vehicle’s center of gravity. It must also include a figure for excess payload capacity. Any Offeror who fails to submit such analysis in this format will be considered non-responsive, which will render its Proposal ineligible for award.
	4. Responsibility. Each Proposal must contain satisfactory evidence of the ability to construct the Apparatus and must also show the ability to render prompt service and to furnish replacement parts for the completed Apparatus chassis, body, and components.
3. Conditional Contents.
	1. Authority. If Offeror is not an individual, the individual submitting the Proposal must provide evidence showing general or specific authority to act on the Offeror’s behalf.
	2. Foreign Entities. If the Offeror is a foreign entity, the Offeror must submit either proof of the right to do business in Indiana or a statement that it will promptly register with the Indiana Secretary of State for the right to do business in Indiana if Owner provides Offeror with a Notice of Award.
	3. Affiliated Entities. If the Offeror relies on the assets of its parent corporation or any other entity to support its Proposal, then the Proposal must include a financial statement of the entity along with a document legally executed by such entity guaranteeing the full and faithful performance of the Project and that all assets of the entity will be subject to faithful performance thereof.
4. Optional Contents. Each Proposal may include:
	1. a brief cover letter;
	2. a standard Supplies contract draft in accord with the RFP and the Specifications or an indication that the Offeror prefers that Owner draft such a contract;
	3. a statement of conditions, exceptions, or alternates; *and*
	4. any other advertising or self-serving information that the Offeror desires to submit, such as other products and services, with the understanding that it is possible that such information may not, in fact, be reviewed and may be used against the Offeror.
5. Ownership. All Proposals become the exclusive property, including the intellectual property, of Owner; provided, however, that Owner shall incur no obligation to pay any amounts to an Offeror with respect to its Proposal.

### Submission Requirements.

1. General. Each Proposal is to be submitted in accordance with this RFP. All documents and forms are to be completed fully and accurately.
2. Addressee. All Proposals must be given to the Project Manager via hand delivery or else addressed to the Project Manager using the appropriate physical or electronic mail address provided in the Notice to Offerors. The envelope or message header must clearly indicate the name of the Offeror and be marked “ATTN: Fire Apparatus RFP.”
3. No Fax. No Proposals sent by fax will be accepted.
4. Copies. All material submitted by mail must be submitted in duplicate.
5. Binding.
	1. By Mail. Proposals that are submitted by mail must be submitted in a folder or binder with separate tabs for the different documents.
	2. By Email. Proposals that are submitted electronically must both include each document as a separate attachment and also include one attachment that includes all the other documents combined into a single file.
6. Electronic Format. Electronic documents must be submitted as attachments in a standard compatible format (for example, Adobe .pdf or Microsoft Word files). Offerors are encouraged to lock the files for editing (while still allowing for copying, pasting, and printing). All text must be searchable, selectable, and printable.
7. Legibility. Each mailed Proposal should be typewritten. A handwritten Proposal that cannot be clearly read will be deemed unresponsive.
8. Signature. Each document and form included as part of the Proposal must be signed, initialed, or electronically signed by an individual who is authorized to submit the Proposal.

### Proposals.

1. No Offer. This RFP is not an offer to enter into a contract, but merely a solicitation to Offerors to submit a conforming Proposal to Owner.
2. No Obligation. Owner shall incur no obligation to any Offeror for making its Proposal.
3. No Liability. Owner shall have no liability for rejecting a Proposal that is not prepared in conformity with the RFP.
4. Conditions and Exceptions. Each Offeror may condition its Proposal such that it will not be subject to the RFP, but only if it specifies a condition (e.g., advance payment terms) or references the specific provision(s) to which it excepts and the grounds for the condition and/or exception. Though Owner will act in good faith, such conditions or exceptions may be grounds for Owner to reject the Proposal. See Section 3B – Proposal Contents for additional requirements regarding exceptions.
5. Alternates. Each Offeror may submit, in addition to its Proposal, an alternate provision or set of terms, conditions, materials, supplies, or procedures that it prefers along with any corresponding change in the amount of its final offer (e.g., not providing a warranty called for by the Specifications in exchange for decreasing the price by a set amount). Owner may then accept or reject either the Proposal or the alternate.
6. Withdrawal. Each Offeror may withdraw or modify its Proposal at any time prior to the Deadline by submitting timely Written notice thereof to the Project Manager. No Proposal may be withdrawn or modified after the Deadline for a period of sixty (60) calendar days without Owner’s consent.

### Proposal Bond.

1. Amount. In accordance with IC §§ 5-22-9-2(3) and 5-22-16-5, each Offeror is required to submit with its Proposal a certified check, bond, or other acceptable evidence of financial responsibility made payable to Owner in an amount not less than ten percent (10%) of Offeror’s total base Proposal.
	1. The surety on the Proposal Bond must be a duly authorized corporate surety company authorized to do business in the State of Indiana.
	2. An attorney-in-fact who signs a Proposal Bond must file therewith an effectively dated copy of the power of attorney, bearing the seal of the company, evidencing such agent’s authority to execute the Proposal Bond.
2. Purpose. The general purpose of the Proposal Bond is to ensure, to the extent a Proposal is selected for award, and if Offeror should fail to timely complete the Post-Award Requirements, that Owner will then be compensated for its lost time and efforts during the post-award process and for its diminished ability and negotiating posture with respect to other Offerors.
3. Satisfaction. Each Proposal Bond must be returned to the respective Offerors within a reasonable time after an award is made except with respect to a Winning Offeror. In such case, the Proposal Bond will be returned after completion of the Project.
4. Forfeiture. In the event the Winning Offeror should fail to fulfill the Post-Award Requirements or the Agreement within the time provided, Owner may declare the Proposal Bond forfeited.

### Selection Criteria.

1. General Criteria. Owner will make an award to the responsive and responsible Offeror who submits a Proposal that in the Owner’s judgment is the **most advantageous** to Owner.
	1. This will usually correspond to the Proposal that offers the lowest price among competing responsible, responsive Offerors, but other factors such as litigation history, reputation, prior relationship with Owner may play minor or major roles depending on their severity or extensiveness.
	2. With respect to the Apparatus, special consideration will be given to the following:
		1. proximity of Contractor in anticipation of future repairs;
		2. parts warranties (if significant, alternate pricing preferred);
		3. accessibility of component parts that require periodic maintenance and inspection;
		4. ease of operation (pumping and driving);
		5. driver visibility; *and*
		6. symmetrical proportions.
2. Responsiveness. Responsiveness will be determined by timely submitting all required Proposal contents in the required manner, and as otherwise provided by Applicable Law.
3. Responsibility. Responsibility will be determined by having ample experience in satisfactorily completing ventures similar to the Project, by ability, by references, by financial guaranties, by integrity or reputation, by demonstrating an understanding of the Specifications (upon demand), and as otherwise provided by Applicable Law. Owner may deem any Offeror who owes any sum to Owner that is past due as not responsible.
4. Owner Discretion. Owner has final authority in determining the scope and evaluation of the criteria in this section. These criteria are subject to change at any time.

### Post-Award Requirements.

1. Post-Award Documents. The Winning Offeror, as determined by Owner, must submit in compliance with the RFP:
	1. the Indiana Law Affidavit form (see Affidavit form after the Specifications);
	2. if located outside the state of Indiana, proof of registration with the Indiana Secretary of State to do business in Indiana; *and*
	3. a draft Agreement for the Project, or a Written request for Owner to submit the same.
2. Timeframe. The documents required by this section must be submitted **within 14 days of Owner having issued the Notice of Award** or, if not possible to be submitted within such timeframe, then within a reasonable time under the circumstances. All documents must be received before Owner may enter into the Agreement.
3. Agreement.
	1. Submission. The Winning Offeror must either submit to Owner an Agreement draft signed by a person capable of binding the Offeror to the Agreement or submit a Written declaration that it prefers Owner’s attorney to draft the Agreement.
	2. Contents. The Agreement must incorporate by reference and impose the terms of all other Contract Documents, subject to any mutually agreed-upon changes.
4. Breach. The failure or refusal by the Winning Offeror to complete the Post-Award Requirements will constitute a material breach of the terms of this RFP.
5. No Liability. The failure or refusal by the Winning Offeror to timely complete the Post-Award Requirements shall entitle Owner to cancel an award, to terminate all negotiations and expectancies with the Offeror, to collect on that Offeror’s Proposal Bond, and to enter into an Agreement with other Offerors. Owner shall have no liability for any such action.
6. Proposal Bond. Except in the case of a Winning Offeror or where forfeited pursuant to this RFP, the Proposal Bond that each Offeror submitted as part of its Proposal will be released upon the Effective Date, or sixty (60) days after the Deadline, whichever is earlier.

### Project Times.

1. Target Date. The Target Date for Delivery is on or before **October 31, 2024**.
2. Start of Work. Construction must commence as indicated in the Notice to Proceed, or if none has been provided by the 30th day after the Effective Date, then Construction must commence by the 60th day after the Effective Date.
3. Progress Schedule. Within 14 days after the Effective Date, Contractor must submit to the Project Manager a preliminary Progress Schedule subject to Project Manager review, that indicates the times (numbers of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Contract Documents.
4. Time Is of the Essence. Time will be considered of the essence during the Project to the extent that the Work has been delayed due to party disputes concerning the Contract Documents.
5. Work Delay / Stoppage.
	1. Stoppage. Without cause and at any time, the Project Manager may issue a Change Directive to terminate or suspend any portion of the Work.
	2. Notice. Upon a Force Majeure Event, Contractor must provide prompt Written notice to Owner of such event not later than two (2) days after the event has occurred. Owner may promptly investigate any Force Majeure Event.
	3. Right to Seek Change Order. Contractor is entitled to seek an adjustment of the Target Date of Delivery to the extent that a delay caused by a Force Majeure Event or Owner Delay has adversely impacted its direct costs or time to perform the Work and only to the extent an extension is essential.
	4. Resolution. Owner will consider an equitable adjustment in the Target Date of Delivery, the Contract Price, or both, provided in any Change Directive presented pursuant to this section but only to the extent Contractor’s costs and/or time of performance have been adversely impacted by the event.
	5. Limitations.
		1. Contractor will not be entitled to any adjustment in Contract Price or the Target Date of Delivery for delay, disruption, or interference caused by or within the control of the Contractor.
		2. No Force Majeure Event or Owner Delay, whether or not such event is foreseeable, will entitle Contractor to any change in the Contract Price, including incidental or consequential damages, overhead, loss of reputation, or loss of profit.
	6. Liquidated Damages. Liquidated Damages may apply to any Project delay that is attributable to Contractor, in accord with the Agreement.

### Design.

1. Responsibility. Contractor will be solely responsible for the design used in the manufacture of the Apparatus.
2. Quality. The Apparatus must be of the highest quality and of the latest design and type, while using the most current industry manufacturing techniques.
3. Weight and Distribution. The Apparatus, assembly, Supplies, etc., must be designed and constructed with consideration to overall vehicle weight, vehicle weight distribution, and to the nature and distribution of the load to be sustained. A calculation must include the chassis weight with all fluids and fuels topped off, estimated body weight, a 250-lb. allowance per seat for personnel, and a 2,500-lb. distributed load allowance for equipment.
4. Part Replacement. The Apparatus must be designed and constructed so that component parts can be removed for service and repair with standard tools. Any special tools needed to service any part of the Apparatus must be supplied with the Apparatus and included in the Contract Price. During the design and construction, Contractor must consider the ease of access to various areas requiring lubrication, inspection, service, or adjustment.
5. Standards. Contractor must meet the minimum requirements of NFPA Pamphlet 1901 current edition, The Underwriter's Laboratories, Inc., and all state and federal Department of Transportation vehicle regulations current as of the Effective Date.

### Progress Inspections.

1. Progress Pictures. Progress pictures of the Apparatus must be provided to the Project Manager or its designee throughout each phase of construction, paint, and assembly.
2. Inspection Trips. Contractor’s Project Representative must host three (3) progress inspection trips at Contractor’s manufacturing facility at mutually agreeable times during the following phases of construction:
	1. preconstruction, to finalize all construction details;
	2. pre-paint/chassis inspection; *and*
	3. final inspection.
3. Travel Costs. Contractor must pay for all reasonable transportation, lodging, and meals costs incurred by Owner under Subsection (B) for up to two (2) Owner representatives per trip. If a one-way trip would be less than 250 miles, it will be made by motor vehicle; otherwise, at Owner option, by either motor vehicle or commercial air.
4. Additional Visits. Owner may schedule further inspection trips at its own cost at any reasonable time during the manufacturing process. A factory representative must be on site to give updates and to allow Owner representatives to inspect the Apparatus.

### Delivery.

1. Site. The completed Apparatus must be delivered under its own power to Owner’s designated location. A factory delivery technician must accompany the Apparatus.
2. Inspection. Owner will inspect the Apparatus and any other Supplies upon delivery during a walkthrough provided by the delivery technician. Defective Supplies will be grounds for rejection and return of the completed Apparatus at no cost to Owner.
3. Training. Upon delivery, Contractor’s Project Representative must remain at the Fire Department until released by the Fire Chief during which time he or she must comprehensively instruct and train Fire Department personnel in the proper operation, care, and maintenance of the Apparatus and its parts.
4. Submittals. Upon delivery, Contractor shall provide the following information:
	1. a statement of origin for the Apparatus;
	2. an electrical as-built schematic booklet;
	3. the cab and chassis VIN;
	4. the engine serial number;
	5. the transmission serial number;
	6. the Apparatus serial number;
	7. a copy of a complete operations and general maintenance instructions as delivered, including, but not limited to, the chassis, engine, transmission, axles, lubrication charts, rescue body, and appropriate accessories;
	8. the Underwriters Laboratories Incorporated Test certification; *and*
	9. all data required in NFPA Pamphlet #1901, current edition, especially chapters 14 - 20.

### Supplies.

1. Equipment. Contractor must provide an appropriate and adequate supply of tools and equipment necessary for the proper performance of the Work.
2. Materials and Workmanship. The workmanship of the Supplies must be of the highest quality. The Supplies must be new and of the best grade of their respective kind for their purpose. Supplies may be substituted upon Written consent of the Project Manager. Upon request, Contractor must furnish evidence as to the kind and quality of Supplies at any time during the Project. All Supplies are to be installed according to the Plans or the manufacturer’s instructions. Quality control inspections shall be performed at each step of the manufacturing process.
3. Good Title. Owner will acquire title to all Supplies upon delivery to the Town and acceptance by Owner in accord with Applicable Law. All Supplies shall be free of any third-party claims, liens, charges, contracts, or chattel mortgage. Owner shall have title to, and Contractor must deliver possession of, all unused Supplies.
4. ADA. All Supplies are to meet applicable guidelines of the Americans with Disabilities Act of 1990.

### Personnel.

1. Labor. Contractor must provide an appropriate and adequate source of labor necessary for the proper performance of the Work.
2. Contractor’s Project Representative. Contractor must provide a competent Project Representative, satisfactory to Owner, who will:
	1. act with full authority to bind Contractor;
	2. ensure that the Work is done properly and in accordance with the Contract Documents;
	3. immediately report any work stoppage (ongoing or anticipated) and the reason therefor;
	4. timely submit to the Project Manager all Invoices and Submittals; *and*
	5. be the primary contact person for regular communications with the Project Manager and respond to any such communications within two (2) days.

### State Law Provisions.

1. Anti-Discrimination. Pursuant to IC § 22-9-1-10, neither the Winning Offeror nor that Offeror’s subcontractors may discriminate against any employee or applicant for employment to be employed on the Project, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.
2. Investment in Iran. Pursuant to IC 5-22-16.5, each Offeror who is engaged in investment activities in Iran will be considered nonresponsible.
3. Foreign Entities. Pursuant to IC § 23-0.5-5-2, a foreign entity may not do business in Indiana until it registers with the Indiana Secretary of State.
4. Non-Collusion. Pursuant to IC § 5-22-16-6, no Offeror may collude with another person regarding its Proposal. See the Indiana Law Affidavit for more details.
5. Forced Labor. Pursuant to IC § 5-22-15-24.2, no forced labor (as defined in 19 U.S.C. 1307) may be used in producing supplies under any contract arising out of this RFP.
6. Steel Products. Pursuant to IC § 5-22-15-25, any steel products (as defined in IC § 5-22-15-25) under any third-party contract arising out of this RFP must have been manufactured in the United States.

### Assurances.

1. Certifications. Each Offeror, by submitting its Proposal, certifies that:
	1. it has read and understood the terms of the RFP and the procurement process, generally;
	2. it has read and understood the Specifications;
	3. it has familiarized itself with, and will comply with, all Applicable Law;
	4. it has the right and power to submit a Proposal;
	5. it possesses all professional licenses required to complete the Project;
	6. it does not have any personal interest, direct or indirect, that would give rise to a conflict of interest on the Project that has not been publicly disclosed to Owner;
	7. it has had the opportunity to consult with independent legal counsel;
	8. it has submitted its Proposal voluntarily;
	9. any assertions contained in its Proposal are true to the best of its knowledge;
	10. its submitting representative is fully authorized to submit the Proposal; *and*
	11. it intends to enter into a binding contract with Owner in accord with the RFP.
2. Indemnification. Each Offeror, by submitting its Proposal, covenants to irrevocably release, discharge, and agree to indemnify and hold harmless Owner, its officers, employees, representatives, agents, and servants from and against any and all liability, debts, suits, actions, legal proceedings, claims, demands, damages, costs, expenses, lost wages or benefits, and attorney’s fees (including paralegal fees), whether known or unknown, and whether past, present or future, resulting from a willful or negligent act or omission of the Offeror, its officers, employees, agents, and servants arising out of or relating to its Proposal, Owner’s subsequent award of the Agreement, completion of the Project pursuant thereto, or a violation of a third party’s intellectual property rights.
3. Arrearage of Taxes or Debts. Each Offeror, by submitting its Proposal, certifies that it is not presently in arrears in payment of taxes, permit fees, or other statutory, regulatory, or judicially required payments to the State of Indiana or to the Town.
4. Criminal or Civil Liability. Each Offeror, by submitting its Proposal, certifies that it has no current, pending, or outstanding criminal, civil, or enforcement actions initiated by any federal agency or by any department, agency, or political subdivision of the State of Indiana and that neither it nor its principals are legally, administratively, or contractually barred from entering into a contract for the completion of the Project.
5. Anti-Nepotism. Each Offeror, by submitting its Proposal, certifies that it is aware of the provisions under IC 36-1-21 regarding concerns of nepotism in contractual relationships with governmental entities and further certifies that none of the owners of the Offeror is a relative of any elected official of Owner.
6. Lapse. Each Offeror, by submitting its Proposal, covenants that it will not allow any current permit, license, registration, qualification, or status required by this RFP or attested to in its Proposal to lapse during the Project and that it will notify Owner of any breach thereof unless such breach is immediately corrected.
7. Breach. For a material breach of any certification or covenant in this section:
	1. Owner may reject any claim based on facts or information overlooked or neglected or based on ignorance, misunderstanding, or misinterpretation;
	2. Owner may reject the Offeror’s Proposal or terminate any contract with the Offeror arising out of this RFP without liability or penalty;
	3. Owner may avail itself of any other remedy allowed by law; *and*
	4. the Offeror responsible for the breach must indemnify and hold Owner harmless for its direct losses.

### Price Provisions.

1. Proposal Form Instructions. Each Offeror must clearly submit on the Proposal Form a single Lump Sum Price in both words and numbers.
2. Lump Sum. The Contract Price must equal a Lump Sum Price and be clearly indicated in the form of Agreement. The Contractor will be paid a Lump Sum Price in accord with this RFP that covers all Work and all Supplies necessary to complete the Project.
3. Inclusions. The Lump Sum Price must include, but not be limited to, all respective costs related to mobilization, demobilization, overhead, profit, approvals, government fees, labor, professional services, tests, inspections, meetings, Submittals, equipment, corrections, travel and accommodations, delivery and installation of Supplies, and the removal and off-site transport of condemned materials.
4. Sales Tax. The Lump Sum Price must not include, and Owner will in no way be responsible for paying, a sales tax, as Owner is tax exempt (the exemption certificate will be made available upon request.).
5. Schedule of Values. Within 30 days after the Effective Date, Contractor must submit to the Project Manager a Schedule of Values showing the cost of each included component relative to the Contract Price. The sum of all items listed in the Schedule of Values must clearly be shown to equal the Contract Price. All items not listed will be assumed to have no value, though Owner will collaborate with Contractor on a Change Order if such assumption would later result in a substantial and material injustice.
6. Defects. If the Project Manager should waive any obligation to correct Defective Work or Supplies, then Owner may make a deduction from the Contract Price based on the Schedule of Values.
7. Contract Price Adjustment. To the extent a Change Order or Change Directive should require a change in quantity of an item of Supplies or an addition or deletion to the scope of the Work, the following factors must be used (in preference of their placement on the list) to calculate any adjustment to the Contract Price:
	1. any costs, fees, and any other markups specifically set in the Contract Documents;
	2. the Schedule of Values;
	3. the yearly Consumers Price Index (CPI) for the applicable Work or Supplies, to the extent that Contractor provides timely notice of any increase thereto;
	4. a mutually accepted amount, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner; *or*
	5. if an increase or decrease cannot be agreed to, then the change in the Contract Price must be determined by the reasonable expense and savings in the performance of the Work resulting from the proposed change, including reasonable overhead and profit, as may be set forth in the Contract Documents.
8. Unfair Application. Notwithstanding anything in this section to the contrary, if the use of a price for a given item of Work or Supplies on the Schedule of Values would cause substantial inequity, because, for example, of differences in the character or quantity of the item as originally contemplated or because of a change in the market, the unjust values must be equitably adjusted via Change Order or Change Directive.
9. Settlement. To the extent that Owner and Contractor disagree upon whether Contractor is entitled to be paid for any Work required by Owner, or if there are any other disagreements over the statement or scope of Work or proposed changes to the Work, Owner and Contractor must resolve the disagreement pursuant to the standing dispute resolution provisions of the Contract Documents. As part of the negotiation process, Contractor must furnish Owner with a good faith estimate of the costs to perform the disputed Work in accordance with Owner’s interpretations. If the Parties are unable to agree and Owner expects Contractor to perform the Work in accordance with Owner’s interpretations, Contractor must proceed to perform the disputed services, conditioned upon Owner issuing a Change Directive to Contractor: (i) directing Contractor to proceed; and (ii) specifying Owner’s interpretation of the services that are to be performed. Upon receipt of such a Change Directive, Contractor will be entitled to submit in its Invoice an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the Work, and Owner agrees to pay such amounts, with the express understanding that: (i) such payment by Owner does not prejudice Owner’s right to argue that it has no responsibility to pay for such Work; and (ii) receipt of such payment by Contractor does not prejudice Contractor’s right to seek full payment of the disputed Work if Owner’s Change Directive is deemed to be a change to the Work.

### Payment Provisions.

1. Invoices. Invoices must be submitted no more often than monthly. The amount to be invoiced to Owner during the Project must be the proportional value of the portion of the Project that has been accepted by the Project Manager by the date of Invoice submission compared to the overall Contract Price, minus any amounts previously paid. Nothing in this provision shall operate to restrict Owner from withholding other amounts in accord with law or the Contract Documents.
2. Review Period. Each Invoice for the Project must be subject to review for Defective Work or Supplies by the Project Manager within ten (10) days; provided, however, that Owner must be allowed thirty-five (35) days to return Defective Supplies.
3. Defective Items. No portion of any Invoice may be paid, nor may any debt be incurred therefor, for any Defective Work or Supplies substantively declared as such in writing by the Project Manager; provided, however, that Project Manager may waive this prohibition in favor of an adjustment to the Contract Price.
4. Payment Period. Owner shall have thirty-five (35) days after its regularly scheduled meeting to pay any Invoice that has been submitted at least five (5) days prior thereto.
5. Payments Withheld.
	1. Triggering Events. Owner may withhold payment of any Invoice, and no debt may be incurred therefor, to such extent as may be necessary in Owner’s opinion to protect Owner from loss as a result of any of the following:
		1. reasonable evidence that the Apparatus will not be delivered per the schedule in the Contract Documents, and that the unpaid balance would not be adequate to cover any actual or Liquidated Damages for the anticipated delay;
		2. reasonable doubt that the Project can be completed for the unpaid balance;
		3. Defective Work or Supplies, unless properly remedied;
		4. liens that have been filed in connection with the Work or Supplies;
		5. any Liquidated Damages that may have accrued under this Agreement;
		6. a Change Order has reduced the Contract Price; *and/or*
		7. failure of the Winning Offeror to carry out the Project in accordance with this RFP, the Agreement, or in compliance with Applicable Law.
	2. Release. When in the opinion of the Project Manager the grounds for the withholding or retaining payments no longer exist, payment will be made for the amount previously withheld or retained in accord with the RFP and Agreement. The Winning Offeror will not be entitled to interest from Owner for any amount properly withheld or retained.
	3. Waiver. The Project Manager may waive any right to cure Defective Work or Supplies in favor of an adjustment to the Contract Price.
6. Final Payment. Final payment may not be made on any amount that is in dispute with any person performing Work on the Project. Final payment will be made subject to the Winning Offeror having furnished the Project Manager with a release, in satisfactory form, of all claims against Owner that may arise out of the Project.
7. Appropriations. All payment and performance obligations for the purchase of Supplies are subject to the appropriation and availability of funds. Owner will ensure in good faith that such appropriations are made.
8. Claims Barred. No claim for extra payment will be allowed due to alleged impossibility in carrying out the Project because of inadequate or improper Specifications.
9. Interest. Pursuant to IC § 5-17-5-1, interest will be paid on any untimely payment at the rate of 1% per month except for amounts subject to a good faith dispute.

### Public Disclosure.

1. Public Records. All materials submitted to Owner or Project Manager may be considered public documents under Applicable Law and may be subject to disclosure under the Indiana Access to Public Records Act. By submitting a Proposal, an Offeror understands and agrees that Owner will not be responsible or liable in any way for any loss that the Offeror may suffer from the lawful disclosure of information or materials to third parties.
2. Trade Secrets.
	1. Owner accepts its obligations under Applicable Law not to release any public record that constitutes a trade secret or other material protected from disclosure. To that end, any material requested to be treated as a trade secret or other otherwise protected from disclosure must be clearly and conspicuously identified as such and readily separable from the balance of the Proposal.
	2. Offerors are hereby notified that the Indiana Public Access Counselor has made the following statements regarding trade secrets: “whenever a public agency enters into an agreement with set terms, agreed-upon consideration, offers and acceptances, the final terms of the contract are disclosable” and “no confidentiality or nondisclosure clause can bargain away the public’s right to know.”
	3. No designation of a trade secret will necessarily be conclusive, and, therefore, Offerors may be required to justify why material marked as such should not, upon Written request, be disclosed by Owner under Applicable Law.

### Breach / Termination.

1. Events of Breach. The following occurrences, if incorporated into the Agreement, will constitute, without limitation, an event of a breach with respect to the Agreement:
	1. Contractor providing insufficient personnel to perform Work on the Project or otherwise failing to Work on or complete the Project according to the schedule;
	2. Contractor’s failure to reasonably respond to Project Manager’s concerns;
	3. Contractor’s failure to pay Contractor’s debts as they come due, or Contractor’s assignment for the benefit of creditors, or filing or acquiescing to any petition in any court or proceeding for bankruptcy, reorganization, or insolvency;
	4. Contractor’s failure to promptly remove any lien that may be filed on the Supplies;
	5. Contractor’s failure to prevent the Apparatus from be taken or made subject to execution or other process of law; *and/or*
	6. Contractor’s failure to perform material obligations under the Agreement.
2. Notice. In the event of any breach of the Agreement, the non-breaching party must provide Written notice to the breaching party, articulating the circumstances of the breach. Upon the occurrence of a breach, in addition to any other rights and remedies provided in the contract or by law, the non-breaching party may provide Written notice that it intends to terminate the contract unless the breach is cured.
3. Cure Period. The breaching party must have seven (7) days to cure any breach after having received notice thereof; provided, however, that if the breach is capable of being cured but not during such timeframe, then the Cure Period shall be extended for a reasonable time.
4. Termination for Cause. If the breach is not cured within the Cure Period, the non-breaching party may terminate the Agreement without penalty by providing Written notice to the breaching party of such declaration.
5. Effect of Termination. Each party’s rights and obligations pursuant to the Agreement must cease immediately upon termination, except as otherwise provided in such contract. Upon any termination of the Agreement related to bankruptcy or breach, each party will have any remedy provided therein and also any other remedy allowed by law or in equity with attorney’s fees and court costs.

### Liquidated Damages.

1. Assurances. By submitting a Proposal, an Offeror represents that it understands that:
	1. time is of the essence during the Project, as provided in Section 9 – “Project Times”;
	2. Owner will have a reasonable likelihood of suffering financial loss that is difficult to ascertain if the Project should not be completed by the Target Dates of Substantial Completion and Final Completion;
	3. such financial losses may be difficult to ascertain or quantify;
	4. disputes in any legal setting only add to such delays, difficulties, and expenses; *and*
	5. it is assuming the risk for the losses that may be borne by this section.
2. Approximating the Losses. Instead of requiring proof of the losses described in this section, Owner and Offeror recognize that the amounts specified in this section as Liquidated Damages bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure to timely complete the Project.
3. Agreement. The Winning Offeror shall insert in the Agreement, either directly or by reference hereto, a Liquidated Damages provision such that: **Contractor must pay Owner $100.00 as Liquidated Damages for each day (full or partial) after the Target Date of Delivery.**
4. Withholding. Upon reasonable notice of availing itself of any Liquidated Damages provision in this section, Owner may issue a Change Directive to unilaterally adjust the Contract Price and withhold any sums that would otherwise be due to the Winning Offeror.
5. Survival. If Owner should terminate the Agreement pursuant to Section 20 – Breach / Termination of this RFP (as may be incorporated into the Agreement), Contractor will be liable for Liquidated Damages under this section until Owner reasonably obtains delivery of similar Supplies. These Liquidated Damages are in addition to any excess costs of repurchase. This right shall survive the expiration or termination of the Agreement to the maximum extent permitted by law.
6. Scope. The remedies afforded by this section shall be limited to the issue of Project delays. Nothing in this section shall impair the rights of Owner and the Winning Offeror to any other remedy that would otherwise be available under the Contract Documents or Applicable Law with respect to this or any other type of breach.

### Dispute Resolution.

1. Delays Minimized. The existence of a dispute notwithstanding, Contractor must continue without delay to manufacture any Supplies that are not affected by the dispute in accord with this RFP. Should Contractor fail to continue to manufacture the Supplies without delay, any additional reasonable, direct costs incurred by Owner or Contractor as a result of such failure to proceed must be borne by Contractor, and Contractor will have no claim against Owner for such costs.
2. Mediation. If a dispute should arise out of or relate to the Contract Documents, or the alleged breach thereof, and if the dispute is not settled through negotiation, Owner and Contractor must first try in good faith to settle the dispute by mediation within thirty (30) days administered under the Indiana Rules for Alternative Dispute Resolution before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the Parties are unable to agree on a mediator, a mediator shall be appointed by the Indiana Association of Mediators. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.
3. Attorney Fees. In any legal action except mediation that arises out of or relates to the Contract Documents, the Party that substantially prevails may recover from the other Party its costs and expenses (including reasonable attorneys’ and paralegal fees) incurred in connection with the action, any appeal, and collection of any judgment therefrom.
4. Waiver of Jury Trial. THE PARTIES EACH AGREE TO AND DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS RFP, THE SOLICITATION PROCESS, OR ANY CONTRACT ARISING THEREFROM.

### Owner’s Rights.

1. Reserved Rights. Owner reserves without limitation, and may exercise at its sole discretion, the following rights and conditions with regard to the procurement process:
	1. to cancel the procurement process and reject any and all Proposals;
	2. to waive any informality or irregularity;
	3. to revise the RFP via an addendum;
	4. to reject any Proposal that is incomplete, inadequate, or not responsive to the requirements of the RFP;
	5. to deem as nonresponsible any Offeror who owes money to Owner that is past due;
	6. to require confirmation of information submitted by an Offeror, to require additional information from an Offeror concerning its Proposal, and to require additional evidence of qualifications to complete the Project;
	7. to seek or provide clarifications or conduct negotiations with an Offeror at any time;
	8. to contact individuals and entities with knowledge of an Offeror’s ability and suitability to perform under a contract and to investigate statements contained in the Proposal;
	9. to accept or reject any suggestions, conditions, exceptions, and alternates submitted by an Offeror; *and*
	10. to take any action affecting the procurement process that is determined to be in Owner’s best interests.
2. Good Faith. Owner will exercise the rights expressed in this section in good faith and only bearing in mind the best interests of Owner, not those of any particular Offeror.

### Protest Procedures.

1. Procedures. The following protest procedures will apply to the procurement process and the RFP:
	1. Addressee. All protests must be directed to the Project Manager.
	2. Procurement Process Deadline. Any protest based on the procurement process, generally, or on the form or content of the RFP, which is or should have been apparent prior to the Deadline, will not be considered if received by the Project Manager later than seven (7) days prior to the Deadline.
	3. Selection Process Deadline. Protests based on other circumstances, including the selection process and award, must be received within seven (7) days from the date of award; however, in no event will a protest be considered if all Proposals should be rejected.
	4. Contents. The protest must be in writing and include: (1) the name, street address, and email address of the aggrieved party; (2) the name of the Project; (3) a detailed description of the specific grounds for the protest and any supporting legal or factual documentation; and (4) the specific ruling or relief requested.
	5. Initial Review. The Project Manager will initially review the protest, and may, upon review: (1) reject the protest for failing to meet the requirements; (2) deny the protest on the basis of information provided if the facts do not support its validity; (3) act upon the protest to grant the ruling or relief requested; or (4) refer the protest to Owner.
	6. Owner’s Review. Any final decision of the Project Manager, if not reviewed by the Owner, may be appealed to Owner. The decision of Owner is final and binding.
2. Acknowledgment. By submitting its Proposal, each Offeror acknowledges that it has reviewed and acquainted itself with these protest procedures and submits according thereto.

### Miscellaneous.

1. Proposal Form Discrepancies. On the Proposal Form, any discrepancy between words and numbers or symbols for the offer price will be resolved in favor of the words.
2. Notice. Any communication personally delivered or properly addressed and sent to any party using an address listed on the RFP or Proposal shall constitute sufficient notice whenever Written notice is required. Any Offeror that changes its contact information must give Written notice within seven (7) days unless its Proposal has been withdrawn or rejected.
3. Assignment Prohibited. Neither Owner nor the Winning Offeror may assign, sublet, or transfer the Agreement or any rights or interest therein (including payment) without the express Written consent of the other. No assignment will act to relieve any obligation to perform unless the obligation is specifically waived.
4. Currency. Unless otherwise specified, all dollar amounts expressed in the RFP and the Proposal refer to United States currency.
5. Calculation of Time.
	1. Official Time. The official time within the area under Owner’s jurisdiction will be the official time for the transaction of all business.
	2. Reasonable Time. Wherever a provision of this RFP requires or implies an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.
	3. Calculation of Days. Calculation of time herein shall be computed by excluding the first day and including the last. Any provision specifying a certain amount of days includes all intervening weekdays, weekends, and/or holidays except that, if the last day be a Saturday, Sunday, or a state or federal holiday, it will be excluded from the computation. Any document received after the close of regular business hours shall be deemed received the following business day.
6. No Waiver. The waiver by Owner of a breach of any provision of this RFP, the Agreement, or the procurement process shall not operate as, nor be construed to be, a waiver of any subsequent breach thereof.
7. Governing Law. This RFP and any Proposal submitted thereto shall be governed by and interpreted in accordance with the laws of the State of Indiana, without giving effect to the principles regarding the choice of law or conflicts of laws. If any part or provision of this RFP conflicts with the laws of the State of Indiana, those laws shall control.
8. Forum. Any action arising from, or relating to, this RFP or any Proposal resulting therefrom in any way must be brought either in the state courts located in LaGrange County or the United States District Court for the Northern District of Indiana, Fort Wayne Division. By submitting its Proposal, an Offeror submits to the exclusive jurisdiction of such courts.

PROPOSAL FORM

**TOWN COUNCIL OF THE TOWN OF FREMONT, INDIANA**

**2022-23 PUMPER TANKER (FIRE APPARATUS)**

Please carefully read the full RFP, and then make a conforming Proposal as desired.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **#** | **Project** | **Quantity** | **Unit Cost** | **Offer Price** |
| 1 | Manufacture and delivery of the Apparatus, including all Work and Supplies incident thereto. | 1 | Lump Sum | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| OFFER PRICE SPELLED OUT |
| FACTORY LOCATION FOR CONSTRUCTION OF CHASSIS AND APPARATUS |
| PROPOSED ALTERNATE TO TARGET DATE OF DELIVERY OF ON OR BEFORE OCTOBER 31, 2024 AND REASONS  |

List below or on an extra sheet any conditions (e.g., advance payment terms) or alternates (e.g., substituted Supplies or warranty cost differentials). Though Owner will act in good faith, conditions may be grounds for Owner to reject the Proposal.

The undersigned covenants that he or she is fully empowered to execute and deliver this Proposal Form on behalf of the entity identified below (“Offeror”) and that, if accepted by the Owner, this Proposal Form shall constitute a lawful and binding obligation of the Offeror to complete the Project in accord with the Request for Proposals and the Specifications.

Entity: Representative:

By: Email:

Title: Phone:

Address:

INDIANA LAW AFFIDAVIT

This Indiana Law Affidavit forms an enforceable part of the 2022-23 contract for the purchase of a pumper taker fire apparatus (“Agreement”) between the undersigned entity (“Contractor”) and the Town of Fremont.

Pursuant to IC § 5-22-16-6, Contractor deposes and states under the penalties for perjury that it has not employed or retained any third party to solicit or secure the Agreement; that it has not entered into, nor offered to enter into, any combination, collusion, or contract with a third party with respect to the Agreement; and that it has not received or paid any fee, commission, percentage, or any other consideration, contingent upon or resulting from the price to be offered, the award, and/or execution of the Agreement; excepting such consideration and subject to the terms and conditions expressed upon its face.

Contractor also affirms compliance with the substantive parts of IC § 22-9-1-10 on employment non-discrimination, which is hereby incorporated into this Indiana Law Affidavit. Finally, as required by IC § 5-22-16.5, Contractor hereby certifies that it is not engaged in investment activities in Iran.

|  |  |
| --- | --- |
| Full Legal Name of Business Entity | Entity State / Type |
| Agent’s Full Printed Name | Title |
| Signature | Date |

STATE OF }

COUNTY OF }

Before me, a Notary Public in and for said County and State, appeared the person identified above, on behalf of the entity identified above, proved to me based on satisfactory evidence and/or personally known to me, who acknowledged execution of the foregoing Indiana Law Affidavit to be his or her voluntary act, and who, having been duly sworn, stated that, as such officer and with full authority, all representations made herein are true. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.

Notary Public Signature and Printed Name

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County.