

Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS		Supplier Contract No.	SC-00004089		
City & County of Denver		Date:	6/17/19	Revision No.	
Purchasing Division		Payment Terms	NET 30	Resolution (as applicable):	
201 West Colfax Avenue, Dept. 304		Freight Terms	DESTINATION F.O.B.		
Denver, CO 80202		Ship Via			
United States		Buyer:	Maggie Baker		
Phone: 720-913-8100 Fax: 720-913-8101		Phone:	720-913-8151		

Workday: DENVR0000099967 Phone: 303-210-4478 Email: bradl@millerberndmfg.com
 Supplier ID:

Millerbernd Manufacturing Company
 622 6th St. S (PO Box 98)
 Winstead, MN 55395
 Attn: Brad Langerak
 Colorado Secretary of State ID: 20151498316
 U.S. Federal SAM Registry Verification Date: 06/17/2019

Ship To: Public Works, Transportation Operations
 5440 Roslyn St. Building E
 Denver, CO

Bill To: As Specified by Agency

1. Goods/Services:

Millerbernd Manufacturing Company, a Foreign Corporation, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A** and shall be held firm for the term of this Master Purchase Order.

4. Extension or Renewal:

The effective period of the annual contract or agreement resulting from this proposal shall be from date of City signature for an initial two (2) years. It is also a specific provision of this proposal that the City and the vendor may mutually agree to renew and continue the contract or agreement consummated under this proposal for additional periods of one year at the same prices, terms and conditions. However, no more than three (3) yearly extensions shall be made to the original agreement.

5. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

6. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

7. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

8. Risk of Loss:

Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

9. Invoice:

Each invoice shall include: (i) the Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

10. Payment:

Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of three million five-hundred thousand dollars (\$3,500,000.00). The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may set off against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

11. Amendments/Changes:

Only the Executive Director of General Services or his/her delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

12. Warranty:

Vendor warrants and guarantees to City that all goods furnished under this Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used and that any professional services associated with the goods, or standalone professional services under \$10,000, shall be performed in a workmanlike and professional manner with the degree of skill and judgment normally exercised by recognized professionals performing services of the same or substantially similar nature. For any goods or services which are or become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall at no expense to City, at City's election and to City's satisfaction, either remedy any and all defects or replace the defective goods within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

13. Indemnification/Limitation of Liability:

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

14. Termination:

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

15. Interference:

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

16. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

17. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

18. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

19. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

20. Insurance:

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Master Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Risk Management reserves the right to require additional policies and/or limits based on agreement scope of work. Vendor shall provide a copy of this Master Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Master Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Master Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Master Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Master Purchase Order shall not act as a waiver of Vendor's breach of this Master Purchase Order or any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Master Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Master Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Master Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Master Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits; (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

21. Severability:

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

22. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

23. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

24. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

25. Records and Audits:

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

26. Remedies/Waiver:

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

27. No Discrimination in Employment:

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

28. Use, Possession or Sale of Alcohol or Drugs:

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

29. Conflict of Interest:

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

30. Advertising and Public Disclosure:

The Vendor shall not include any reference to the Master Purchase Order or to services performed or goods purchased pursuant to the Master Purchase Order in any of the Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

31. No Employment of Illegal Aliens to Perform Work Under The Agreement:

- a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").
- b. The Contractor certifies that:
 - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- c. The Contractor also agrees and represents that:
 - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
 - (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

32. MBE/WBE Procurement Goals– Provision for Contracts/Master Purchase Orders:

- A. This Agreement [Master Purchase Order] is subject to all applicable provisions of Article V, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as §§ 28-117 -137 and 28-152 - 28-158, D.R.M.C., (referred to in this Agreement [Master Purchase Order] as the "MBE/WBE/SBE Purchasing Ordinance") and any Rules or Regulations promulgated pursuant thereto. The Contractor [Consultant][Vendor] identified in its bid [proposal] the participating MBE and/or WBE firms that will be used to satisfy the procurement goal, whether as a self-performing bidder or proposer, a subcontractor, or member of a joint venture and a total participation level by such firms of **0%**. The procurement goal for MBE/WBE participation established for this Agreement by the Division of Small Business Opportunity (DSBO) is **0%**.
- B. Under §28-132, D.R.M.C., the Contractor [Consultant][Vendor] has an ongoing, affirmative obligation to maintain for the duration of this Agreement [Master Purchase Order], at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement [Master Purchase Order] was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement [Master Purchase Order] through contract amendment or otherwise as set forth in §28-133, D.R.M.C. The Contractor [Consultant][Vendor] acknowledges that:
1. It must establish and maintain records and submit regular reports, as required, which will allow the City to assess progress in achieving the M/WBE participation goal.
 2. If any contract modifications are issued under the Agreement [Master Purchase Order], the Contractor [Consultant][Vendor] shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of the procurement of such contract, upon any of the bases discussed in §28-133, D.R.M.C., regardless of whether such increase or decrease in scope of the procurement has been reduced to writing at the time of notification.
 3. If any contract modifications are issued under the contract, that include an increase in the amount of covered goods or scope of covered services under the Agreement [Master Purchase Order], whether by amendment or otherwise which increases the dollar value of the contract, whether or not such change is within the scope of performance by an M/WBE at the time of contract award, such contract modification shall be immediately submitted to DSBO for notification purposes. Those amendments or other contract modifications that involve a changed scope of goods or services that cannot be performed by existing project subcontractors or by the Contractor [Consultant][Vendor] shall be subject to a goal for M/WBEs equal to the original goal on the contract which was included in the bid or proposal. The Contractor [Consultant][Vendor] Consultant shall satisfy such goal with respect to such changed scope of procurement by soliciting new M/WBEs in accordance with §28-133, D.R.M.C., as applicable, or the Contractor [Consultant][Vendor] must show each element of modified good faith set out in §28-135(d), D.R.M.C. The Contractor [Consultant][Vendor] shall supply to the director the documentation described in §28-135(d), D.R.M.C. with respect to the increased dollar value of the contract [master purchase order].
 4. Failure to comply with these provisions may subject the Contractor [Consultant][Vendor] to sanctions set forth in the MBE/WBE/SBE Purchasing Ordinance. Should any questions arise regarding specific circumstances, the Contractor [Consultant][Vendor] must consult the MBE/WBE/SBE Purchasing Ordinance or contact the designated DSBO representative at (720) 913-1999.

33. FEDERAL PROVISIONS:

Where the source of the funds, directly or indirectly for this Purchase Order is the Federal Government, the Vendor agrees to the applicable provisions set out below. The Vendor shall be responsible for determining which terms are applicable to its products and/or services.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). **DAVIS-BACON ACT COMPLIANCE** Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148 to 3148) as supplemented by Department of Labor regulations (29 CFR part 5). **ANTI-KICKBACK ACT COMPLIANCE** Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). **CONTRACT WORK HOURS AND SAFETY STANDARDS** Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5) **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT** Contractor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. **CLEAN AIR AND WATER REQUIREMENTS** Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.), and the Clean Water Act (33 U.S.C. 1251 et. seq.). Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate EPA regional office. **ENERGY CONSERVATION REQUIREMENTS** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201) **NO SUSPENSION OR DEBARMENT** Contractor certifies that neither it nor its Principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. **BYRD ANTI-LOBBYING.** If the Maximum Contract Amount exceeds \$100,000, the Contractor must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name:	<u>Mullenbernd Manufacturing</u> <small>(Company Name)</small>	City & County of Denver, Purchasing Division
By:	<u>Tina Goerish</u> <small>(Authorized Signature)</small>	By: <u>Maggie Baker</u>
Print Name:	<u>Tina Goerish</u>	Print Name: <u>Maggie Baker</u>
Title:	<u>Controller</u>	Title: <u>Associate Buyer</u>
Date:	<u>7/9/19</u>	Date: <u>7/10/19</u>
		Supervisor Initial: <u>MB</u>

EXHIBIT "A"

Vendor: Millerbernd Manufacturing Company
Title: Light Poles, Mast Arms, Luminaire Arms & Related Parts
Solicitation No.: 10888A

It is recommended that you use your Supplier Contract (SC) No. SC-00004089 in all future correspondence and/or other communications.

SCOPE OF WORK:

The purpose of this SC is to obtain light poles, mast arms, luminaire arms and all necessary related parts for the City.

All light poles, mast arms, and luminaire arms must meet TES Signal Standards.

ESTIMATED QUANTITIES:

The City intends to purchase the estimated quantity immediately. The unit price of each item was used to create a price list. The City will use this price list to order one or more of each item depending on the City's need at the time during the awarded contract period.

F.O.B. POINT:

Prices quoted shall be F.O.B. 5440 Roslyn St. Building E Denver, CO, unloaded.

DELIVERY CONSIDERATIONS:

All deliveries shall be made between the hours of 7:00 A.M. and 2:00 P.M., Monday through Friday, excluding holidays.

WARRANTY GUARANTEE:

Millerbernd Manufacturing Company shall be fully responsible for any and all warranty work, regardless of whether or not manufacturers of equipment, and/or its component parts, provide the actual warranty coverage. In addition, Millerbernd Manufacturing Company shall have or establish a single, local source that will accomplish or coordinate any necessary warranty work. Millerbernd Manufacturing Company shall respond to requests for warranty assistance within twenty-four (24) hours.

EMERGENCY PURCHASES:

The City and County of Denver reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by Millerbernd Manufacturing Company.

COOPERATIVE PURCHASING:

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this proposal or Request for Proposal that pricing offered herein to the City and County of Denver may be offered by Millerbernd Manufacturing Company to any other governmental jurisdiction purchasing the same products.

Millerbernd Manufacturing Company must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.

PALLET CHARGE:

All pallets supplied shall be non-returnable, no deposit.

VENDOR PERFORMANCE MANAGEMENT:

Millerbernd Manufacturing Company is required to furnish a performance report to the buyer on an annual basis, no later than the anniversary date of the applicable Master Purchase Order or City Contract, providing at a minimum the following information:

All pallets supplied shall be non-returnable, no deposit.

VENDOR PERFORMANCE MANAGEMENT:

Millerbernd Manufacturing Company is required to furnish a performance report to the buyer on an annual basis, no later than the anniversary date of the applicable Master Purchase Order or City Contract, providing at a minimum the following information:

FOR GOODS

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Percentage of items shipped from local stock
- Percentage of items backordered
- Average delivery time for stock material
- Average delivery time for backorders

PRICING:

All prices quoted shall be firm and fixed for the initial two (2) years of the awarded contract period.

The Millerbernd Manufacturing Company will have the opportunity to revise their unit pricing on an annual basis if renewal options are exercised during years three, four, and five of the awarded contract. If Millerbernd Manufacturing Company wishes to revise their pricing, it shall be submitted to the City agency contact, no less than one hundred and twenty (120) days prior to the contract anniversary date.

All requested pricing revisions submitted by the awarded Millerbernd Manufacturing Company shall be accompanied by a detailed explanation as to the reasoning for the pricing revision request and shall be reviewed by the City. It will be the City's sole discretion as to if this revision is acceptable for negotiation.

Any price revision negotiation shall be required to be mutually agreed upon by both Millerbernd Manufacturing Company and the City. A maximum allowable increase shall not exceed five percent (5.00%), unless adverse market conditions are observed.

In the event the market price on any item is reduced during the period of the contract, Millerbernd Manufacturing Company for that item shall reduce the proposal price to the City accordingly.

A.13 PROPOSAL ITEMS:

Bid Item #	Manufacturer	Part #	Description	Estimated Quantity	Unit Price	Proposed Manufacturer	Proposed Part #
1	Valmont	DC01-1-35-NO	TRAFFIC SIGNAL LIGHT POLE (SINGLE MAST ARM SUPPORT 20'-40') with Anchor Bolts	12	\$4,637.00	Millerbernd	DC01-1-35
2	Valmont	DC01-2-35-NO	TRAFFIC SIGNAL LIGHT POLE (SINGLE MAST ARM SUPPORT 45'-55') with Anchor Bolts	6	\$6,089.00	Millerbernd	DC01-2-35
3	Valmont	DC01-3-35-NO	TRAFFIC SIGNAL LIGHT POLE (SINGLE MAST ARM SUPPORT 60'-70') with Anchor Bolts	1	\$7,152.00	Millerbernd	DC01-3-35
4	Valmont	DC01-4-35-NO	TRAFFIC SIGNAL LIGHT POLE (DOUBLE MAST	2	\$6,529.00	Millerbernd	DC01-4-35

			ARM SUPPORT 20'-40') with Anchor Bolts				
5	Valmont	DC01-5-35-NO	TRAFFIC SIGNAL LIGHT POLE (NO MAST ARM) with Anchor Bolts	4	\$1,929.00	Millerbernd	DC01-5
6	Valmont	DC01-20'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (20')	2	\$1,867.00	Millerbernd	DC01-20
7	Valmont	DC01-25'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (25')	4	\$2,067.00	Millerbernd	DC01-22
8	Valmont	DC01-30'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (30')	4	\$2,863.00	Millerbernd	DC01-30
9	Valmont	DC01-35'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (35')	4	\$3,217.00	Millerbernd	DC01-35
10	Valmont	DC01-40'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (40')	4	\$3,548.00	Millerbernd	DC01-40
11	Valmont	DC01-45'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (45')	2	\$4,172.00	Millerbernd	DC01-45
12	Valmont	DC01-50'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (50')	1	\$4,703.00	Millerbernd	DC01-50
13	Valmont	DC01-55'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (55')	1	\$5,324.00	Millerbernd	DC01-55
14	Valmont	DC01-60'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (60')	1	\$6,094.00	Millerbernd	DC01-60
15	Valmont	DC01-65'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (65')	1	\$6,717.00	Millerbernd	DC01-65
16	Valmont	DC01-70'MA-FP/GV	TRAFFIC SIGNAL MAST ARM (70')	1	\$7,521.00	Millerbernd	DC01-70
17	Valmont	DC01-10'LMA-FP/GV	10' LUMINAIR ARM FOR TRAFFIC SIGNAL POLES	24	\$277.00	Millerbernd	DC01-10-LMA