



Agenda Commentary

Item Title/ Subject: Budgeted Purchase of Polycart Truck

Staff Source: Gene McCullough, Public Works Director

Donnie Phipps, Solid Waste Supervisor

Date: April 30th, 2024

History/Background Information: The Solid Waste Authority has budgeted a replacement polycart truck for this fiscal year. We have had success with the last Kann model we purchased, which was a low mileage demo. Kann has another such vehicle, a newer 2019 model. Donnie has been discussing the purchase with their agent for several months. Kann has given us a price quote of \$182,500.00, which is well below our budgeted \$225,000.

Recommendation: Approve purchase of the quoted polycart garbage truck from Kann Manufacturing.

Price/Cost: \$182,500.00



Kann Manufacturing Corporation
 P.O. Box 400 - 210 Regent Street - Guttenberg, Iowa 52052
 Phone: 563-252-2035 - Fax: 563-252-3069 - Email: sales@kannmfg.com

QUOTE

Date	Quote #
04/29/24	00009573

Quote To: CITY OF CLINTON
 PO BOX 1177
 CLINTON, OK 73601-

Ship To: CITY OF CLINTON
 415 GARY BLVD
 CLINTON, OK 73601-

Contact DONNIE PHIPPS
Customer 0003099
Telephone 580-323-0217 **Fax** 580-323-0346

Terms	Expiry Date	Salesperson	Ship Via
NET 30 DAYS	05/29/24	RT	NOT INCLUDED IN QUOTE

Qty	Part #	Description	Unit price	Ext. Price
1.0	3751210	BODY ASSY 28YD, EXT HPR SLEA 28 YD AUTOMATED SIDE LOADER MOUNTED ON A 2019 FREIGHTLINER M2 PAINTED WHITE LED STROBES & WORK LIGHTS TRIPLE SAFETY VISION CAMERA PKG BROOM & SHOVEL CLEANUP KIT TRANSMISSION MOUNTED PTO S/N: SLEA-208 CHASSIS VIN: 1FVHCYFE5KHLG6004	182,500.000	182,500.00



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QUOTE

KANN MANUFACTURING CORPORATION

OFFER OF SALE

1. **Definitions.** As used herein, the following terms have the meanings indicated.
- Buyer: means any Customer receiving a Quote for Products.
Goods: means any tangible part, system or component to be supplied by Seller.
Products: means the Goods and/or Services described in the Quote.
Quote: means the offer or proposal made by Seller to Buyer for the supply of Products.
Seller: means Kann Manufacturing Corporation (Kann), including all divisions and businesses thereof.
Services: means any services to be provided by Seller.
Terms: means the terms and conditions of this Offer of Sale.
2. **Terms.** All sales of Products by Seller are expressly conditioned upon, and will be governed by the acceptance of, these Terms. These Terms are incorporated into any Quote provided by Seller to the Buyer. Buyer's order for any Products whether communicated to Seller verbally, in writing, by electronic data interface or other electronic commerce, shall constitute an acceptance of these Terms. Seller objects to any contrary or additional terms or conditions of Buyer. Reference in Seller's order acknowledgment to Buyer's purchase order or purchase order number shall in no way constitute an acceptance of any of Buyer's terms or conditions of purchase. No modification to these Terms will be binding on Seller unless agreed to in writing and signed by an authorized representative of Seller.
3. **Price; Payment.** The Products set forth in the Quote are offered for sale at the prices indicated in the Quote, unless otherwise specifically stated in the Quote. Prices are valid for thirty (30) days and do not include any sales, use, or other taxes or duties. Seller reserves the right to modify prices at any time to adjust for any raw material price fluctuations. Unless otherwise specified by Seller, all prices are Ex Works (EXW) Seller's facility (INCOTERMS 2020). All prices are contingent upon credit approval and full payment for all purchases is due thirty (30) days from the date of invoice (or such date as may be specified in the Quote). Unpaid invoices beyond the specified payment date incur interest at the rate of 1.5% per month or the maximum allowable rate under applicable law.
4. **Shipment; Delivery; Title and Risk of Loss.** All delivery dates are approximate, and Seller is not responsible for damages resulting from any delay. Regardless of the manner of shipment, delivery occurs and title and risk of loss or damage pass to Buyer, upon placement of the Products with the carrier at Seller's facility. Unless otherwise agreed prior to shipment, the Buyer is responsible to select and arrange, at Buyer's sole expense, the carrier and means of delivery. If it is agreed that the Seller is to select and arrange the carrier and means of delivery, freight and insurance costs for the shipment to the designated delivery location will be prepaid by Seller and added as a separate line item to the invoice. Buyer shall be responsible for any additional shipping charges incurred by Seller due to Buyer's acts or omissions. Buyer shall not return or repackage any Products without the prior written authorization from Seller, and any return shall be at the sole cost and expense of Buyer.
5. **Warranty.** The warranty for the Products is specified in the Kann Warranty Policy; in summary, the Goods are warranted against defects in material or workmanship for a period of twelve (12) months unless otherwise specified and agreed upon, from the date of delivery.
- EXEMPTION CLAUSE: DISCLAIMER OF WARRANTY, CONDITIONS, REPRESENTATIONS: THIS WARRANTY IS THE SOLE AND ENTIRE WARRANTY, CONDITION, AND REPRESENTATION, PERTAINING TO PRODUCTS. SELLER DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO DESIGN, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**
6. **Claims; Commencement of Actions.** Buyer shall promptly inspect all Products upon receipt. No claims for shortages will be allowed unless reported to the Seller within ten (10) days of delivery. Buyer shall notify Seller of any alleged breach of warranty within thirty (30) days after the date the non-conformance is or should have been discovered by Buyer. Any claim or action against Seller based upon breach of contract or any other theory, including tort, negligence, or otherwise must be commenced within twelve (12) months from the date of the alleged breach or other alleged event, without regard to the date of discovery.
7. **LIMITATION OF LIABILITY.** IN THE EVENT OF A BREACH OF WARRANTY, SELLER WILL, AT ITS OPTION, REPAIR OR REPLACE THE NON-CONFORMING PRODUCT WITHIN A REASONABLE PERIOD OF TIME. IN NO EVENT IS SELLER LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING ANY LOSS OF REVENUE OR PROFITS WHETHER BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS.
8. **Security Interest.** To secure payment of all sums due from Buyer, Seller retains a security interest in all Products delivered to Buyer and, Buyer's acceptance of these Terms is deemed to be a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect Seller's security interest.
9. **User Responsibility.** Buyer, through its own analysis and testing, is solely responsible for making the final selection of the Products and assuring that all performance, endurance, maintenance, safety and warning requirements of the application of the Products are met. Buyer must analyze all aspects of the application and follow applicable industry standards, specifications, and any technical information provided with the Quote or the Products, such as Seller's instructions, guides and specifications. If Seller provides options of or for Products based upon data or specifications provided by Buyer, Buyer is responsible for determining that such data and specifications are suitable and sufficient for all applications and reasonably foreseeable uses of the Products. In the event Buyer is not the end-user of the Products, Buyer will ensure such end-user complies with this paragraph.
10. **Use of Products; Indemnity by Buyer.** Buyer shall comply with all instructions, guides and specifications provided by Seller with the Quote or the Products. **Unauthorized Uses.** If Buyer uses or resells the Products in any way prohibited by Seller's instructions, guides or specifications, or Buyer otherwise fails to comply with Seller's instructions, guides and specifications, Buyer acknowledges that any such use, resale, or non-compliance is at Buyer's sole risk. Further, Buyer shall indemnify, defend, and hold Seller harmless from any losses, claims, liabilities, damages, lawsuits, judgments and costs (including attorney fees and defense costs), whether for personal injury, property damage, intellectual property infringement or any other claim, arising out of or in connection with: (a) improper selection, design, specification, application, or any misuse of Products; (b) any act or omission, negligent or otherwise, of Buyer; (c) Seller's use of patterns, tools, equipment, plans, drawings, designs, specifications or other information or things furnished by Buyer; (d) damage to the Products from an external cause, repair or attempted repair by anyone other than Seller, failure to follow instructions, guides and specifications provided by Seller, use with goods not provided by Seller, or opening, modifying, deconstructing, tampering with or repackaging the Products; or (e) Buyer's failure to comply with these Terms. Seller shall not indemnify Buyer under any circumstance except as otherwise provided in these Terms.
11. **Cancellations and Changes.** Buyer may not cancel or modify, including but not limited to movement of delivery dates for the Products, of any order for any reason except with the Seller's written consent, and upon terms that will indemnify, defend and hold Seller harmless against all direct, incidental and consequential loss or damage and any additional expense. Seller, at any time, may change features, specifications, designs and availability of Products. If the Buyer requests a cancellation of Products for any reason, the request must be submitted in writing to the Seller, and the Seller has the right to refuse or accept the request. If the Seller accepts the cancellation request from the Buyer, the Buyer will be notified by the Seller in writing of the acceptance to cancel the Product(s) from the order, and the Buyer will agree to pay, as determined by, and by the sole discretion of the Seller, the higher of the two costs of, either (i) the total accumulative cost that the Seller has in the Product at time of cancellation, or (ii) a 25% restocking fee of the Quoted price for the cancellation of any or all Products as requested.
12. **Limitation on Assignment.** Buyer may not assign its rights or obligations without the prior written consent of Seller.
13. **Force Majeure.** Seller is not liable for delay or failure to perform any of its obligations by reason of events or circumstances beyond its reasonable control. Such circumstances include without limitation: accidents, labor disputes or stoppages, government acts or orders, acts of nature, pandemics, epidemics, other widespread illness, or public health emergency, delays or failures in delivery from carriers or suppliers, shortages of materials, war (whether declared or not) or the serious threat of same, riots, rebellions, acts of terrorism, fire or any reason whether similar to the foregoing or otherwise. Seller will resume performance as soon as practicable after the event of force majeure has been removed. All delivery dates affected by force majeure shall be tolled for the duration of such force majeure and rescheduled for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist. Force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the parties, affiliates and/or sub-contractors.
14. **Waiver and Severability.** Failure to enforce any provision of these Terms will not invalidate that provision; nor will any such failure prejudice either party's right to enforce that provision in the future. Invalidation of any provision of these Terms shall not invalidate any other provision herein and, the remaining provisions will remain in full force and effect.
15. **Termination.** Seller may terminate any agreement governed by or arising from these Terms for any reason and at any time by giving Buyer thirty (30) days prior written notice. Seller may immediately terminate, in writing, if Buyer: (a) breaches any provision of these Terms, (b) becomes or is deemed insolvent, (c) appoints or has appointed a trustee, receiver or custodian for all or any part of Buyer's property, (d) files a petition for relief in bankruptcy on its own behalf, or one is filed against Buyer by a third party, (e) makes an assignment for the benefit of creditors; or (f) dissolves its business or liquidates all or a majority of its assets.
16. **Indemnity for Infringement of Intellectual Property Rights.** Seller is not liable for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights ("Intellectual Property Rights") except as provided in this Section. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer based on a third party claim that one or more of the Products sold hereunder infringes the Intellectual Property Rights of a third party in the country of delivery of the Products by Seller to Buyer. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of any such claim, and Seller having sole control over the defense of the claim including all negotiations for settlement or compromise. If one or more Products sold hereunder is subject to such a claim, Seller may, at its sole expense and option, procure for Buyer the right to continue using the Products, replace or modify the Products so as to render them non-infringing, or offer to accept return of the Products and refund the purchase price less a reasonable allowance for depreciation. Seller has no obligation or liability for any claim of infringement: (i) arising from information provided by Buyer; or (ii) directed to any Products provided hereunder for which the designs are specified in whole or part by Buyer, or (iii) resulting from the modification, combination or use in a system of any Products provided hereunder. The foregoing provisions of this Section constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for claims of infringement of Intellectual Property Rights.
17. **Governing Law.** These Terms and the sale and delivery of all Products are deemed to have taken place in, and shall be governed and construed in accordance with, the laws of the State of Iowa, as applicable to contracts executed and wholly performed therein and without regard to conflicts of laws principles. Buyer irrevocably agrees and consents to the exclusive jurisdiction and venue of the courts of Clayton County, Iowa with respect to any dispute, controversy or claim arising out of or relating to the sale and delivery of the Products.
18. **Entire Agreement.** These Terms, along with the terms set forth in the main body of any Quote, forms the entire agreement between the Buyer and Seller and constitutes the final, complete and exclusive expression of the terms of sale and purchase. In the event of a conflict between any term set forth in the main body of a Quote and these Terms, the terms set forth in the main body of the Quote shall prevail. All prior or contemporaneous written oral agreements or negotiations with respect to the subject matter shall have no effect. These Terms may not be modified unless in writing and signed by an authorized representative of Seller.
19. **Compliance with Laws.** Buyer agrees to comply with all applicable laws, regulations, and industry and professional standards, including those of the United States of America, and the country or countries in which Buyer may operate, including without limitation the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.S. Anti-Kickback Act ("Anti-Kickback Act"), U.S. and E.U. export control and sanctions laws ("Export Laws"), the U.S. Food Drug and Cosmetic Act ("FDCA"), and the rules and regulations promulgated by the U.S. Food and Drug Administration ("FDA"), such as currently amended. Buyer agrees to indemnify, defend, and hold harmless Seller from the consequences of any violation of such laws, regulations and standards by Buyer, its employees or agents. Buyer acknowledges that it is familiar with all applicable provisions of the FCPA, the Anti-Kickback Act, Export Laws, the FDCA and the FDA and certifies that Buyer will adhere to the requirements thereof and not take any action that would make Seller violate such requirements. Buyer represents and agrees that Buyer will not make any payment or give anything of value, directly or indirectly, to any governmental official, foreign political party or official thereof, candidate for foreign political office, or commercial entity or person, for any improper purpose, including the purpose of influencing such person to purchase Products or otherwise benefit the business of Seller. Buyer further represents and agrees that it will not receive, use, service, transfer or ship any Products from Seller in a manner or for a purpose that violates Export Laws or would cause Seller to be in violation of Export Laws. Buyer agrees to promptly and reliably provide Seller all requested information or documents, including end-user statements and other written assurances, concerning Buyer's ongoing compliance with Export Laws.



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QUOTE

Sub Total:	182,500.00
Sales Tax:	0.00
Federal Excise Tax:	0.00
Freight:	0.00
Total:	182,500.00

-Customer is responsible for throttle advance programming if required.

- F.O.B. Kann Manufacturing Corporation. Freight charge is estimated based upon fuel cost at the time of quotation. The charge subject to change at the time of delivery.

- Modifications to customer supplied chassis will be at the customer's expense and will be added to the customer's invoice. Customers will be notified prior to any modifications.

- If Kann Manufacturing Corporation facilitates the customer purchase of a chassis, C.O.D. terms on both chassis and body will supercede all other specified terms found in this agreement.

*** Ordering Information:

Order date: _____ Number of Units Ordered: _____ Customer's P.O. #: _____

Customer Order Authorization Signature: _____

Kann Manager Authorization: *Rt*