



REQUEST FOR QUOTATION

ANNUAL CONTRACT TO PURCHASE ASPHALT AND STREET MATERIALS

BID NO. 745-1001-09F

Bid Due Date: Thursday, October 16, 2008, 2:00 p.m.

I. GENERAL CONDITIONS

1. General Information - The Purchasing Department of the City of Antioch, California will receive at its office at the Maintenance Services Center, 1307 West Fourth Street at 2:00 p.m. on October 16, 2008, bid responses for City of Antioch Bid No. 745-1001-09F. Bids shall be made only on this bid form, properly executed, and enclosed in a sealed envelope bearing the name of the bidder, the bid number, bid due date, and bid title. Forms will be available and may be secured by prospective bidders at the office of the Purchasing Division. Bids shall be written in ink, computer generated, or by typewriter. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by the person signing the bid. Bids are to be verified before submission as they cannot be corrected or altered or signed after bids are opened.

If you downloaded this Request for Quotation from the City of Antioch's website, www.ci.antioch.ca.us/CityGov/Finance/Purchasing/RFPs.htm, it is your responsibility to check back on the website for any addenda that may have been issued, prior to the bid/proposal due date (or you may contact the Purchasing office at 925-779-6994).

2. Form of Bid - The bid shall be made on the attached bidder's proposal form. If the form is deemed inadequate, additional information may be submitted with the proposal, via an attachment of catalogs, drawings, photographs, or a letter. Letters repeating prices and details from the City's specifications must be omitted.

3. Interpretation of Bids - Should a bidder find discrepancies in, or omissions from the specifications, or should bidder be in doubt as to their true meaning, bidder may submit to the Purchasing Agent a written request for an interpretation thereof prior to the bid opening. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of, or change in the proposed documents will be made only by an addendum issued to each person to whom specifications have been issued, and shall become part of any contract awarded. The City will not be responsible for any other explanation or interpretations.

4. Addenda - Any addenda issued by the City during the time of bidding shall be covered in the bid and shall be made a part of the contract.

5. Bid Openings - Bids shall be delivered to the Purchasing Department of the City of Antioch on or before the day and hour set for the opening of bids in the published Notice to Bidders. Each bid shall be enclosed in a separate sealed envelope bearing the description of the bid, the bid number, the name of the bidder, and the date and hour of the bid opening. A bidder may withdraw his bid, either personally or by written request, at any time prior to the scheduled time for opening of bids.

6. Late Bids - Any bids received after the scheduled time of opening will be clocked in but will not be opened or considered.

7. No Bid - If a bid is not made, the bid form must be returned and the reason for not bidding stated; otherwise the vendor's name will be removed from the bidders list.

8. Award or Rejection - The bid will be awarded to the lowest responsible bidder. The City, however, reserves the right to reject any or all bids, to accept or reject any one or

more items of a bid, or to waive any minor irregularities or informalities in the bid. It is anticipated that all items will be purchased, however the City reserves the right to change quantities prior to the award. The City reserves the right to make the award to the overall low bidder, or split the award amongst the bidders. For the purpose of evaluating bids for multiple awards, the sum of \$175.00 is considered to be the administrative cost to the City for issuing and administering each contract awarded. Individual awards will be made for the items and combinations of items which result in the lowest aggregate price to the City, including such administrative cost.

9. Terms and Conditions - The bidder shall not change the wording in the attached specifications or conditions. No words or comments shall be added to the general conditions or detailed specifications. Any explanation or alternative offered shall be set forth in a letter attached to the front cover of the specifications. Alternatives which do not substantially comply with the City's specifications cannot be considered. Conditional bids cannot be accepted.

10. Alternatives - The make or brand and grade of the article on which the bid is submitted should be stated on the bid form. If alternates are bid, literature must be submitted with bid in order for the alternate to be considered. All items on which bids are submitted must in all cases be equal or better in quality and utility to those specified by the City. Determination of the acceptability of any product offered shall be solely at the discretion of the City of Antioch.

11. Payment Terms - Must be indicated by filling in the proper blanks on the bid form. Cash discounts of less than 20 days will be considered net. The standard terms at the City of Antioch are Net 30 days.

12. FOB Point - It is understood that the bidder agrees to deliver FOB Destination, with no freight charges to the City. All costs for packing, delivery, drayage, postage, freight, express, or for any other purpose are to be borne by the bidder.

13. Brand Names - The use of the name of a manufacturer, or any special brand or make, in describing any item in the bid documents does not restrict bidders to that manufacturer or specific article. An equal of the named product will be given due consideration. Notwithstanding the foregoing, the City may impose additional restrictions in the Specification section of the documents.

14. Tax - No bid shall include federal excise tax, inasmuch as the City is exempt per published IRS regulations concerning state/local governments. The City is obligated to pay applicable state sales or use taxes (8.25%).

15. Samples - When requested, bidders shall submit properly marked samples of the article(s) on which bid is made to the City. Any sample submitted must be clearly marked in such a manner that the marking is fixed, so that the identification of the sample is assured. Such marking shall state (1) name of bidder, (2) number of bid, and (3) item number. Samples, when required, must be furnished free of expense to the City, and if not destroyed by tests, will upon request be returned at bidder's expense.

16. Inspection - All items furnished shall be subject to the inspection of the City, and unsuitable items may be rejected. Defective items shall be made good by the vendor in a manner satisfactory to the City.

17. Assignment - No assignment by the contractor or any contract to be entered into hereunder or of any part thereof, except of funds to be received thereunder by the contractor, will be recognized by the City unless such assignment has had the prior written approval of the City.

18. Warranty - Terms of any warranty offered by the manufacturer or the bidder shall be included with the bid.

19. Timely Delivery - Time is of the essence, and the purchase order is subject to termination for failure to deliver on time. The acceptance by buyer of later performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the vendor.

20. Liquidated Damages - If delivery does not occur on schedule it is understood that the City will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that the contractor shall pay to the City the sum of one hundred (\$100.00) dollars per day for each and every calendar day's delay in finishing the contract.

21. Termination for Default - The City may, by written notice of default to the vendor, terminate any resulting order in whole or in part should the vendor fail to make satisfactory progress, fail to deliver within time specified therein or fail to deliver in strict conformance to specifications and requirements set forth therein. In the event of such termination, the City reserves the right to purchase or obtain the supplies or services elsewhere, and the defaulting vendor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the City. The prevailing market price shall be considered the fair repurchase price. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

22. Termination for Convenience - The City may, by written notice stating the extent and effective date, terminate any resulting order for convenience in whole or in part, at any time. The City shall pay the vendor as full compensation for performance until such termination the unit or pro rate price for the delivered and accepted portion, and a reasonable amount, as costs of termination, not otherwise recoverable from other sources by the vendor as approved by the City, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price. In no event shall the City be liable for any loss of profits on the resulting order or portion thereof so terminated. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

23. Fiscal Year - Obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

24. Equal Opportunity - The City of Antioch requires any vendor who receives business from the City to adhere to the Equal Opportunities in Employment guidelines as set forth within Federal and State guidelines. By signing and submitting a proposal for this contract to the City, the vendor does certify, to adhere to said guidelines.

25. Business License – The City of Antioch requires that any vendor doing business within the city limits must hold a valid City of Antioch Business License prior to merchandise delivery (by vendor) or services provided. If required, the awarding vendor must contact the Business License Representative at 925-779-7059 for more information or an application.

26. Governing Law - This contract shall be construed and interpreted according to the laws of the State of California.

27. Questions relating to this bid should be directed to Debra Joseph, Buyer II, City of Antioch, P.O. Box 5007, Antioch, CA 94531-5007, (925) 779-6995.

II. DETAILED SPECIFICATIONS

1. The City of Antioch is currently soliciting bids to furnish Asphalt/Street Materials for the Maintenance Division, on an as-needed basis, for the period of 11/1/08 thru 10/31/09 with the option to renew one additional year upon acceptance by both parties. All asphalt will be billed as shipped. In order to be considered, each bidder submitting a bid must meet or exceed all specifications stated herein.

2. Prices shall be firm for a period not less than ninety (90) days from date of award. The contract period is effective November 1, 2008, to October 31, 2009. Prices subject to change thereafter must be approved by the City of Antioch. The City must be notified in writing, not less than thirty days prior to increase. The City reserves the right to cancel the award and resolicit bids, if, in its opinion, the increased prices are greater than general market conditions warrant. All prices shall include any applicable freight charges. Price increases shall not exceed 6%. Freight charges listed as separate items will not be considered. This same principle will apply for any other charges, such as minimum load requirements, time requirement, etc. Include all applicable charges on additional sheet if not included in this bid.

3. The Contractor shall deliver the materials, equipment, supplies or services, or cause the work to be performed, within the time and in the manner specified in the contract. Times and dates stated herein are of the essence. If at any time, the contractor has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to the City. Deliveries must be prepaid. C.O.D. shipments will not be accepted.

4. The City of Antioch offers a 10% preference to vendors offering recycled products. If your products contain recycled material, please provide detailed information for products identified as such. In addition, the City of Antioch requests that all efforts to develop and support the State of California's Recycled Product Requirement.

5. Delivery: Discharge of asphalt into City-owned or contracted trucks must commence within thirty (30) minutes of arrival at Contractor's plant.

6. Air Pollution Control: The Contractor shall not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity that would violate the regulations of any governmental authority. The Contractor shall not violate any regulation adopted by the Bay Area Air Pollution Control District.

7. Award: Award of this contract will be made to the bidder that is most responsive to the needs of the City. Additional consideration will be given to vendors who operate in the Antioch area due to the nature of asphalt material. The City of Antioch reserves the right to reject any and all bids. The City may also elect to award the bid to a primary and secondary contractor. If your company does not wish to participate as a secondary vendor, please include a statement notifying the City of your intentions in this matter.

8. Submission of Bids: Bids shall be submitted on the forms provided and shall be delivered to the Purchasing Division no later than 2:00 p.m. on Thursday, October 16, 2008. **Note: Telephone/FAX bids will NOT be accepted.**

Should you have any questions regarding these specifications, please contact Mike Bechtholdt, Streets Superintendent, at (925) 779-6953.

RETURN THIS PAGE WITH YOUR PRICING SCHEDULE

III. Bid Work Sheet - Bid No. 745-1001-09F - Due 10/16/08, 2:00 p.m.

To The City of Antioch:

In compliance with the annexed notice inviting sealed proposals, the undersigned hereby proposes to furnish all necessary tools and equipment, materials, labor, and supervision (including cost of Worker's Compensation Insurance and all payroll taxes on such labor) to complete the annual contract for purchase of asphalt and street materials as herein described in accordance with the special provision therefor, and agrees to enter into a contract therefor, at the listed prices.

All prices shall be F.O.B. Jobsite, Antioch, California. Sales tax should not be a part of the unit price. Should you show sales tax as a separate line item, the rate for the City of Antioch is 8.25%.

Over Quantity	Description	1 to 99 Tons Cost/Ton	100 to 399 Cost/Ton	400 and Cost/Ton
2,500 Tons	1/4" AR 4000 Asphalt	_____	_____	_____
2,000 Tons	3/8" AR 4000 Asphalt	_____	_____	_____
2,000 Tons	1/2" AR 4000 Asphalt	_____	_____	_____
800 Tons	1/4" SC 800 Asphalt (cutback, cold mix)	_____	_____	_____
2,000 Gals	SS-1 Oil			\$_____/gal

All materials bid must comply with CalTrans Specifications

*Do not include sales tax in your bid price.

Deliveries will be made within _____ days after order.

The following cash discount will apply _____% _____ days.

Terms or Cash Discount (if other than net 30 days)_____

Company Name_____

Contact Name_____

Title_____

Address_____

City/State/Zip_____

Telephone_____ FAX:_____

E-mail address _____

Contractor's License # _____

Signature _____ Date _____

Send via mail (sealed) to:
City of Antioch, Purchasing
Bid No. 745-1001-09F
P.O. Box 5007
Antioch, CA 94531-5007

OR

Deliver via courier (sealed) to:
City of Antioch, Purchasing
Bid No. 745-1001-09F
1307 West Fourth Street
Antioch, CA 94509

Directions to Purchasing: From Highway 4, take Auto Center Drive exit. Drive north approx. 1 mile; Auto Center Drive turns into West Fourth Street. Purchasing is located at 1307 West Fourth Street (Fourth and 'N' Streets). Enter from 'N' Street. The office is located in the mobile trailer next to the Stores Warehouse.

(Auto Center Drive was changed from Somersville Road.)

LATE BIDS WILL NOT BE ACCEPTED – NO EXCEPTIONS.

**REQUEST FOR QUOTATION
INSTRUCTIONS AND CONDITIONS**

1. PREPARATION/SUBMISSION OF BIDS:

- Each bid must be submitted on this form in a sealed envelope with the bid number, closing date, and time on outside.
- All information shall be entered in ink or typewritten. Mistakes may be crossed out and corrections inserted before submission of your bid. Corrections shall be initialed in ink by the person signing the bid.
- Corrections and/or modifications received after the closing time specified will not be accepted.
- Time of delivery shall be stated as the number of calendar days following receipt of the order by the vendor to receipt of the goods or services by the City.
- Time of delivery may be a consideration in the award.
- Prices will be considered as net if no cash discount is shown.
- All bids shall be signed by an authorized officer or employee of the bidder.
- Bids must be submitted by the date and at, or prior to, the time specified to be considered. No late bids, telegraphic or telephone, will be accepted.
- If your quotation is on an "all or nothing" basis, please state on quotation form.

2. BRAND NAMES:

- Brand names and numbers, when used, are for reference to indicate the character or quality desired.
- Equal items will be considered, provided your offer clearly describes the article. Offers for equal items shall state the brand and number, or level of quality. The determination of the Purchasing Agent as to what items are equal shall be final and conclusive.
- When brand, number, or level of quality is not stated by the bidder, it is understood the offer is exactly as specified.

3. SAMPLES:

- Samples of articles, when required, shall be furnished free of cost of any sort to the City of Antioch.
- Samples of articles selected may be retained for future comparison.
- Samples which are not destroyed by testing, or which are not retained for future comparison, will be returned upon request at your expense.

4. TAXES:

- Do not include sales, use, or federal excise taxes in your bid. All applicable sales tax will be added to purchase order. The City of Antioch is exempt per IRS regulations from the payment of Federal Excise Taxes.
- If your company is outside California and collects use tax, please state the amount as a separate item if the City is to remit the tax.

5. LIABILITIES:

The vendor shall hold the City of Antioch, its officers, agents, servants, and employees, harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this bid, and agrees to defend, at his own expense any and all actions brought against the City of Antioch or himself because of the unauthorized use of such articles.

All materials, supplies and equipment in these specifications and bid shall be in full compliance with the safety orders and regulations of the Division of Industrial Safety of the State of California and all laws and ordinances applicable thereto.

Cost of inspection of deliveries or offers for delivery, which do not meet specifications will be charged to vendor.

6. DEFAULT BY BIDDER:

In case of default by the bidder, the City of Antioch may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the City of Antioch. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

7. AWARDS:

The City of Antioch reserves the right: (1) to award bids received on the basis of individual items, or groups of items, or on the entire list of items, (2) to reject any or all bids, or any part thereof, (3) to waive any informality in the bids; and (4) to accept the bid that is in the best interest of the City. The Purchasing Agent's decision shall be final.

- In determining and evaluating the best quotation, the prices will not necessarily be the controlling factor, but quality, equality, efficiency, utility, suitability of the equipment offered and the reputation of the equipment in general use will also be considered with any other relevant factors.

8. RIGHT TO AUDIT:

The City of Antioch reserves the right to verify, by examination of vendors' records, all invoiced amounts when firm prices are not set forth in the purchase agreement.

9. ASSIGNMENT:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

CITY OF ANTIOCH
INSURANCE REQUIREMENTS FOR SUPPLIERS

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the products and material supplied to the Entity. The cost of such insurance shall be borne by the Vendor.

Minimum Scope of Insurance

Coverage shall be at least as broad as insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and including products coverage.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The policy or policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees, and volunteers are to be covered as insureds with respect to products of the Vendor.
2. The Vendor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, and volunteers shall be in excess of the Vendor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) day's prior written notice has been provided to the Entity.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable by entity.

Verification of Coverage

Vendor shall furnish the Entity with original certificates and amendatory **endorsements** affecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Waiver of Subrogation

Vendor hereby agrees to waive subrogation which any insurer of contractor may acquire from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the vendor, its employees, agents, and subcontractors.

Vendor Exceptions

There are a number of organizations/companies that provide services to your agencies that will not have formal contracts in place. These include but are not limited to United Parcel Service, Federal Express, United States Mail, and for hire interstate truck lines as examples. Although each of these companies may provide vendor services to you, you typically will not require formal contracts and will require evidence of insurance. All of the companies listed above are required to be licensed under the Department of Transportation rules and regulations which also requires specific limits of insurance.

For further information, please contact the City Attorney's office at (925) 779-7015 or the Purchasing Division at (925) 779-6994.

Debra Joseph, Buyer II

PREVAILING WAGES

Where labor is required for public work as part of this contract, pursuant to the provisions of the Labor Code of the State of California, contractors shall pay no less than the minimum wages established by the Director of the Department of Industrial Relations of the State of California. Copy of wage schedules are obtainable from the City's Engineering Department.

It shall be mandatory upon the contractor to whom the contract is awarded, and his subcontractors to pay not less than the established prevailing rate of wages to all workers employed by the contractor or said subcontractors in the execution of the contract.

The Contractor shall post a copy of the general prevailing rate of per diem wages at the job site pursuant to Section 1773.2 of the Labor Code of the State of California.

Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2, and any amendments thereof of the Labor Code of the State of California, the Contractor and any subcontractor under him shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the contract.

The Contractor shall, as a penalty to the State or the District, forfeit Twenty-Five Dollars for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for any work or craft in which such worker is employed under the contract by the Contractor or by any subcontractor under him. The difference between such stipulated prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which each workman was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. The provisions of Section 1776 of the Labor Code of the State of California shall be complied with by the Contractor. For all classes of work not specified herein, the minimum wage shall be that specified for general laborer.

The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of payment by him of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at his own expense.

The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of worker employed on the project.

EQUAL OPPORTUNITIES IN EMPLOYMENT

The contractors and all subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. Contractor is required to submit policy statements: Affirmative Action and Equal Employment Opportunity (EEO). The Contractor and all Subcontractors shall, in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

APPEALS AND REMEDIES

Any actual or prospective bidder, offeror, or contractor that has a grievance in connection with any City solicitation or award of contract may protest to the department soliciting the subject bid request, the City Manager or City Council. Protestors are urged to seek resolution of their complaints initially with the using department. All protests shall be submitted in writing. The protest shall be submitted within five (5) working days after protestor knows or should have known of the facts supporting protest, but not later than the award of bid.

In the event of such protest, the using department involved shall not proceed with the solicitation or award of contract until a determination is made to settle the dispute. All disputes shall be settled in the best interest of the City. This determination may be granted by using department, City Manager, or City Council. If protestor is in agreement with decision made at any staff level below City Council, the solicitation or award of contract process shall be continued, according to the recommendation from staff. If required, the City Council will act as the final authority of all such decisions. After such decision, it shall direct the final course of action.

(1) Notice to Contractor/Protestor of Decision. All decisions shall be promptly issued in writing and furnished immediately by certified mail to the contractor/protestor. The decision shall state the reasons for such action and shall inform the contractor of its appeal rights of the Municipal Code.

(2) Final Decision/Contractor's Right to Appeal. Using department's decisions shall be final and conclusive, unless within five (5) working days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the City Council or commences an action in a court of law.