# EXHIBIT I

**From:** Bryan Idzior
**Sent:** Monday, October 28, 2002 10:24 AM
**To:** Ray Justice; Tom Pakenas
**Subject:** Fw: Snow Plowing Agreement- Ryan Shea Region
**Attach:** Snow Proposal 10-10-02.doc

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—— Original Message ——
**From:** Crull, Gary
**To:** 'b.idzior@globalserviceus.com'
**Cc:** Peters, Mike ; Shea, Ryan
**Sent:** Friday, October 25, 2002 3:23 PM
**Subject:** Snow Plowing Agreement- Ryan Shea Region

Dear Brian:

I had the opportunity to review the Snow Plowing agreements that you have provided Ryan and Mike and Kmart has the following requirements completed prior to execution of any contract.

1. The contractor's Proposal is to be completed in triplicate on an original golden rod with **General Conditions on the back side.** I am attaching an electronic version that you can put on the golden rod forms, including the general conditions.

2. We require an original certificate of insurance naming Kmart and the contractor you are using as additionally insured.

3. A list of contractors and contacts is to be provided to Mike Peters
4. There is nothing in the contract that states the hauler is to leave a ticket at the store to verify time and cost prior to leaving. Store Management should sign off if they are at the store

<<Snow Proposal 10-10-02.doc>>

Additionally, we would like the following general issues answered"

1. In local geographical stores being of the same size, there is a considerable dollar differences in each proposal.

2. If the snow has to be hauled of, what is the maximum distance and cost per load. An hourly cost is not economical if the snow is hauled 45 minutes away

3. Full and light applications of salt are not broken down on every proposal
4. What kind of scope was given to the bidding contractors?
5. Are the contractors going to mark curbs and hydrants to locate when plowing?
6. Who will repair any damage that the firm does to curbs, landscape, etc.?

Mike will be contacting you to finalize contracts and receipt of the required information. If there are any questions, please advise.

Sincerely, Gary Crull

Pakenas
EXHIBIT NO. 91
7-21-06 MEF

Gary L. Crull

Director of Construction/Facility Services

**Kmart Corporation**

(248) 637-4328 (office)

(248) 614-2850 (fax)

# Contractor's Proposal to Kmart Corporation

## Execute in Triplicate

Store Address or Stamp

Order No. _____
Authorization No. _____
Date _____

**Project:** Snowplowing, Salting & Snow Removal

**Proposal:** For and in consideration of the sum to be paid us by Kmart Corporation on the contract basis hereinafter mentioned, We will furnish all labor and material and do all work and agree to all conditions as called for in.
Specifications dated as Itemized below.

Drawings No. N/A
as prepared by Kmart Corporation, this Proposal and the Bidding Instructions dated N/A
(the "Contract Documents"), all of which are hereby incorporated by reference and made part hereof.

The term of the contract shall be from acceptance date until one (1) year from acceptance date but may be canceled sooner by **either party upon 48 hours notice.**

**Itemization:** (necessary to consideration of proposal)
It is agreed that Contractor shall furnish all labor, material and equipment necessary to effect snow plowing and removal services at the premises of the above noted Kmart store. Such premises shall include the entire parking lot, all sidewalks and drives on the adjacent to the store property.

Service by Contractor shall be performed upon authorization of Kmart Store Manager or when accumulation of snow exceeds 2". Contractor shall start work within two (2) hours of such authorization or accumulation, and proceed diligently to completion.

As snow is plowed, it shall be piled in wind rows on the lot or off the edges of the pavement except that no snow is to be pushed onto any evergreens or other shrubbery surrounding the lot. All snow is to be kept on the premises only.

The fee for snow plowing service shall be $ _____ per trip.
If salting is required, the fee for this service shall be $ _____ per trip.

If accumulations of snow are such per trip that removal of the bulk snow from the premises is necessary, such removal shall be performed at actual cost based upon rates of $ _____ per hour for the time spent on site (not portal) for tandem axle dump trucks. Such removal shall only be performed upon direct instructions from the Kmart Facility Manager.

It is understood that Contractor shall maintain or have available sufficient "back-up" equipment to insure service in event of mechanical breakdowns.

In the event that plowing is performed during exceptionally heavy snowfall and it is deemed necessary to re-plow certain areas, such re-plowing shall be performed at a cost based upon a pro-ration of the per trip price for the fractional area of lot to be Re-plowed.

Kmart Corporation
Facility Management Division

_____ Field Office

Accepted _____ 20 ____

By _____

_____
Type Name and Title

**Contractor** _____

By _____ Date _____

_____
Type Name and Title

Address _____

City _____ State _____ Zip _____

Phone No. _____

GPS030979

Tax Identification # _____

***This Proposal is Subject to and Governed by the Terms and Conditions on Reverse Side.***

Vendor ID # _____

W:Facility Management Division/Facility Services/Annual Service Agreement/Snow Proposal 6/99

# Terms and Conditions

PERMITS AND INSPECTIONS: Contractor shall secure any and all permits and/or inspections required by all applicable federal, state and local codes, rules, regulations, ordinances and statutes ("Applicable Laws"). Certificates of inspection shall be furnished to Kmart in all cases where permits are required. The Cost of such permits and/or inspections shall be included in Contractor's final invoice to Kmart with the applicable receipts attached thereto, and the costs shall not be subject to Contractor's percentage charges for overhead and profit.

EXAMINATION OF THE PREMISES: By this accepted Proposal ("Contract") it is acknowledged that the Contractor is familiar with the construction site, is satisfied as to all matters necessary for carrying out the work and the character of the site has been taken into account in submitting this bid. No allowance or extra payment will be made on account of any costs, expenses, delays or other matters incurred in connection with the character of the site or occasioned by Contractor's failure to become familiar with said site or on account or any error or oversight on Contractor's part.

NO DISCRIMINATION: Contractor agrees that no person with responsibilities in the operation of this Contract will discriminate with respect to any subcontractor, employee or applicant for participation in this project because of race, creed, national origin, sex or age.

LIABILITY AND WORKERS' COMPENSATION INSURANCE: Contractor shall maintain comprehensive general liability insurance with limits of not less than $1,000,000 per occurrence or $2,000,000 aggregate which shall include, but not be limited to, contractual liability. Contractor shall also maintain comprehensive automobile liability coverage with a combined single limit of not less than $1,000,000, workers' compensation insurance as required by Applicable Laws and employers liability coverage with limits of not less than $500,000. Contractor shall include Kmart as an additional named insured in connection with all coverages and shall provide Kmart with a certificate of insurance evidencing same and the required coverages.

CONTRACTOR'S INDEMNIFICATION: To the fullest extent permissible under Applicable Laws: Contractor shall reimburse, indemnify, hold harmless and defend Kmart, its employees, agents, servants, landlords, and representatives from and against any and all losses, damages, expenses, claims, suits and demands of whatever nature, including those resulting from damages or injuries, including death, to any property or persons, caused by or arising out of any action, omission, breach or operation under the Contract or in connection with the work attributable to the Contractor, any subcontractor, any material supplier, any of their respective employees, agents, servants, and representatives, or any other person, including Kmart, its employees, agents, servants and representatives; provided, however, that the Contractor shall not be required to indemnify Kmart, its employees, agents, servants and representatives hereunder for any damages or injuries, including death, to any property or persons, caused solely and exclusively by the negligence of Kmart, its employees, agents, servants and representatives.

WORKMANSHIP AND GUARANTEES: Contractor warrants that the performance of all work and the entire installation will be in accordance with (1) good construction practice, (2) the Contract Documents, and (3) Applicable Laws. Contractor shall guarantee all work to be free from defects in material and workmanship for a period of one (1) year unless otherwise noted on the Contract Documents.

SAFETY REQUIREMENTS: Contractor shall keep all oily and/or paint-soaked rags in metal containers and must remove same at the completion of each day's work. CONTRACTOR SHALL NOT PERMIT SMOKING IN ANY BUILDING SUBJECT TO THIS CONTRACT.

TAXES: All taxes are included in the bid, including federal, state, county and municipal excise, gross receipts, sales, use of other taxes now in force, payroll taxes, contributions for employment insurance, old age pensions (including Social Security) or annuities. Sales and use taxes apply to MATERIAL ONLY, unless otherwise specified by Applicable Laws.

CONTRACTO'S INVOICES: Contractor's invoices must include: (1) total cost of labor, (2) total cost of materials, (3) sales tax, (4)Contractor's profit, (5) grand total, (6) authorized extras, if any (must be authorized in writing by Kmart), and (7) supporting documents. Invoices must be submitted to the designated Kmart Office. Where the amount of the Contract exceeds $5,000 or upon request of Kmart, Contractor's final invoice shall be accompanied by Contractor's Sworn Statement indicating that all indebtedness is paid in full, Contractor's final waiver of lien and final unconditional waivers of liens from all subcontractors and suppliers. Further, such lien waivers are required from anyone having previously asserted lien rights or provided an intent to assert such rights. Contractor's invoices for partial payment shall be accompanied by Contractor's Sworn Statement setting forth the amounts due to its laborers, subcontractors and suppliers. Contractor's indebtedness shall not exceed 20% of current gross invoice plus any amounts previously withheld.

ASSIGNMENTS: Contractor agrees that this Contract shall not be assigned and any monies due hereunder shall not be assigned unless approved in writing by Kmart. All assigned invoices shall be accompanied by Sworn Statements and Waivers of Liens as described in the previous paragraph.

TERMS OF PAYMENT: Net 30 days unless otherwise agreed to in writing by Kmart. For all contracts exceeding $5,000, payment will be made as follows: on or about the twentieth day of each month, ninety percent of the value of the work completed up to the end of the previous month. Less the aggregate of previous payments; on substantial completion of the entire work a sum sufficient to increase the total payments to ninety percent of the Contract price; and thirty days thereafter, provided the work is fully completed and the Contract fully performed, the balance due under the Contract. Kmart reserves the right to make payments to Contractor in the form of checks payable jointly to Contractor and to any of its subcontractors or suppliers that may have the right to assert a claim of mechanics lien against the premises. Kmart may offset against payments required under this Contract any monetary obligation from Contractor to Kmart, whether the obligation arises out of this Contract or otherwise.

DEVIATION FROM CONTRACT DOCUMENTS: Any and all deviations from the Contract Documents must be agreed to in writing by Kmart.

RESPONSIBILITY TO UPDATE PLANS: Contractor shall update the subject building plans to show any and all changes in arrangement or layout of store fixture or deviations to the drawings and return all drawings to the Kmart representative.

TERMINATION/COMPLETION: If the Contractor should neglect or refuse or fail to supply enough properly skilled workmen or proper material, fail in any respect to diligently prosecute the work under Contract, fail to make prompt payment to subcontractors, materialmen or laborers, disregard Applicable Laws, the instruction of Kmart, or otherwise be guilty of a material breach of the Contract, then Kmart may without prejudice to any other right or remedy, after giving Contractor forty-eight (48) hours notice, terminate the Contract. In the event Kmart shall terminate the Contract, it shall have the right to take possession of the site and all materials and plant thereon and to employ any other person or persons necessary to finish the work either on a fixed subcontract basis or percentage basis or a combination of the two, whichever in the opinion of Kmart shall be advisable. In case of such termination, Contractor shall bot be entitled to receive any further payment under the contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by Kmart in finishing the work, plus 15%, such excess shall be paid by Kmart to contractor. If such expense shall exceed the unpaid balance, Contractor shall pay the difference thereof plus 15% to Kmart. Kmart reserves the right to terminate this contract with fort-eight (48) hours notice at any time it determines it does not wish to proceed with the project or with contractor. In such event, Contractor shall be paid for such portions of the work as have been completed and for materials which have been provided, fabricated or delivered up to the date of termination, no allowance being made for anticipated profit on that portion of the work not completed.

TIME OF COMPLETION: Contractor shall execute the work with all diligence and expedition consistent with personal and public safety and with the approved schedule and completion date, recognizing that TIME IS OF THE ESSENCE OF THIS CONTRACT. Contractor shall not be entitled to any extension of the completion date unless required due to catastrophic weather conditions or the intentional act or omission of Kmart; in no event shall Contractor be entitled to an increase in the Contract price or damages of any nature arising out of project delay, however caused.

INDEPENDENT CONTRACTOR: Contractor is, and at all times shall remain, an independent contractor in performance of this Contract. Code 916-69