



**Request for Bid (RFB)**  
**for**  
**Hired Trucks and Road**  
**Building Equipment**  
**Bid #2024-05PC**

Issued by:

Portage County  
Purchasing Department

**All required bid document/copies must be submitted**  
**No later than **2:00 PM 2/27/2024** to:**

**Portage County Purchasing**  
**1462 Strongs Ave**  
**Stevens Point WI 54481**

LATE BIDS WILL BE REJECTED  
There will be a public opening for this Bid  
1462 Strongs Ave  
Stevens Point WI 54481

For further information regarding this  
RFB contact Christopher Schultz  
At (715) 346-1393  
Email: schultzcc@co.portage.wi.gov

Issued: 2/06/2024

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## 1. GENERAL INFORMATION AND SCOPE

The County of Portage Wisconsin (County), through its Purchasing Department (Purchasing), requests bids to establish a call list and contracts with owner/operators of quad-axle trucks and road building equipment interested in working on County road projects and roadway maintenance.

The attached Standard Terms and Conditions shall govern this bid unless specifically modified in these bid documents. Conditions of bid that include the word "must" or "shall," describe a mandatory requirement. All specifications are defined as mandatory minimum requirements unless otherwise stated. If no bidder is able to comply with a given specification or condition of bid, Purchasing reserves the right to delete that specification or condition of bid. Failure to meet specification requirements shall disqualify your bid. Vendors may not submit their own contract document as a substitute for these terms and conditions.

**Retain a copy of these Bid documents for your files.** Should you receive an award, these Bid documents become your contract terms and conditions.

**Contract Execution:** Portage County utilizes a web based electronic signature program (DocuSign) for the execution of contracts that do not require notarization. By submitting your bid you are agreeing to the use of this program to sign documents should you receive an award. There is no cost to the bidder associated with this process.

Definitions: The following definitions are used throughout the RFB documents:

Bidder/Vendor means a company or individual submitting a bid response to this RFB

Contractor means bidder awarded the contract

County means the County of Portage Wisconsin

Purchasing means the County of Portage Purchasing Department

RFB means Request for Bid

State means the State of Wisconsin

VendorNet means the State of Wisconsin's electronic purchasing information system

## 2. CONTRACT TERM

Date of award, through the following years bidding process (12 months). Any extension must be authorized by mutual agreement of the vendor and the County.

## 3. QUESTIONS

If a vendor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB they shall notify the Procurement Director named below of such error and request a modification or clarification.

Any communications or questions regarding the specifications, or special conditions of bid should be written and submitted to Purchasing as soon as possible, but no later than **2PM on 2/15/2024**.

Purchasing will respond to questions if necessary by issuing an official addendum, posted on VendorNet and on the Portage County Website. Bidders are responsible for checking these websites for any addenda before submitting a bid. Failure to acknowledge addenda may disqualify your bid.

<http://vendornet.state.wi.us>

<http://www.co.portage.wi.gov>

Any correspondence or questions submitted must include the bid number

Submit questions in writing via email to:

Christopher Schultz, Procurement Director, e-mail: [schultzc@co.portage.wi.gov](mailto:schultzc@co.portage.wi.gov)  
Phone: 715-346-1393

#### 4. METHOD OF BID

Bidder shall submit a unit price for each item. All prices must be quoted in U.S. Dollars. Bids requiring an order minimum may be disqualified. Bidder must bid on the enclosed Bid Offer Form.

#### 5. BID SUBMISSION

Bidders must submit **an original and one copy** including all required materials for acceptance of their bid by the date and time listed on the Bid Cover Sheet. Any bids received after that time and date will be rejected. Receipt of a bid by the US mail system does not constitute receipt of a bid by Purchasing, for purposes of this RFB. Also refer to the Bid Response Requirements.

Faxed and e-mailed bids are not accepted. Bids must be mailed or delivered to:

Portage County Purchasing Department  
1462 Strongs Ave  
Stevens Point WI 54481

All bids are to be packaged, sealed, and show the following information on the **outside of the package**:

- Vendor's Name and Address
- Request for Bid Title
- Request for Bid Number
- Bid Due Date

#### 6. BID RESPONSE REQUIREMENTS

7. In order for your bid to be considered, the following information must be provided by the due date and time listed on the bid cover page. Failure to include any required documents will disqualify your bid. Include an original and a copy:

- 7.1 Signature and Authority Affidavit Form, Attachment A (Acknowledge addendum(s) if any.)
- 7.2 References Sheet, Attachment B
- 7.3 Bid Offer Form, Attachment C

The Signature and Authority Affidavit submitted in response to this RFB must be signed by the person in the Contractor's organization who is responsible for the decision as to the prices being offered in the Bid or by a person who has been authorized in writing to act as agent for the person responsible for the decision on prices and services. Failure to provide these forms/information with your bid submittal may disqualify your bid. The County encourages all bidders to print their submission double-sided to save paper.

#### 8. METHOD OF AWARD

Award(s) shall be made on the basis of the lowest net unit price per item from a responsive, responsible bidder(s) who meets specifications. Multiple bidders may be awarded. Timeliness and availability may be considered when making this award.

#### 9. BIDDER/CONTRACTOR QUALIFICATIONS

To be eligible for a contract award, you must be qualified and able to provide the following:

- 9.1 Bidder must supply references of three firms to which similar service have been provided during the past five years to a comparable-sized institution or company. If contacted, all of those references must verify that a high level of satisfaction was provided. Use Attachment B to list references.
- 9.2 Bidder must be in the business of operating trucks or road building equipment for the past three years.
- 9.3 Awarded contractor must provide Purchasing a Certificate of Insurance and maintain the minimum limits specified for the term of the contract. All policies must be issued with a 30-day cancellation notice, by an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of A1, and signed by an authorized agent.

Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage. Portage County shall be listed as an additional insured on the GL policy.

## 10. SPECIFICATIONS

The following specifications are minimum acceptable requirements. Bid specifications may not be revised without an official written addendum issued by Purchasing.

- 10.1 Truck and equipment operators must be properly licensed and trained in accordance with federal, state and local laws, codes, ordinances and industry standards.
- 10.2 Operators must perform all work in a professional and safe manner.
- 10.3 Trucks and equipment must be in good working order and meet or exceed industry standards for the type of work assigned or requested.
- 10.4 Road building and maintenance equipment includes graders, dozers, pavers, milling machines, diggers, rollers, logging equipment, road maintenance equipment, etc.
- 10.5 Any mobilization cost for construction equipment shall be listed separately and clearly labeled as mobilization. The price listed shall be the price per mobilization.

## 11. ON SITE SERVICE

In carrying out the scope of this contract, the Contractor shall be required to perform services on County property. Bidders must include all transportation, fuel, and insurance charges. Failure to include these costs may disqualify your bid.

## 12. SUBCONTRACTING OR THIRD PARTY PAYMENTS

All subcontracting shall be pre-approved by the County before any work begins. Subcontractors must abide by all terms and conditions of the contract. The prime contractor shall be responsible for all subcontractor(s) work and payment. The County will not pay any subcontractor or third parties directly.

### 13. FIRM PRICES

The awarded contractor may not increase awarded pricing for the entire contract period. Awarded contract pricing may be lowered due to general market conditions. The County will review any adjustment of costs before the beginning of a contract renewal period. Price increase requests for renewals must be justified with supporting documentation of industry-wide increases.

### 14. INVOICING REQUIREMENTS

The County's terms are to pay or reject invoices within 30 days of receipt. Before payment is made, it also must verify that all invoiced charges are correct as per this contract. Only properly submitted invoices shall be officially received for payment. Thus, your prompt payment requires that your invoices be clear and complete in conformity with the instructions below.

All invoices must be itemized showing:

- |                         |  |
|-------------------------|--|
| a. time/date of service | d. complete product description as stated on your bid. |
| b. vendor name          | e. prices per the contract                             |
| c. remit to address     |  |

The original invoice must be sent to the Portage County Highway Department.

### 15. CONTRACT CANCELLATION

This Contract may be terminated by either party under the following conditions:

- 15.1 The County may terminate the contract at any time at its sole discretion by delivering 10 days written notice to the contractor.

If the problem is service performance, contractor will be warned either verbally or in writing of unsatisfactory performance and intent to cancel this contract. Contractor will be given a period of time to 'cure' the performance. If the performance does not improve contractor will be given 10 days written notice that the contract will be cancelled.

**Upon termination, the County's liability will be limited to the pro rata cost of the services performed as of the date of termination.**

- 15.2 If at any time the contractor's performance threatens the health and/or safety of the County or the public, the County has the right to cancel and terminate the Contract without notice.
- 15.3 If the Contractor fails to maintain and keep in force the insurance as required, the County has the right to cancel and terminate the Contract without notice.

### 16. APPEALS PROCESS

Notices of intent to protest and protests must be made in writing. Protestors should make their protests as specific as possible and should identify Wisconsin Statutes or Portage County Ordinance provisions that are alleged to have been violated.

The written notice of intent to protest the intent to award a contract must be filed with Christopher Schultz, Procurement Director, Portage County Wisconsin, 1462 Strongs Ave, Stevens Point, WI 54481, and received in his office no later than five (5) working days after the notice of intent to award is issued.

The written protest must be received in his office no later than ten (10) working days after the notice of intent to award is issued.

The decision of the Procurement Director may be appealed to the Corporation Counsel Office within (5) working days of issuance. The appeal must allege a violation of a Wisconsin Statute or a Portage County Ordinance provision.

**ATTACHMENT A**

**SIGNATURE AND AUTHORITY AFFIDAVIT FORM**

BIDDING COMPANY NAME: \_\_\_\_\_

FEIN (Federal Employer ID Number) \_\_\_\_\_ OR Social Security # (if Sole Proprietorship) \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip + 4 \_\_\_\_\_

Number of years in Business \_\_\_\_\_

Name the person to contact for questions concerning this bid.

Name \_\_\_\_\_ Title \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Toll Free Phone (\_\_\_\_) \_\_\_\_\_

Fax (\_\_\_\_) \_\_\_\_\_ Email Address \_\_\_\_\_

In signing this bid, we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other bidder, competitor or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids to any other bidder or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, having familiarized themselves with the conditions affecting the cost of the work, having read completely the specifications, hereby proposes to perform everything required and to provide and furnish labor, materials, equipment, tools and all other services and supplies necessary to produce in a complete and workmanlike manner all of the materials or products described in the specifications relating to this Bid.

I further certify that I have carefully examined the bid documents and all terms herein, and site where the work is to be done and have no agreements to prevent the completion of said work.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Name (type or print)**

\_\_\_\_\_  
**Date**

This firm hereby acknowledges receipt / review of the following addendum(s) (If any)

Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_



**ATTACHMENT B**

**REFERENCES**

**Vendor:** \_\_\_\_\_

Provide company name, address, contact person, telephone number, and appropriate information on the product(s) and/or service(s) provided to customers similar to those requested in this solicitation document. Potential subcontractors cannot be references. Any subcontractor arrangement for the completion of this work shall be listed on a separate page.

**Company Name:** \_\_\_\_\_

Address (include Zip + 4) \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Product(s) Used and/or Service(s) Provided: \_\_\_\_\_

**Company Name:** \_\_\_\_\_

Address (include Zip + 4) \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Product(s) Used and/or Service(s) Provided: \_\_\_\_\_

**Company Name:** \_\_\_\_\_

Address (include Zip + 4) \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Product(s) Used and/or Service(s) Provided: \_\_\_\_\_

**Company Name:** \_\_\_\_\_

Address (include Zip + 4) \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Product(s) Used and/or Service(s) Provided: \_\_\_\_\_

ATTACHMENT C

BID OFFER FORM

Vendor: \_\_\_\_\_

**Bid must include all transportation, fuel, equipment and operator costs.  
Use multiple Bid Offer Forms if necessary.**

Description	Capacity	Quantity Available for Hire	Unit Price Per Hour with Operator
Quad-axle truck with rear tow bar capability for chip seal machine.			

Other Trucks – Please List Description	Capacity	Quantity Available for Hire	Unit Price Per Hour with Operator

Road Building and Maintenance Equipment – Please List Description	Capacity	Quantity Available for Hire	Unit Price Per Hour with Operator

Lead time for services is \_\_\_\_\_ days after receipt of order

An original and one copy of all required forms are included in the submittal? Yes \_\_\_\_\_ No \_\_\_\_\_

Portage County is exempt Federal Excise and Wisconsin Sales Taxes, 77.54(9a). WI Stats.  
Portage County’s CES number is ES 43251.

**ATTACHMENT D**

**STANDARD TERMS AND CONDITIONS**

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired, unless otherwise specified. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish an acceptable equivalency. The County shall be the sole and final judge of equivalency.
- 2.0 HOW TO AMEND A REQUEST FOR BID, PROPOSAL OR QUOTE:**
- 2.1** Public Works Projects are subject to Wis Stats 66.0901(5): If a person submits a bid or proposal for the performance of public work under any public contract to be let by a municipality and the bidder claims that a mistake, omission or error has been made in preparing the bid, the bidder shall, before the bids are opened, make known the fact that an error, omission or mistake has been made. If the bidder makes this fact known, the bid shall be returned to the bidder unopened and the bidder may not bid upon the public contract unless it is re-advertised and relet upon the re-advertisement. If a bidder makes an error, omission or mistake and discovers it after the bids are opened, the bidder shall immediately and without delay give written notice and make known the fact of the mistake, omission or error which has been committed and submit to the municipality clear and satisfactory evidence of the mistake, omission or error and that it was not caused by any careless act or omission on the bidder's part in the exercise of ordinary care in examining the plans or specifications and in conforming with the provisions of this section. If the discovery and notice of a mistake, omission or error causes a forfeiture, the bidder may not recover the moneys or certified check forfeited as liquidated damages unless it is proven before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission the bidder was free from carelessness, negligence or inexcusable neglect.
- 2.2** Non-Public Work Projects: After a Request for Bid/Proposal/Quote has been filed with the Portage County Purchasing Department, the responder may submit an amended response BEFORE THE DUE DATE AND TIME set in the request. All the conditions and provisions of the original Bid/Proposal/Quote will be in effect. No submittals or amendments will be accepted after the due date and time of the request. This does not preclude the County from requesting additional information and/or clarification.
- 3.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 4.0 QUALITY:** Unless otherwise indicated in the request, all material shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the County.
- 5.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The County reserves the right to increase or decrease quantities to meet actual needs.
- 6.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 7.0 PRICING AND DISCOUNT:** The County qualifies for governmental discounts. Unit prices shall reflect these discounts.
- 7.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price; the unit price shall govern in the bid/proposal evaluation.
- 7.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions.

- 8.0 RESPONSES TO REMAIN OPEN:** Responses must remain open and will be deemed to be open and subject to acceptance until awarding of the bid/proposal is finalized, or a minimum of sixty (60) days unless otherwise specified.
- 9.0 ACCEPTANCE-REJECTION:** The County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, request clarification of any bid/proposal, award a bid/proposal that is not the lowest price, and to accept any part of a bid/proposal as deemed to be in the best interests of the County.
- 10.0 GUARANTEED DELIVERY:** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs and other costs attributable to the delay.
- 11.0 CONTRACT AND EXECUTION OF CONTRACT:** Unless otherwise specified in the bid/proposal, the successful responder agrees to enter into a contract, a copy of which will be on file in the office of the Portage County Purchasing Department. Contractor shall and will well and truly execute and perform this contract under the terms applicable to the satisfaction of the County, and shall promptly make payment to each and every person or party entitled thereto of all the claims for work or labor performed and materials furnished in the performance of this contract.
- 12.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the County.
- 13.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The Contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The County reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The County also reserves the right to cancel this contract with any state or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- 14.0 LICENSES AND PERMITS:** Contractor shall have and/or provide any and all licenses and permits required to perform the work specified and furnish proof of such licensing authorization and permits with their bids if required.
- 15.0 ASSIGNMENT:** No right or duty in whole or in part of the Contractor under this contract may be assigned or delegated without the prior written consent of the County.
- 16.0 NONEXCLUSIVE CONTRACT:** Unless otherwise stated, the County reserves the right to purchase work or materials outside of this contract.
- 17.0 NONDISCRIMINATION & AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation, gender identity and gender expression, or national origin. This provision 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.
- 18.0 INDEPENDENT CAPACITY:** The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the County. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the County.

- 19.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.
- 20.0 WARRANTY:** Unless otherwise specifically stated, equipment purchased as a result of this request shall be warranted against defects by the Contractor for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the Contractor.
- 21.0 INSURANCE RESPONSIBILITY:** If insurance is required, satisfactory proof of the existence and carriage of such insurance of the kinds and limits specified will be required.
- 22.0 CANCELLATION:** The County reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.
- 23.0 VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Portage County tax liability may have their payments offset by the County.
- 24.0 OPEN RECORDS:** Both parties understand that the County is bound by the Wisconsin Public Records Law, and as such, responses and contracts are subject to and conditioned on the provisions of the law. Contractor acknowledges that it is obligated to assist the County in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that the Contractor must defend and hold the County harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the contract.
- 25.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, the Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 26.0 ADVERTISING AND NEWS RELEASES:** Reference to or use of the County, any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the County. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the County.
- 27.0 HOLD HARMLESS:** The Contractor will indemnify, pay the cost of defense including attorney's fees, and save harmless the County and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.
- 28.0 FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this contract is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
- 29.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.