

**CITY OF ALBUQUERQUE**

REQUEST FOR BID

THE CITY OF ALBUQUERQUE, PURCHASING OFFICE IS REQUESTING OFFERS FOR THE FOLLOWING GOODS OR SERVICES:

REQUEST NUMBER: RFB2010-072-BH  
TITLE: BUS TIRE LEASING WITHOUT SERVICE  
OPENING DATE: DECEMBER 23, 2009 (1:30 PM)

The City Clerk of the City of Albuquerque will receive sealed offers for the goods or services described in this request at:

**Via United States Postal Service:**

OFFICE OF THE CITY CLERK  
CITY OF ALBUQUERQUE  
POST OFFICE BOX 1293  
ALBUQUERQUE, NEW MEXICO 87103

**Hand Deliver, Air Mail, UPS, FedEx, etc.:**

OFFICE OF THE CITY CLERK  
CITY OF ALBUQUERQUE  
ONE CIVIC PLAZA  
ALBUQUERQUE, NEW MEXICO 87102

**Note: Use of the mail or any delivery service is at your own risk.**

**OFFERS WILL BE RECEIVED UNTIL 1:30 PM DECEMBER 23, 2009**

**The time and date offers are due shall be strictly observed.**

PAGE 2  
GENERAL INFORMATION AND REQUIREMENTS  
REQUEST NUMBER: RFB2010-072-BH

**Offers will be opened promptly after the 1:30 PM due time at:**

ALBUQUERQUE/BERNALILLO COUNTY GOVERNMENT  
CENTER  
7TH FLOOR CONFERENCE ROOM  
ONE CIVIC PLAZA  
ALBUQUERQUE, NEW MEXICO

ALL OFFERORS ARE RESPONSIBLE FOR READING AND UNDERSTANDING ALL INFORMATION CONTAINED IN THIS REQUEST. OFFERORS ARE RESPONSIBLE FOR CHECKING TO ASSURE THAT NO PAGES ARE MISSING. PLEASE CHECK THIS PACKAGE UPON RECEIPT. IF ANY PAGES ARE MISSING PLEASE CONTACT THE BUYER NAMED ON PAGE 3.

THE FOLLOWING INFORMATION AND FORMS ARE REQUIREMENTS FOR THIS REQUEST.

- \_\_\_\_\_ OFFEROR COMPLIANCE FORM  
COMPLETE ALL APPLICABLE INFORMATION, INCLUDING YOUR FEDERAL TAX IDENTIFICATION NUMBER, AND RETURN IT WITH YOUR OFFER.
- \_\_\_\_\_ PRICING DETAIL FORM(S)  
COMPLETE ALL PRICING DETAIL, INCLUDING UNIT AND EXTENDED PRICES (THIS IS VERY IMPORTANT).
- \_\_\_\_\_ OFFEROR COMMENTS FORM  
IF APPLICABLE, COMPLETE, SIGN AND RETURN WITH YOUR OFFER.
- \_\_\_\_\_ PREFERENCE CERTIFICATION FORM  
IF APPLICABLE, COMPLETE, SIGN AND RETURN WITH YOUR OFFER.

PAGE 3  
OFFEROR COMPLIANCE FORM

REQUEST NUMBER: RFB2010-072-BH  
OPENING DATE: DECEMBER 23, 2009

FOR FURTHER INFORMATION  
CALL BERNICE HUGHES  
AT (505) 768-3339

DELIVERY DATE: \_\_\_\_\_  
(PLEASE SPECIFY)

FOB POINT: TRANSIT  
8001 DAYTONA RD. N.W.  
ALBUQUERQUE, NM 87121

REQUISITION 258919

BID BOND AMOUNT: \$0.00

PERFORM BOND AMOUNT: \$0.00

BID BOND PERCENT: 0%

PERFORM BOND 0%

IF APPLICABLE, BID AND PERFORMANCE BOND INFORMATION CAN BE FOUND IN THE SUPPLEMENTAL TERMS AND CONDITIONS.

DISCOUNT: PLEASE INDICATE YOUR FIRM'S DISCOUNT FOR PROMPT PAYMENT:  
(THE MINIMUM ACCEPTABLE PERIOD IS 20 CALENDAR DAYS)

20 CALENDAR DAYS: \_\_\_\_\_%

30 CALENDAR DAYS: \_\_\_\_\_%

OTHER: \_\_\_\_ CALENDAR DAYS: \_\_\_\_\_%

PREFERENCES MAY BE AVAILABLE FOR THIS BID. PLEASE SEE ATTACHMENTS.

I, THE UNDERSIGNED, HAVE READ AND EXAMINED THE GENERAL TERMS, CONDITIONS, ANY SUPPLEMENTAL TERMS AND CONDITIONS, AND THE SPECIFICATIONS OF THIS REQUEST AND AGREE TO COMPLY WITH ALL OF THEM.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(PRINT OR TYPE)

COMPANY NAME: \_\_\_\_\_ EIN: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ EMAIL: \_\_\_\_\_

DIRECT DEPOSIT PAYMENT TRANSFERS ARE STRONGLY ENCOURAGED.  
TO ACCESS FORMS VISIT [WWW.CABQ.GOV/VENDOR](http://WWW.CABQ.GOV/VENDOR)

PAGE 4  
 PRICING DETAIL FORM  
 REQUEST NUMBER: RFB2010-072-BH

GROUP NO.	ITEM NO.	QUANTITY/UNIT	ITEM DESCRIPTION	UNIT PRICE	TOTAL PRICE
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IN ACCORDANCE WITH THE ENCLOSED SPECIFICATIONS, TERMS AND CONDITIONS, FURNISH THE CITY WITH THE FOLLOWING: BUS TIRE LEASING WITHOUT SERVICE FOR A PERIOD OF TWENTY-FOUR MONTHS WITH OPTION TO EXTEND FOR UP TO TWO (2) TWELVE (12) MONTH PERIODS OR ANY PART OF MONTH UPON MUTUAL AGREEMENT BETWEEN THE VENDOR AND THE CITY.

	1	300.00 EA ESTIMATED	NEOPLAN AN440 BUS TYPE, TIRE SIZE, B305/75R24.5	_____	_____
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	2	250.00 EA ESTIMATED	NEW FLYER DE60LF AND DE40LF BUS TYPE, TIRE SIZE B305/75R24.5	_____	_____
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	3	220.00 EA ESTIMATED	DCCB SLF 232 BUS TYPE, TIRE SIZE LT245/70R19.5	_____	_____
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BID PRICE SHOULD INCLUDE ALL FREIGHT, INSURANCE AND ALL APPLICABLE TAXES.

FOR QUESTIONS REGARDING THIS BID CONTACT BERNICE HUGHES AT BHUGHES@CABQ.GOV.

\*\*\*\*\*LAST ITEM REQUESTED\*\*\*\*\*

SPECIFICATIONS TIRE LEASING WITHOUT SERVICE  
RFB 2010-072-BH

- A. **PURPOSE AND INTENT:** The purpose of the Request for Bid is to provide the City of Albuquerque with tires for the ABQ Ride's buses.
- B. **BACKGROUND:** The ABQ Ride currently has approximately one hundred fifty one (151) buses. The annual fleet mileage experienced by the City of Albuquerque is approximately 6.3 million miles for fixed route vehicles. As stated in Part III Scope of Services, the City of Albuquerque will apply and use exclusively, tires furnished by the Contractor on the present and upcoming fleet. The City of Albuquerque reserves the right to test tires other than the Contractor's on not more than five percent (5%) of its fleet during the term of the contract. The exception to this clause is for vehicles less than 16,000 lbs. GVWR and non-revenue vehicles.
- C. **CONTRACTOR QUALIFICATIONS:** To qualify under this RFB, the Contractor must be regularly engaged in the operation of a bus tire mileage leasing business and must furnish a list of transit properties presently and recently under tire lease agreements.
- D. **ELIGIBILITY:** To establish eligibility for consideration for this RFB, each bid must equal or exceed the requirements hereinafter set forth in this Request for Bid.
- E. **TECHNOLOGICAL ENHANCEMENTS:** Offerors may submit technical and cost proposals for any technology enhancements, which are state of the art for the tire products related to this proposal. Such options shall be stand along options complete with a cost proposal. Execution of this option will be upon mutual consent of both parties.
- F. **CITY OF ALBUQUERQUE OBJECTIVE:** Due to the fluctuation in the industry the City of Albuquerque's objective in selecting a Contractor is one that is most beneficial to the City of Albuquerque. The City of Albuquerque's objective is to implement a firm fixed price contract or a fix price contract with minimum price fluctuations over the life of the contract.
- G. **EQUIPMENT:** Offerors must provide and maintain latest available tire equipment i.e., tire balancer, regrooving machine, tire mount & dismount machine, all needed accessories.
- H. **ACCESSORIES:** Provide free of charge tire supplies to include hardware i.e. valve stems, valve caps, valve cores, valve caps, patches, and tire lube.

General: The City of Albuquerque's present fleet has the following approximate characteristics:

<u>Make/Model</u>	<u>Quantity</u>	<u>Tire Size</u>	<u>Single or Dual Rear</u>
Neoplan AN440	40	B305/75R24.5	Dual
New Flyer DE60LF/DE40LF	116	B305/75R24.5	Dual
DCCB SLF 232	36	LT245/70R 19.5	Dual

Bridgestone provides the tires currently being utilized by the City of Albuquerque on revenue vehicles. It is a condition of this Scope of Services that the City of Albuquerque will apply and use exclusively tires furnished by the Contractor on the vehicles identified above, however, the City of Albuquerque reserves the right to test tires other than the Contractor's on not more than five percent (5%) of its' fleet.

It is understood in these Specifications and the ensuing Agreement, that a tire means a casing and valve stem in reference to tubeless type tires.

All tire rims will be furnished by the City of Albuquerque and will be of the sizes and types, and spaced as recommended by the Tire and Rim Association of America, Inc. Tire inflation and load capacities per tire will also be in accordance with the recommendation of the aforementioned association and/or the vehicle manufacturer.

To establish eligibility for consideration for this RFB, each bid must equal or exceed the requirements hereinafter set forth in the Specifications.

**Definition of Terms:** The following term, as used in this specification shall mean the following:

**Tire:** A tire is a tubeless-type casing with valve stem

**Bus:** Any bus used for the transportation of passengers by the city of Albuquerque.

**Rim or Wheels:** The rims or wheels upon which tires are to be mounted.

**Bus Miles:** The actual number of miles of operation/travel for a bus. A bus mile shall be ascertained by the City of Albuquerque by using vehicle hubodometers meters or odometer where hubodometers are impractical. Other tracking means may be instituted by the City of Albuquerque.

**Mile/Tire Service Rate:** The mileage/tire service rate paid to the Contractor for tires and supplies. This rate is all inclusive of personnel costs including wages, fringes, cost amortization of all tools and materials.

**Scrap Tires:** Any tire, which through damage or use has completed its usable life and is permanently unfit for any additional service. Supplier will be held responsible for disposal of all leased tires.

**Damaged Tires:** Tires that are removed for cause other than normal wear prior to achieving the average miles.

**Average Miles:** This is derived by dividing total mileage by the number of tires used to achieve this mileage.

**Defective Tires:** Tires supplied by the Contractor which do not meet all local, state, and federal regulations, or meet expected life miles. Shall include manufacturer's defect on damage due to shipping.

1. **Tire Features:** Mileage type tires, radial construction and have a ply rating appropriate for each vehicle type. Each tire must be of regroovable type. Regrooved tires will be used on drive axles only. Each tire must have an individual ID number branded into its sidewall and branded and scan able inside the tire to facilitate tire location and mileage record keeping. There will be no duplication of ID numbers.

The tires proposed to be used for this contract shall be described in detail with the proposal submitted. The Contractor shall guarantee that the tires proposed shall (at a minimum) meet the following criteria:

- a. Radial
  - b. The Contractor shall provide the City of Albuquerque with mileage tires of sufficient carrying capacity of Albuquerque to conform to the approved standards of the Tire and Rim Association of America, Inc.
  - c. Bead shall be designed to withstand heat generated under full load conditions and heavy repeated brake application on City of Albuquerque vehicles.
  - d. Shall be designed to operate at New Mexico legal freeway speed limits.
  - e. Tires shall be replaced when the following tread depths are reached: front tires – 4/32”; rear tires 2/32”.
2. **Tire Inventory:** The number of tires furnished by the Contractor must be sufficient to keep all City of Albuquerque buses fully equipped. The Contractor shall submit with their bid their tire tracking and inventory methodology. Based upon casing availability, the Contractor will furnish non-retreadable “No-Value

Tires” to the City of Albuquerque for the sole and exclusive purpose of equipping the City of Albuquerque’s obsolete or out-of-service vehicles. The City of Albuquerque will acquire each “No Value Tire” as is, and the Contractor makes no warranties as to the condition or fitness for continued use of such tires.

3. **Title To Tires:** Title to all tires furnished to the City of Albuquerque under the Agreement will remain at all times with the Contractor.

4. **Reporting:**

a. The Contractor shall provide detailed monthly reports to the City of Albuquerque which shall include, but not necessarily be limited to the following:

1. Tire Brand: Tires shall be individually and uniquely branded prior to delivery.

5. **Contractor’s Interaction with the Media and the Public:**

A. The ABQ Ride Director or designee shall review and approve all City of Albuquerque related copy proposed to be used by the Contractor for advertising or public relations purposes prior to publication. The Contractor shall not allow City of Albuquerque-related copy to be published in its advertisements and public relations programs prior to receiving such approval. The Contractor shall ensure that all published information is factual and that it does not in any way imply that the City of Albuquerque endorses the Contractor’s firms, service, and/or product.

B. The Contractor shall refer all inquiries from the news media to the ABQ Ride, and shall comply with the procedures of the City of Albuquerque’s Public Affairs staff regarding statements to the media relating to the contract or the Services.

C. The Contractor shall designate a staff person acceptable to the City of Albuquerque to keep the ABQ Ride Director or designee informed of all impacts on the community resulting from the Services of this Contract. This designated staff person may be the Contractor’s project superintendent, project engineer, or other employee acceptable to the City of Albuquerque; the person does not need to be full time.

D. If the Contractor receives a complaint from a citizen or the community, the Contractor shall inform the ABQ Ride Director or designee immediately upon receipt of complaint and prior to action.



**Testing:** The City of Albuquerque reserves the right to install test tires of a make other than the Contractor's on its buses. The number of buses equipped with such test tires shall not exceed 5% of the total number at any one time. With the City of Albuquerque's prior written approval, a reasonable number of tires, not to exceed 5% may also be tested by the Contractor on City of Albuquerque vehicles provided such tires are being tested for the purpose of determining their benefits to City of Albuquerque operation. The desired results and benefits of the test tires shall be provided in writing to the City of Albuquerque's Maintenance Division.

7. **Bus Retirement:** The City of Albuquerque shall notify the Contractor, as soon as possible, prior to the date of retiring buses. At that time, Contractor shall evaluate all usable tires to replace scrap tires. This may occur at remote locations.

## **Obligations of the City of Albuquerque**

1. **Bus Mileage Reports and Tire Records:** The City of Albuquerque shall maintain an accurate record of the number of miles run by each bus during the term of this Agreement and provide to the Contractor a report of such mileage on each bus prior to the fifteenth (15<sup>th</sup>) day of the month following the month the miles were run.

The number of miles run by each bus shall be determined either by means of an instrument which will accurately record mileage being run on each bus. The recording instruments and/or mileage records referred to shall be open for inspection by the Contractor's representative at all times.

2. **Use, Care & Storage of Tires:** The City of Albuquerque agrees to provide a safe place for the storage of spare tires and tires unfit for further service; the City of Albuquerque shall pay the Contractor the amount of any damage or loss resulting from accident, fire, adverse mechanical conditions, improper or negligent use, loss, theft, or fraudulent conversion of said tires. The value of tires for the purpose of determining the amount of any damage or loss under this Agreement shall be determined by subtracting from the higher amount of either (a) net average mileage secured from similar tires normally and permanently removed from service during the past (12) twelve months, or (b) the applicable current minimum mileage for bonus qualification for tires, the mileage run by the particular tire prior to such damage or loss and multiplying the difference, representing unused mileage on the tire by the tire rate in effect.
3. **Independent Contractor:** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purposes whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the services described in Section 1. Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the

Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

**4. Personnel:**

- A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the services required under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

**5. Additional Revenue Vehicles:** If the City purchases additional revenue vehicles during the term of the Agreement, it agrees to purchase buses less tires, where practical and will give the Contractor notice of such purchase. The City will also arrange to have such buses equipped with mileage tires furnished by the Contractor, and those tires will then be included under the Agreement. If any new buses equipped with tires furnished by the Contractor are driven overland, the Contractor will receive the mileage rate specified in the Agreement. The Contractor will provide a rate for providing services for OEM tires provided.

**6. General Conditions:**

- a. All materials used in the manufacture of the tires furnished under this Agreement conform to all US Government and the State of New Mexico laws and regulations likewise; the manufacturing of the tires furnished shall conform to all federal, state and local laws and regulations.
- b. No advantage shall be taken by the Contractor in the omission of any part or detail which goes to make the tires complete and ready for service.
- c. The Contractor shall assume full direct responsibility for all materials and accessories used in the furnishing of tires and all warranties associated therewith.

7. **Delivery:** Tires will be delivered to ABQ Ride Albuquerque's garages located at 601 Yale Boulevard, Albuquerque, New Mexico and 8001 Daytona Rd., Albuquerque, New Mexico no later than **twenty-one (21) days** from receipt of order. Deliveries shall be between the hours of 8:30 a.m. and 4:15 p.m., Monday through Friday.
  
8. **Transition/Termination:** In the event of transition or termination of agreement, the Contractor will:
  - a. Manage a transition program from the present contract to be awarded under this Request for Bid. The Transition Plan must be submitted as part of the Offeror's proposal.
  - b. Verify tires delivered to the City have a mutually agreed tire rate especially for new make/model coach operating on different tire size.
  - c. Control the ordering and delivery of tires to build up of inventory does not exist prior to contract expiration, particularly in the last several weeks.
  - d. Schedule a fleet inspection requiring removal and disposition of low tread tires prior to the termination.
  - e. Schedule an inspection of vehicles that may be "parked" for disposition. These vehicles should have scrapped tires mounted.
  - f. Request removal of scrap tires on the property by the termination date.
  - g. Require a complete inventory of the rolling, spare stock, and scrap tires on the property. A representative of the City may wish to accompany the Contractor's representative verifying number of units, 32nds remaining, and brand number. A copy of the inventory should be signed and dated by a City representative and retained in the City's file for audit purposes during the run out.
  - h. Review outstanding and upcoming OEM coach manufacturer orders that may have specified leased tires.
  - i. Schedule a meeting to discuss a smooth transition between suppliers.
  
9. **Service Hours:** At any time during the term of this Contract, the City may change service hours by written notice to the Contractor.
  
10. **Unauthorized Work:** Any services not required by the terms of the Contract that are performed without written authority from the City, will be considered as unauthorized at the sole expense of the Contractor. Services performed will not be

paid for, and no extension in the period of performance shall be granted on account thereof.

**11. Inspection of Services, Approval:**

- A. The City reserves the right to inspect all and every part of the Services at any time during the performance and after completion, at its discretion.
- B. If the Services or any part thereof have not been performed in accordance with this Contract, the Contractor will be notified in writing that such Services are not satisfactory. Thereupon, the Contractor shall take the necessary corrective action. The City shall not be obligated to make any inspections, however, and neither the inspection of the Services, nor the lack thereof, shall relieve the Contractor its responsibility for performing and providing the Service is in accordance with the terms of this contract.
- C. The City shall not be deemed to have accepted the Contractor's performance of the Services unless the City designated representative has given notice of final acceptance of the Services to the Contractor. No payment in whole or in part shall be construed to be an acceptance of the Services.

**12. Manufacturing Defects:** The Contractor shall notify the City on tires removed from service due solely to "Manufacturing Defects". Determination of "Manufacturing Defect" tires will be by joint inspection and mutual agreement.

**13. Key Personnel:** The Contractor shall notify the City prior to assigning key personnel to this project. The Contractor agrees that replacements' assignments must be as highly qualified if not more so as outlined in the Standard of Performance described in Section 16 below.

**14. Performance of Contractor's Personnel:** Work Locations: The City reserves the right, during the term of the contract, to alter, add, or delete locations of tire storage, repairs, or service as the City deems necessary.

**15. In Service Performance.** The Contractor shall:

- A. Inspections: Participate in all inspections and Quality Assurance tire audits. Intervals to be designated by the City.
- B. Final Tire Deliveries: No tires shall be delivered within six (6) months prior to the expiration date of Contract without written approval from the City's Project Manager prior to delivery.

16. **Indemnity:** The Contractor agrees to defend, indemnify, and hold harmless the City and their officials, agent and employees from and against any and all claims, actions, or proceedings of any kind brought against said parties on account of any matter arising from the Services performed by the Contractor under this Agreement. The indemnity required herein shall not be limited by reason of the specification any particular insurance coverage in this Agreement.
17. **Insurance:** The Contractor shall not commence any work under this Agreement until the insurance required in Exhibit A, Part II, Section 18 has been obtained and the certificates (or policies) have been submitted to the City.
18. **Discrimination Prohibited:** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, national origin or ancestry, age, physical handicap disability, as defined in the Americans With Disabilities 1990, as currently enacted or hereafter amended.
19. **ADA Compliance:** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the "ADA"), which are imposed directly to the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agent, and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.
20. **Anti-Graffiti:** The Contractor will be required to furnish equipment, facilities, or other items required to complete this service, project/contract which is "Graffiti Free". Failure of the Contractor to comply with this requirement may result in cancellation of this contract.

21. **Reports and Information:** At such times and in such forms the City may require, they shall be furnished to the City such statements, records, reports, data and information the City may request pertaining to matters covered by this Agreement. Unless authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.
22. **Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.
23. **Audits and Inspections:** At any time during business hours and as often as the City may deem necessary there shall be made available to the City of examination the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to examine, and make excerpts or transcripts from such record to make audits of all contracts, invoices, materials, pay records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor may be required to provide such information and records and appear as a witness in hearings for the City's Board of and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.
24. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part any reports, data or other materials prepared under this Agreement.
25. **Entire Agreement/Changes:**
  - A. The Agreement and the Exhibits attached hereto represent the entire and integrated Agreement between parties and supersedes all prior negotiations, representations or agreements, whether written or oral.
  - B. No change, modification, or amendment to the Contract shall be binding upon either party unless set forth in writing and signed by the proper officials of both parties, and where applicable concurred in or approved by a government or agency thereof. Variations, additions, or exceptions to the terms and conditions set forth in the Agreement shall not be considered part of this Agreement unless expressly agreed to in writing and signed by the City and a proper official of the Contractor, if necessary.

26. **Compliance with Laws:** In providing the Scope of Services outlined herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments.
27. **Changes:** The City may, from time to time, request changes in the Specifications of the Contractor performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.
28. **Assignability:** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.
29. **Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper its obligations under this Agreement or in the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving five (5) days written notice to the Contractor of such termination and specifying effective date of such termination. In such event, all finished or unfinished documents, data, and equitable compensation for any satisfactorily completed hereunder. Notwithstanding the above the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold payments to the contractor for the purposes of set-off until such time as the exact amount of damages due the City for the Contractor is determined.
30. **Termination by the City:** The City may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid for all services satisfactorily completed at the end of the date of termination. If this Agreement is terminated due to the fault of the Contractor, Section 16 hereof relative to termination shall apply.
31. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
32. **Enforcement:** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

33. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
34. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.
35. **Approval Required:** This Agreement shall not become effective or binding until approved by the City's Purchasing Officer.



PAGE 17  
SUPPLEMENTAL TERMS AND CONDITIONS  
REQUEST NUMBER: RFB2010-072-BH

SUPPLEMENTAL TERMS AND CONDITIONS:

THESE SUPPLEMENTAL TERMS AND CONDITIONS ARE IN ADDITION TO THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND, IN THE EVENT THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND THESE SUPPLEMENTAL TERMS AND CONDITIONS, THE PROVISIONS OF THESE SUPPLEMENTAL TERMS AND CONDITIONS SHALL CONTROL.

AWARD OF CONTRACT - ALL OR NONE:

IT IS THE CITY'S INTENTION TO AWARD A CONTRACT RESULTING FROM THIS REQUEST TO THE RESPONSIVE AND RESPONSIBLE OFFEROR WHOSE "ALL OR NONE" TOTAL PRICE IS LOWEST. IF NO RESPONSIVE "ALL OR NONE" OFFERS ARE RECEIVED, THE CITY MAY AWARD TO THE LOWEST RESPONSIVE AND RESPONSIBLE OFFEROR WHO OFFERS AT LEAST AS MANY ITEMS AS ALL OTHER OFFERORS.

CONTRACT PERIOD - 24 MONTHS:

A CONTRACT RESULTING FROM THIS REQUEST WILL BE EFFECTIVE FOR TWENTY-FOUR (24) MONTHS FROM THE DATE OF ISSUE OF THE PURCHASE ORDER UNLESS OTHERWISE SPECIFIED IN THE REQUEST.

CONTRACT PERIOD - EXTENSION OF:

ANY CONTRACT RESULTING FROM THIS REQUEST MAY BE EXTENDED FOR UP TO TWO ADDITIONAL TWELVE (12) MONTH PERIODS OR ANY PART OF A TWELVE (12) MONTH PERIOD BY MUTUAL AGREEMENT BETWEEN THE CONTRACTOR(S) AND THE CITY.

ESTIMATED QUANTITIES, NOT AN ORDER:

THE ESTIMATED QUANTITIES LISTED DO NOT CONSTITUTE AN ORDER AND ARE NOT NECESSARILY COMPREHENSIVE; THEY ARE A REPRESENTATIVE SAMPLE OF WHAT IS LIKELY TO BE PURCHASED DURING THE COURSE OF A CONTRACT RESULTING FROM THIS REQUEST AND WILL BE USED ONLY TO EVALUATE OFFERS AND AWARD SUCH A CONTRACT. THESE QUANTITIES AS STATED MAY INCREASE OR DECREASE DEPENDING ON THE ACTUAL NEEDS OF THE CITY. ACTUAL ORDERS WILL BE PLACED BY END USER.

PAGE 18  
SUPPLEMENTAL TERMS AND CONDITIONS  
REQUEST NUMBER: RFB2010-072-BH

FREIGHT, PREPAID:

FREIGHT WILL BE F.O.B. DESTINATION - FREIGHT PREPAID. F.O.B. POINT OTHER THAN INDICATED BY THE CITY WILL NOT BE ACCEPTABLE.

GUARANTEED PERFORMANCE:

THE OFFEROR, IF AWARDED A CONTRACT AS A RESULT OF THIS REQUEST, GUARANTEES THAT THE MATERIALS SUPPLIED ARE CAPABLE OF THE PERFORMANCE REQUIRED IN THE SPECIFICATIONS IN THIS REQUEST, AND AGREES TO MAKE SUCH CHANGES, ADJUSTMENTS OR REPLACEMENTS AS ARE IMMEDIATELY NECESSARY IN ORDER FOR THE MATERIALS TO MEET THE PURCHASING REQUIREMENTS AT NO COST TO THE CITY. IF DEFECTS OR SPECIFICATION FAILURES ARE DISCOVERED, THE PURCHASING OFFICER SHALL HAVE THE RIGHT, NOTWITHSTANDING ACCEPTANCE AND PAYMENT, TO REQUIRE THE UNIT/ITEM TO BE PROPERLY FURNISHED IN ACCORDANCE WITH THE SPECIFICATIONS AND DRAWINGS AT THE COST AND EXPENSE OF THE OFFEROR OR THE OFFEROR'S SURETY.

INSPECTION OF MATERIALS:

THE CITY RESERVES THE RIGHT TO INSPECT MATERIALS PROVIDED BY THE OFFEROR THROUGH A CONTRACT RESULTING FROM THIS REQUEST TO DETERMINE THEIR QUALITY, FITNESS AND SUITABILITY. INSPECTION OF THESE MATERIALS MAY BE CONDUCTED WHENEVER THE CITY CONSIDERS NECESSARY.

PAGE 19  
SUPPLEMENTAL TERMS AND CONDITIONS  
REQUEST NUMBER: RFB2010-072-BH

INSURANCE:

THE CONTRACTOR SHALL PROCURE AND MAINTAIN AT ITS EXPENSE UNTIL FINAL PAYMENT BY THE CITY FOR SERVICES COVERED BY THIS AGREEMENT, INSURANCE IN THE KINDS AND AMOUNTS HEREINAFTER PROVIDED WITH INSURANCE COMPANIES AUTHORIZED TO DO BUSINESS IN NEW MEXICO, COVERING ALL OPERATIONS UNDER THIS AGREEMENT, WHETHER PERFORMED BY IT OR ITS AGENTS. BEFORE COMMENCING THE SERVICES AND ON THE RENEWAL OF ALL COVERAGES, THE CONTRACTOR SHALL FURNISH TO THE CITY A CERTIFICATE OR CERTIFICATES IN FORM SATISFACTORY TO THE CITY SHOWING THAT IT HAS COMPLIED WITH THIS SECTION. ALL CERTIFICATES OF INSURANCE SHALL PROVIDE THAT THIRTY (30) DAYS WRITTEN NOTICE BE GIVEN TO THE RISK MANAGER, DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, CITY OF ALBUQUERQUE, P.O. BOX 470, ALBUQUERQUE, NEW MEXICO 87103, BEFORE A POLICY IS CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED. VARIOUS TYPES OF REQUIRED INSURANCE MAY BE WRITTEN IN ONE OR MORE POLICIES. WITH RESPECT TO ALL COVERAGES REQUIRED OTHER THAN WORKERS' COMPENSATION, THE CITY SHALL BE NAMED AN ADDITIONAL INSURED. ALL COVERAGES AFFORDED SHALL BE PRIMARY WITH RESPECT TO OPERATIONS PROVIDED. KINDS AND AMOUNTS OF INSURANCE REQUIRED ARE AS FOLLOWS:

A. COMMERCIAL GENERAL LIABILITY INSURANCE - A COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WITH COMBINED LIMITS OF LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE AS FOLLOWS:

\$1,000,000 PER OCCURRENCE  
\$1,000,000 POLICY AGGREGATE  
\$1,000,000 PRODUCTS LIABILITY/COMPLETED OPERATIONS  
\$1,000,000 PERSONAL AND ADVERTISING INJURY  
\$ 50,000 FIRE - LEGAL  
\$ 5,000 MEDICAL PAYMENTS

SAID POLICY OF INSURANCE MUST INCLUDE COVERAGE FOR ALL OPERATIONS PERFORMED FOR THE CITY BY THE CONTRACTOR AND CONTRACTUAL LIABILITY COVERAGE SHALL SPECIFICALLY INSURE THE HOLD HARMLESS PROVISIONS OF THIS AGREEMENT.

B. AUTOMOBILE LIABILITY INSURANCE - AN AUTOMOBILE LIABILITY POLICY WITH LIABILITY LIMITS IN AMOUNTS NOT LESS THAN \$1,000,000 COMBINED SINGLE LIMIT OF LIABILITY FOR BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE IN ANY ONE OCCURRENCE. SAID POLICY OF INSURANCE MUST INCLUDE COVERAGE FOR THE USE OF ALL OWNED, NON-OWNED, HIRED AUTOMOBILES, VEHICLES AND OTHER EQUIPMENT BOTH ON AND OFF WORK.

C. WORKERS' COMPENSATION INSURANCE - WORKERS' COMPENSATION INSURANCE FOR ITS EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF THE WORKERS' COMPENSATION ACT OF THE STATE OF NEW MEXICO.

D. INCREASED LIMITS - IF, DURING THE TERM OF THIS AGREEMENT, THE CITY REQUIRES THE CONTRACTOR TO INCREASE MAXIMUM LIMITS OF ANY INSURANCE REQUIRED HEREIN, AN APPROPRIATE ADJUSTMENT IN THE CONTRACTOR'S COMPENSATION WILL BE MADE.

PAGE 20  
SUPPLEMENTAL TERMS AND CONDITIONS  
REQUEST NUMBER: RFB2010-072-BH

LAWS AND REGULATIONS:

THE OFFEROR SHALL GIVE ALL NOTICES AND COMPLY WITH ALL LAWS, ORDINANCES, RULES AND REGULATIONS THAT APPLY TO THIS WORK. THE OFFEROR SHALL OBTAIN AND PAY FOR ALL PERMITS AND LICENSES NECESSARY TO EXECUTE AND COMPLETE THE WORK. ALL REQUIRED LICENSES MUST BE IN FORCE AT THE TIME OF SUBMISSION OF AN OFFER AND REMAIN IN FORCE DURING THE ENTIRE PERIOD OF ANY CONTRACT RESULTING FROM THIS REQUEST. FAILURE TO PROVIDE PROOF OF REQUIRED LICENSES IN FORCE WILL RESULT IN THE OFFER BEING JUDGED NON-

LOCAL AREA MAINTENANCE:

NO OFFER WILL BE CONSIDERED UNLESS ADEQUATE MAINTENANCE IS AVAILABLE IN BERNALILLO COUNTY. OFFERORS SHALL INDICATE THE NEAREST SUPPLIER OF PARTS AND SERVICE. FAILURE TO COMPLY MAY RESULT IN REJECTION OF THE OFFER. THE CITY RESERVES THE RIGHT TO CONDUCT ON-SITE INSPECTIONS OR REQUEST INVENTORY PARTS LISTS TO DETERMINE THE ADEQUACY OF LOCAL AREA MAINTENANCE. THE CITY WILL BE THE SOLE JUDGE OF THE ADEQUACY OF THE OFFEROR TO PROVIDE LOCAL AREA MAINTENANCE.

MANUFACTURER'S INFORMATION:

ANY OFFER MADE IN RESPONSE TO THIS REQUEST MUST INCLUDE THE MANUFACTURER'S MAKE AND MODEL NUMBER (AS APPLICABLE) OF EACH ITEM AND LITERATURE CLEARLY DESCRIBING THE ITEM. FAILURE TO PROVIDE THIS INFORMATION MAY RESULT IN REJECTION OF THE OFFER.

MATERIAL SAFETY DATA SHEETS:

TO COMPLY WITH THE OCCUPATIONAL HEALTH AND SAFETY REGULATION 1910.1200 FOR GENERAL STANDARDS ON HANDLING HAZARDOUS MATERIALS, MATERIAL SAFETY DATA SHEETS (MSDS) ARE REQUIRED FOR THE PRODUCTS INCLUDED IN THIS REQUEST. A COPY OF THE MSDS MUST ACCOMPANY YOUR RESPONSE TO THE REQUEST AND BE INCLUDED WITH THE PRODUCT WHEN DELIVERED TO THE END USER. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY CAUSE YOUR OFFER TO BE CONSIDERED NON-RESPONSIVE.

PAGE 21  
SUPPLEMENTAL TERMS AND CONDITIONS  
REQUEST NUMBER: RFB2010-072-BH

**MATERIALS AND WORKMANSHIP:**

ALL MATERIALS FURNISHED BY THE OFFEROR SHALL BE FREE FROM DEFECTS AND IMPERFECTIONS. WORKMANSHIP SHALL BE IN ACCORD WITH THE BEST INDUSTRY STANDARDS AND PRACTICES. BOTH MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO THE APPROVAL OF THE CITY.

# CITY OF ALBUQUERQUE

## GENERAL INSTRUCTIONS, TERMS, AND CONDITIONS

**IMPORTANT: READ CAREFULLY BEFORE SUBMITTING OFFERS. FAILURE TO DO SO SHALL NOT ABSOLVE THE OFFEROR FROM RESPONSIBILITY TO PERFORM OR DELIVER AS SPECIFIED.**

1. **Applicability:** Except as otherwise specifically provided in this Request, these General Instructions, Terms, and Conditions shall govern the procurement of the items specified in this Request. In the event of a conflict between these General Instructions, Terms, and Conditions, Supplemental Terms and Conditions or the Specifications of this bid, the order of applications shall be the Specifications, Supplemental Terms and Conditions, and the General Instructions, Terms and Conditions. In addition, the Public Purchases Ordinance (Section 5-5-1 et seq. ROA 1994) and promulgated Rules and Regulations shall apply.
2. **Definitions:** As used in this request, the definitions of the Public Purchases Ordinance (Section 5-5-2 ROA 1994) apply including the following:
  - A. "City" means the City of Albuquerque, New Mexico.
  - B. "Contract" means any agreement for the procurement of goods, services, construction or concessions. A purchase order issued in response to an offer constitutes a contract.
  - C. "Contractor" means an Offeror who has been awarded a contract.
  - D. "Offeror" means a business that submits a response to a competitive solicitation.
  - E. "Purchase Order" means a document issued by the Purchasing Office directing the Contractor to deliver goods, services or construction.
  - F. "Purchasing Office" means the Purchasing Division of the Department of Finance & Administrative Services of the City.
  - G. "Purchasing Officer" means the person charged with the responsibility of administering the Purchasing Office.
  - H. "Request" means all documents, including those attached or incorporated by reference, issued by the Purchasing Office for soliciting offers to provide goods, services or construction.
  - I. "Responsible Offeror" means a business which has the capability in all respects to perform fully the contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provision of law or ethical conduct. Factors which may be considered in determining the Offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation and experience.
  - J. "Responsive Offer" means a written offer to furnish goods, services or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

3. **Preparation of Offer:**

- A. **Submission:** All offers must be submitted on the Request for Bid Form enclosed. Failure to do so may disqualify your offer. It is the responsibility of the Offeror to submit sufficient additional information to allow for a thorough evaluation of the offer submitted.
- B. **Preparation Method:** All information required in this Request must be typewritten or handwritten in ink and must be legible. Erasures or other changes must be initialed by the person signing the offer. Each offer must be signed on the appropriate pages by an individual authorized to bind the Offeror submitting the offer.
- C. **Unit Prices:** The unit price for each item offered shall be shown unless otherwise specified. In the case of a discrepancy between the unit price and the extended price, the unit price will govern in determining the price used for evaluation. Unit prices offered should be for the units specified.
- D. **Delivery Time:** Delivery time stated in the specifications shall apply. Deviations by the Offeror shall be stated on the Exception Form. Time, if stated in number of days, will be consecutive calendar days.
- E. **Payment Terms:** Standard terms are net 30. The Request for Bid Form provides space for the Offeror to offer discount terms, subject to acceptance by the City. The term shall not begin until the goods, services or construction have been delivered and accepted and the correct invoice is received in the City's Accounts Payable Office.
- Prompt payment discounts will NOT be used as a factor in determining the lowest responsive offer.
- F. **Freight Policy:** Freight will be F.O.B. Destination (as indicated on the Request Form), Freight Prepaid, unless otherwise specified in this Request.
- G. **Taxes:** Offerors shall include any applicable gross receipts taxes in its offered price, unless specified otherwise in this request, and such offer will be construed in that manner. The City will, under appropriate circumstances, furnish a non-taxable transaction certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Offeror. Applicable taxes are to be included in each invoice due and may not be billed more than sixty (60) days after providing the goods or services to which the taxes apply.
- H. **New Material, Etc.:** All materials, supplies, equipment, and vehicles specified in this Request shall be new, the latest in production and manufactured within the last twelve (12) months (computed from the date and time of offer opening) unless otherwise indicated. This does not apply to materials, supplies, equipment or vehicles used by the Contractor to provide the required items of tangible personal property, services or construction.
- I. **Warranty:** Materials furnished by the Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials.

The Offeror agrees that the items of tangible personal property, services or construction furnished under any Contract resulting from this Request shall be covered by the most favorable commercial warranties the Offeror gives to any

customer for such items. Further, the Offeror agrees that the rights and remedies provided in such warranties extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this Request. The Offeror agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance.

- J. **Equivalent Offers:** Where a product is characteristic of a sole manufacturer, or where a brand name is indicated in the specifications, it shall be defined to mean minimum acceptable level or minimum quality required by the City unless the specifications state that no substitutions or equivalents will be allowed. If the Offeror offers an item other than the one specified, which the Offeror considers comparable, the manufacturer's name and model number of that item must be specified in the offer and sufficient performance specification and descriptive data provided to permit a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the offer.
- K. **Exceptions to Specifications:** Offerors are to state any exceptions taken to this Request on the Offeror Comments Form. If no exceptions are stated, the Offeror is required to furnish the items exactly as specified and to comply with all other requirements of this Request.
- L. **Indemnity:** The Contractor to whom an award has been made as a result of this Request expressly agrees to defend, indemnify and save harmless the City and its officers, agents and employees from and against any and all claims, suits demands, actions, or proceedings of every nature and description brought because of any injury or damage received or sustained by any person, persons, or property arising out of the Contractor's providing the goods, services or construction pursuant to the offer or by reason of any act or omission, neglect or misconduct of the Contractor, the agents, employees or subcontractors of the Contractor or the agents or employees of any subcontractor of the Contractor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.
- M. **Patent Indemnity:** If any item furnished pursuant to any Contract resulting from this Request shall be covered by any patent, copyright, or application for patent or copyright, the Contractor shall defend, indemnify and save harmless the City from any and all loss, cost or expense or any all claims suits, or judgments as a result of the use of such item in violation of rights under such patent, copyright, or application for patent or copyright.
- N. **Public Inspection:** Each offer shall be open to public inspection, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the offer and each page shall be clearly marked and readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices and makes and models or catalog numbers of the items offered, deliveries and terms of payment shall be publicly available at the time of the opening of the offer regardless of any designation to the contrary. The City shall endeavor to restrict distribution of the material designated as confidential to only those individuals involved in the review and analysis of the offers. Offerors are cautioned that materials designated confidential may nevertheless be subject to disclosure to any New Mexico citizen under the Inspection of Public Records Act (Sections 14-2-1 through 14-2-3 N.M.S.A. 1978).



- O. **Material Safety Data Sheets:** To comply with the Occupational Health and Safety Regulation 1910.1200 for general standards on handling hazardous materials, material safety data sheets may be required for all or part of the products included on this Request. It is the responsibility of the Offeror to make this determination and, if required, a copy of the MSDS must accompany the product when delivered to the end user. Failure to comply with this requirement may cause the delivery of products to be rejected and all costs related to such action to be borne by the Offeror.
  - P. **Licenses and Certifications:** The Offeror must provide proof in a manner acceptable and within the time period specified by the Purchasing Office, but prior to award unless otherwise specified in this Request, that they are licensed and certified by the appropriate agencies as required by law to perform the services or provide the goods specified in this Request.
4. **Debarment or Ineligibility Compliance:** By submitting its offer in response to this Request, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City immediately.
5. **Ethical Conduct:** By submitting its offer in response to this Request, the Offeror certifies that:
- A. It has not offered, given or agreed to give to any City employee or former employee, a gratuity or offer of employment to influence the preparation of or recommendation of award of this Request;
  - B. It has not retained a person to solicit or secure a City Contract for a contingent fee;
  - C. It has not taken any action in restraint of free competitive bidding in connection with this Request;
  - D. It has not in any way violated the ethical conduct or other provisions of the City's Public Purchases Ordinance; and
  - E. It currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of any contract resulting from this Request.
6. **Requests for Explanations by Offerors:**
- A. **Requests for Explanation:** Any explanation desired by the Offeror regarding the meaning or interpretation of specifications or any part of this Request must be requested in writing and received in the Purchasing Office not less than ten (10) calendar days before the offer opening date.
  - B. **Responses to Requests:** Oral explanations or instructions given prior to the opening of the offer shall not be binding. Any official explanations must be issued, in writing, by the Purchasing Division.
7. **Addenda:**

**Addenda:** Changes or amendments to specifications, conditions or provisions herein may be initiated **ONLY** through the Purchasing Office in the form of a written addendum.

Any addenda shall become a part of this Request and should be acknowledged either by being signed and returned with the offer or through letter or telegram that arrives prior to the opening of the offer. Failure to do so may result in disqualification of the offer.

It is the responsibility of all vendors considering making an offer in response to this Request to ensure that they have received all addenda prior to making an offer. Offerors may contact the Purchasing Division to obtain information regarding any addenda issued. Failure to obtain an addendum shall not be grounds for overturning a recommendation of award.

8. **Clarification of Offers:**

The City may, in the evaluation of offers, request clarification from Offerors regarding their offers, obtain additional material or literature, and pursue other avenues of research as necessary to insure that a thorough evaluation is conducted.

9. **Submission of Offer:**

A. **Time:** Offers not received by the time and date indicated on the Request will not be accepted.

B. **Hand Carried:** Offers may be hand carried to the City Clerk's Office on the basement level of the Albuquerque/Bernalillo County Government Center, One Civic Plaza, Albuquerque, New Mexico.

C. **Mailed:** Offers may be mailed to the Attention of the City Clerk, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico, 87103. The City shall not be responsible for offers that are mailed and not received by the opening date and time specified in the solicitation.

Note: The City picks up mail at the post office once every morning at 7:00 AM (local time). **ALL SEALED BIDS MUST BE RECEIVED IN THE OFFICE OF THE CITY CLERK BY THE TIME SPECIFIED ON PAGE ONE OF THIS RFB. THE TIME RECORDED IN THE CITY CLERK'S OFFICE WILL CONTROL.**

D. **Receipts:** Receipts for hand delivered offers shall be issued by the City Clerk's Office (upon request) for offers which are hand carried.

E. **Envelope Preparation:** The envelope/package containing an offer must be sealed and the following identifying information legibly written or typed on the outside:

- 1) Name of Offeror
- 2) Request Number assigned by the City to the Request
- 3) Opening date as identified on the Request or subsequent addenda

F. **No Other Methods of Offer Delivery:** Neither telephone, telegraphic, electronic or facsimile Offer shall be accepted.

10. **Civil Rights Compliance:**

Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human

Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances relating to the enforcement of civil rights.

Offeror additionally certifies and agrees to abide by and cooperate in the implementation of the policies and practices set forth in the City's Affirmative Action Plan. Questions regarding civic rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Division, Community Services Department.

11. **Americans with Disabilities Act Compliance:**

Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and Federal regulations promulgated thereunder.

12. **Withdrawal of Offers:**

An offer may be withdrawn in person at any time BEFORE the scheduled opening of offers, provided a receipt for the withdrawn offer is signed by the Offeror or the Offeror's authorized representative. The City reserves the right to request proof of authorization to withdraw an offer.

13. **Opening of Offers:**

***Time and Place:*** Offers will be opened by the City Clerk at the time and place identified in this Request. Openings are open to the public. Offerors are encouraged to attend.

14. **Disqualification of Offer:**

Any offer received from an Offeror that is, at the time of submitting its offer or prior to receipt of award of a contract, debarred by or otherwise ineligible to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected. In addition, the City reserves the right to reject an offer for, including but not limited to, any one or more of the following circumstances:

- A. In the past the Offeror has failed to comply with previous contractual commitments or offers to the City.
- B. In the opinion of the City the Offeror is not capable of providing the offered goods, services, or construction as offered or required by the Request or is otherwise not a responsible Offeror.
- C. The Offeror has not provided sufficient or detailed information which allows for the evaluation of the offer.
- D. In the opinion of the City, the offered prices are higher than the prices for which the specified items or services can be purchased on the open market.
- E. The Offeror failed to properly fill in any space on the Request Form and attached documents where information or a signature is required.
- F. The Offeror did not, at the time the offer is made, have an appropriate New Mexico Contractor's License or Certification when one is required by law, regulation or by this Request.

- G. The Offeror failed to submit with their offer, bid bonds or other material requirements of the Request or has otherwise submitted a non-responsive offer.
- H. There are unauthorized additions, conditions, alternate proposals or other irregularities of any kind which might make the offer incomplete, indefinite or ambiguous in meaning.
- I. Offer was not submitted in ink or typewritten or there is any erasure or alteration of words or figures relating to pricing which is not initialed in ink by the Offeror.
- J. The City determines that an offer contains any misrepresentations whatsoever.

15. **Rejection/Cancellation of Offers:**

Any solicitation, prior to opening or after opening, may be cancelled or any or all offers may be rejected in whole or in part when it is in the best interest of the City.

16. **Minor or Technical Irregularities:**

Minor or technical irregularities in an offer, when there is no effect on price, quality or quantity, may be waived and clerical errors in an offer may be corrected if permitted by the Purchasing Officer and are in the best interest of the City.

17. **Nonconforming/Conditional, or Counter Offers:**

An offer which is nonconforming or conditional, whether in part or in whole, will be rejected.

18. **Offer Analysis:**

The City reserves the right to analyze, examine and interpret any offer for a minimum period of ninety (90) consecutive calendar days, after the scheduled time for the opening of offers. Offers may not be rescinded during this period except for good cause and with the written approval of the Purchasing Officer. In those situations where the analysis/evaluation exceeds the ninety (90) calendar days, Offerors may withdraw their offers from consideration.

19. **Award of Contract:**

- A. ***When Award Occurs:*** The award of a contract occurs when a Purchase Order is issued or another written contractual commitment of acceptance by the City Purchasing Officer is provided to the successful Offeror. A Recommendation of Award or Letter of Intent does not constitute award of contract.
- B. ***Award:*** If a contract is awarded, it shall be awarded to the responsive and responsible Offeror whose offer is lowest in total price and is the most advantageous to the City, specifications and other factors considered.
- C. ***Basis of Award:*** The City reserves the right to award a contract based on this Request in total or by group of items, on the basis of individual items, or any combination of these, which in the judgment of the Purchasing Officer, best services the interests of the City, unless otherwise stated in this Request.
- D. ***Increase of Quantities:*** The City reserves the right to increase the quantities of items of tangible personal property, services or construction to be provided within

a twelve (12) month period, under the terms of the Contract, at the same prices, with the consent of the Contractor.

- E. **Decrease of Quantities:** The City reserves the right to decrease the quantities of items of tangible personal property, services or construction to be provided under the terms of the Contract. However, the Contractor shall be offered an opportunity to cancel the portion of the Contract affected by such a decrease if the Contractor is not able to meet the contracted prices by delivering the decreased amount. This clause shall not have effect if the Contract was originally awarded based on estimated quantities.
- F. **Contract Changes:** In no case shall a contract be changed without the prior written approval of the Purchasing Officer.
- G. **Debarment/Cancellation of Contract:** Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this Request for Bids (the "Contractor"), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor for cause as provided in Section 25 below.
- H. **Preferences:** One or more preferences of five percent (5%) may be afforded an Offeror who qualifies for the Local, Small Business, Resident Contractor or Resident Business Preferences in accordance with the City's Public Purchases Ordinance. Please see attachments to this RFB for a Preference Certification Form and Instructions or a Notice of No Preference.

If one or more preferences apply, the Offeror must complete the Preference Certification Form in accordance with the Form Instructions and return the Preference Certification Form with its offer to be considered. The Form and its Instructions contain information regarding the application of the preferences pursuant to the Public Purchases Ordinance. For additional information contact the City's Purchasing Division at (505) 768-3320.

- I. **Additions/Deletions of Items:** The City reserves the right to add ancillary items/services or delete items/services specified in the Contract as requirements change during the term of the agreement. Items may only be added or deleted by written approval from the Purchasing Officer or designee.

Prices and/or discounts for additional items/services will be mutually agreed to by the City of Albuquerque and the Contractor either;

- 1) Under the price structure of the bid to include price margin above Contractor cost; or
- 2) By quotation from Contractor in which the City reserves the right to solicit comparable quotes within the market to validate pricing to be competitive; or
- 3) As otherwise determined by the Purchasing Officer.

An amended Contract (Purchase Order) will be issued for each addition or deletion, prior to change taking effect.

The City reserves the right to award these ancillary items to the primary Contract vendor, another vendor based on the lowest price quoted, or to acquire the items through a separate solicitation.

- J. **Price Escalation:** A request for escalation of Contract pricing may be made under the following conditions:
- 1) Offered prices must be firm for a least ninety (90) calendar days after written notification of a Contract.
  - 2) The Contractor shall provide written notice to the City of any requested price increases.
  - 3) All requests for price increases shall be accompanied by:
    - a. a letter from the Contractor's supplier certifying the price increase to the Contractor; or
    - b. evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.
  - 4) All revisions to Contract pricing shall become effective when they are approved by the City.
  - 5) As provided in Section 25, Audits and Inspections below, all supplier invoices for the offered items shall be subject to auditing by the City and furnished without delay upon request.
  - 6) The City reserves the right to cancel a Contract and solicit a new contract if a requested price escalation is unacceptable to the City. Cancellation of the Contract shall not affect any outstanding orders.
  - 7) All approved price changes resulting from this escalation clause shall be firm for a period of ninety (90) calendar days after approval by the City.
  - 8) Contractor shall notify the City within five (5) working days of subsequent price de-escalations from its supplier or cost reductions in areas where pricing increases were previously implemented. The Contractor will reduce its pricing to the City immediately to pass on such de-escalations and reductions unless otherwise agreed by the parties.
  - 9) The City reserves the right to approve pricing increases requested by the Contractor other than those described in this subsection J, if in the best interest of the City.
  - 10) All approvals required by this subsection J must be in writing by the City Purchasing Officer.
- K. **Other Public Governmental Agencies:** (hereinafter, OPGA), with mutual agreement of awarded vendor, may purchase from any Request for Bid (RFB) issued by the City unless otherwise stated.
- 1) Extension of use of the City of Albuquerque procurement or contract shall in no way impede on the vendors ability to fulfill the pricing, terms and conditions of the originating agreement with the City.
  - 2) It shall be the responsibility of the vendor to verify whether the purchasing entity is a legitimate entity in which to extend this option or whether it is a legal option for that entity under their applicable laws, rules and regulations.

20. **Goods Produced Under Decent Working Conditions:**

It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City-owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines under decent working conditions as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in

which employees can speak freely about working conditions and can participate in and form unions. [Council Bill No. M-8, Enactment No. 9-1998]

21. **Protest Process:**

- A. ***Request Documents:*** Protests concerning the specifications of this Request or other matters relating to the solicitation documents must be received by the Purchasing Officer no later than ten days prior to the deadline set for the receipt of offers.
- B. ***Recommendation of Award:*** Protests concerning other matters relating to this Request must be filed with the Purchasing Officer not later than 5:00 p.m. of the date stipulated in the Recommendation of Award.
- C. ***Timely Protests:*** Protests must be received by the Purchasing Officer prior to the appropriate deadline as set out in A. and B. of this Section or they will not be considered valid. The Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.
- D. ***Required Information from Offeror:*** All protests must be submitted in written form and must be legible. Facsimile, telephone or telegraphic protests will not be accepted. Protest shall contain at a minimum the following:
  - 1) Name and address of the protesting party
  - 2) The solicitation/Request Number
  - 3) A clear statement of the reason(s) for the protest
  - 4) Details concerning the facts which support the protest
  - 5) Attachments of any written evidence available to substantiate the claims of the protest
  - 6) Statement specifying the ruling requested
- E. ***Protest Hearing:*** If a hearing is requested, the request must be included in the protest and received within the time limit to be allowed. The filing fee of twenty dollars (\$20.00) must accompany the request for hearing. The grant of a hearing shall be at the discretion of the Purchasing Officer following review of the protest.
- F. ***Delivery of Protest:*** Protests may be hand-delivered. Protests which are mailed should be addressed as follows:

Purchasing Officer  
City of Albuquerque  
Purchasing Division  
P.O. Box 1293  
Albuquerque, NM 87103

Envelope should also clearly indicate "PROTEST" and the solicitation number.

- G. ***Purchasing Officer Action:*** The Purchasing Officer will, after evaluation of a protest, issue a response. Only issues outlined in the written protest will be considered by the Purchasing Officer or may be raised at a protest hearing.

22. **Delivery, Acceptance and Guarantee:**

- A. ***No Delivery before Purchase Order is Issued:*** No Offeror, including the Offeror to whom an award is made shall deliver any item of tangible personal

property, commence services or construction prior to the issuance of a Purchase Order or other notice to proceed issued by the City Purchasing Division.

- B. ***Cancellation for Non-Delivery:*** The City reserves the right to cancel any order not delivered by a guaranteed date stipulated in any contract resulting from this Request without liability on the City's part.
- C. ***Acceptance of Delivery:*** Acceptance by the City of any delivery shall not relieve the Contractor of any guarantee or warranty, expressed or implied. Such acceptance of delivery shall not be considered an acceptance of services or materials not in accordance with the specifications. Such acceptance of delivery shall not waive the City's right to require replacement of defective material or inadequate service.

23. **Inspections:**

***Prior to Acceptance of Delivery:*** All items of tangible personal property, services or construction found inferior to the quality specified in this Request, deficient or incorrect in weight, measurement, workmanship, handicraft or otherwise, may be rejected as a whole or in part and then shall be removed by the Contractor at the Contractor's own risk and expense promptly after notice of rejection. The Contractor shall assume responsibility for taking the necessary action to correct or replace the rejected items, within the time frame specified in the notice of rejection.

24. **Invoices and Payments:**

The Contractor shall submit an accurate invoice, in duplicate, for each purchase. Invoices shall refer to the Purchase Order Number, the Contract Release Order (CRO) number if applicable, and shall be itemized unless otherwise specified in this Request. Invoices are to be mailed to:

Accounting Division (Accounts Payable),  
City of Albuquerque  
P.O. Box 1985  
Albuquerque, New Mexico 87103.

Invoices mailed or provided to any other entity will result in a delay in making payment. Offerors are encouraged to inquire if payments due are not received within thirty (30) days after delivery of goods/services and submittal of invoice by contacting the Accounting Division at (505) 768-3400.

25. **Audits and Inspections:** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by the contract resulting from this RFB. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by said contract. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

26. **Default/Termination for Cause:**



If, through any cause, the Contractor fails to fulfill the Contractor's obligations under any contract resulting from this Request in a timely and proper manner, or if the Contractor, violates any of the covenants, agreements or stipulations of such contract, the City shall notify the Contractor of such violations in writing and allow the Contractor a reasonable time, set out in the notice, to correct the default. If the default is not corrected within the specified time period the City shall have the right to cancel the contract and any or all other current contracts with the Contractor, and, if applicable, to purchase the required goods or services from another source or sources. The City shall provide written notice to the Contractor specifying the effective date of cancellation. The notice of cancellation may be contained in the notice of default.

If a contract resulting from this Request is cancelled, the Contractor shall not be relieved of liability to the City for damages caused by its breach of the contract. The City reserves the right to recover such damages, including but not limited to any excess cost incurred in having to purchase contract goods/services from other sources by a deduction from an unpaid balance due to the Contractor, collection against a performance or labor and materials payment bond, a combination of these remedies, or any other legal method available. In addition, the Contractor may be removed from the Purchasing Office Vendor List or determined to be ineligible to respond to future solicitations, as being not responsible.

27. **Termination for the Convenience of the City:**

The City may terminate any contract resulting from this Request at any time by giving at least thirty (30) days' notice in writing of such termination to the Contractor. In such event, the Contractor shall be paid under the terms of the contract for all goods/services provided to and accepted by the City, if ordered or accepted by the City prior to the effective date of termination.

28. **Termination for Lack of Appropriations:**

Funding for the contract resulting from this Request has been appropriated by the City Council for the City's current fiscal year. Notwithstanding any other provisions in the contract resulting from this Request, its continuation beyond the end of the/any fiscal year is contingent on the City Council making the appropriations necessary to fund the contract. If sufficient appropriations are not made the contract may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Contractor. Such termination shall not constitute a default. All payment obligations of the City and all of its interest in the contract will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

Revised: 04/22/2009

**PREFERENCE CERTIFICATION FORM**  
**For Local, Small or Resident Business Preferences**  
**(Goods & Services)**

**RFP/RFB NO:** \_\_\_\_\_

**Business Name:** \_\_\_\_\_

**Principal Office:** \_\_\_\_\_  
Street Address City State Zip Code

**Place of Business:** \_\_\_\_\_  
Street Address City State Zip Code



*If your Principal Office and Place of Business are in the Greater Albuquerque Metropolitan Area (see definitions in Instructions attached), please provide the following information:*

**Average Number of Full-time Employees over the Prior Calendar Year: SELECT ONE**

- 0 – 19 employees.
- 20 employees or more.



*If applicable, insert State of New Mexico Resident Business or Resident Manufacturer Certification Number:* \_\_\_\_\_

**CERTIFICATION**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

**Signature of Authorized Individual:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

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

**YOU MUST RETURN THIS FORM WITH YOUR OFFER**

(01/01/2008)

**Instructions for PREFERENCE CERTIFICATION FORM  
For Local, Small or Resident Business Preferences  
(Goods & Services)**

**1. ALL INFORMATION MUST BE PROVIDED.** A 5% small business preference and a 5% local preference or resident business preference are available for this procurement. To qualify, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**

**2. PHYSICAL LOCATION MUST BE STATED.** To qualify for the small business or local preference, a business must have its principal office and place of business in the Greater Albuquerque Metropolitan Area. The business location inserted on the Form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address.

**3. FORM MUST BE COMPLETED BY PRINCIPAL OFFEROR.** This Form must be completed for the Principal Offeror, or one of the Principal Offerors if the Offeror is a joint venture or partnership, by an individual authorized to sign for the Offeror. Subcontractors of the Offeror may not qualify an offer for a preference and should not complete or submit the Form.

**4. APPLICATION OF PREFERENCES.** The small business preference and the local business preference will be applied to all offers submitted by eligible small businesses. The local preference only will be applied to all offers submitted by eligible local businesses which are not small businesses. If there are no offers submitted in response to a solicitation that are eligible for the local preference, then the Resident Business Preference will be applied to any offers submitted which have provided a valid, State of New Mexico-issued, Resident Business or Resident Manufacturer Certification Number.

**5. DEFINITIONS.** The following definitions apply:

- The Greater Albuquerque Metropolitan Area includes all locations within the City of Albuquerque and Bernalillo County.
- A local business is a business with its principal office and place of business in the Greater Albuquerque Metropolitan Area.
- A small business is a local business which employs an average of fewer than 20 full-time employees in a calendar year. The calendar year immediately prior to the request for the preference should be used.
- A principal office is the main or home office of the business as identified in tax returns, business licenses and other official business documents.
- A place of business a location where the business conducts its daily operations, for the general public, if applicable.
- A full-time employee is an employee of the business who is hired to work at least forty (40) hours per week, whether in a permanent, temporary or seasonal status. If all full-time employees of the business are hired to work a shorter work week, the City's Purchasing Officer may reduce this requirement, upon receipt of adequate documentation.

**6. ADDITIONAL DOCUMENTATION.** If requested, a business will be required to provide, within three working days of receipt of the request, documentation to substantiate the information provided on the Form. The City's Purchasing Officer shall determine the sufficiency of such documentation. (01/01/2008)

