CITY OF ALBUQUERQUE

REQUEST FOR BID

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

REQUEST NUMBER: RFB2005-111-DG
TITLE: SILICA SAND AND PEA GRAVEL
OPENING DATE: FEBRUARY 16, 2005 (1:30 PM)

FOR ADDITIONAL INFORMATION CONTACT:

DENISE GALLEGOS, SENIOR BUYER, (505)768-3320
CITY OF ALBUQUERQUE PURCHASING OFFICE
ALBUQUERQUE/BERNALILLO COUNTY GOVERNMENT
CENTER
POST OFFICE BOX 1293
ONE CIVIC PLAZA
ALBUQUERQUE, NEW MEXICO 87103

THE CITY CLERK OF THE CITY OF ALBUQUERQUE WILL RECEIVE SEALED OFFERS FOR THE GOODS OR SERVICES DESCRIBED IN THIS REQUEST AT:

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

HAND CARRIED OFFERS WILL BE RECEIVED AT THE OFFICE OF THE CITY CLERK, ALBUQUERQUE/BERNALILLO COUNTY GOVERNMENT BUILDING, 11TH FLOOR, 1 CIVIC PLAZA, ALBUQUERQUE, NM.

OFFERS WILL BE RECEIVED UNTIL 1:30 PM FEBRUARY 16, 2005

NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.

OFFERS WILL BE OPENED PROMPTLY AT 1:30 PM AT:

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

GENERAL INFORMATION AND REQUIREMENTS
REQUEST NUMBER: RFB2005-111-DG

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 THE COVER PAGE.

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.

_____ LOCAL PREFERENCE CERTIFICATION FORM
IF APPLICABLE, COMPLETE, SIGN AND RETURN WITH YOUR OFFER. THIS FORM MUST ACCOMPANY YOUR OFFER TO BE CONSIDERED FOR THE PREFERENCE.

OFFEROR COMPLIANCE FORM

REQUEST NUMBER: RFB2005-111-DG
OPENING DATE: FEBRUARY 16,2005

FOR FURTHER INFORMATION
CALL DENISE GALLEGOS
AT (505)768-3320

DELIVERY DATE: _____
(PLEASE SPECIFY)

FOB POINT:
JESSICA KIOUS 5J05-764-6278
903 10TH ST. SW
ALBUQUERQUE, NM 87102

REQUISITION 188924

BID BOND AMOUNT: $0.00
BID BOND PERCENT: 0%

PERFORM BOND AMOUNT: $0.00
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:_____%

A 5% LOCAL PREFERENCE IS AVAILABLE FOR THIS BID. THE LOCAL PREFERENCE CERTIFICATION FORM MUST BE COMPLETED, CERTIFIED AND SUBMITTED WITH THE BID IN ORDER TO BE CONSIDERED.
LOCAL PREFERENCE REQUESTED: MFG?_____ BUSINESS?_____

A STATE RESIDENT PREFERENCE MAY BE AVAILABLE FOR THIS BID. A CURRENT STATE OF NEW MEXICO PURCHASING OFFICE ISSUED RESIDENT PREFERENCE NUMBER MUST BE SUBMITTED WITH THE BID IN ORDER TO QUALIFY FOR CONSIDERATION.

PLEASE ENTER THE STATE RESIDENT PREFERENCE NUMBER HERE:_____ MFG?_____
BUSINESS?_____

COMPLIANCE AGREEMENT

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: (_____)_____-_____

DIRECT DEPOSIT PAYMENT TRANSFERS ARE STRONGLY ENCOURAGED.
TO ACCESS FORMS VISIT WWW.CABQ.GOV/ONLINESVCS/VENDORS/VENDORACH.HTML.

PRICING DETAIL FORM

REQUEST NUMBER: RFB2005-111-DG

GROUP NO.	ITEM NO.	QUANTITY/UNI	ITEM DESCRIPTION	UNIT PRICE	TOTAL PRICE
			IN ACCORDANCE WITH THE ENCLOSED SPECIFICATIONS, TERMS AND CONDITIONS, FURNISH THE CITY WITH THE FOLLOWING: 50LB BAGS OF SILICA SAND AND PEA GRAVEL TO BE ORDERED ON AN AS NEEDED BASIS. THE GRAVEL AND SAND SHOULD BE WASHED AND SCREENED AND CONTAIN LESS THAN ONE PERCENT OF LOAM, CLAY SAND, SHELLS, DIRT ORGANIC IMPURITIES OR OTHER FOREIGN MATTER. THE RESULTING CONTRACT SHALL BE FOR 2 YEARS WITH THE OPTION TO EXTEND FOR ONE ADDITIONAL YEAR. ACTUAL FREIGHT SHALL BE PREPAID AND ADDED TO THE INVOICE.' THE CITY INTENDS ON PURCHASING BOTH ITEMS FROM THE SAME VENDOR. SAMPLES MAY BE REQUESTED PRIOR TO THE AWARD OF THIS BID.		
1	1	4,600.00 BG ESTIMATED	SAND: 50 LB BAGS OF #20 STANDARD SAND SILICA. EFFECTIVE SIZE: 0.45-0.55MM (.018" - .022") UNIFORMITY COEFFICIENT: LESS THAN	_____	_____
1	2	1,896.00 BG ESTIMATED	PEA GRAVEL TO BE 1/4" TO 1/8" DIAMETER ROUNDED PARTICLES. SPECIFIC GRAVITY: NOT LESS THAN 2.5 50 LB BAGS.	_____	_____

GROUP TOTAL PRICE ==========

STATE DELIVERY TIME AFTER RECEIPT OF ORDER: _____ DAYS.

24 HOUR NOTICE NEEDED PRIOR TO DELIVERY.

**********LAST ITEM

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

CONTRACT PERIOD - EXTENSION OF:

ANY CONTRACT RESULTING FROM THIS REQUEST MAY BE EXTENDED FOR AN ADDITIONAL TWELVE (12) MONTH PERIOD 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 THE USER.

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.

PRICE ESCALATION:

THIS OFFER MAY BE CONSIDERED FOR ESCALATION UNDER THE FOLLOWING CONDITIONS:

A. OFFERED PRICES MUST BE FIRM FOR A LEAST NINETY (90) CALENDAR DAYS AFTER WRITTEN NOTIFICATION OF A CONTRACT.

B. ALL PRICE INCREASES SHALL BE ACCOMPANIED BY A CERTIFIED LETTER FROM THE OFFEROR'S SUPPLIER SHOWING THE PRICE INCREASE TO THE OFFEROR.

C. ALL INVOICES OF THE OFFERED ITEMS, FROM SUPPLIERS TO THE OFFEROR, SHALL BE SUBJECT TO AUDITING BY THE CITY AND FURNISHED WITHOUT DELAY UPON REQUEST.

D. THE CITY RESERVES THE RIGHT TO CANCEL A CONTRACT RESULTING FROM THIS REQUEST AND SOLICIT A NEW CONTRACT IF THE ESCALATED PRICE IS ABOVE THE CURRENT OPEN MARKET PRICE FOR THE SAME COMMODITY. CANCELLATION OF THE CONTRACT SHALL NOT AFFECT ANY OUTSTANDING ORDERS.

E. ALL REVISIONS OF THE PRICE LIST SHALL BECOME EFFECTIVE WHEN THEY ARE RECEIVED, IN WRITING, AND ACCEPTED, BY THE PURCHASING OFFICE OF THE CITY, PROVIDED THAT THEY DO NOT CONFLICT WITH ITEM (F.) OF THIS PARAGRAPH.

F. ALL APPROVED PRICE CHANGES RESULTING FROM THIS ESCALATION CLAUSE SHALL BE FIRM FOR A PERIOD OF NINETY (90) CALENDAR DAYS AFTER ACCEPTANCE IN WRITING BY THE CITY.

G. THE OFFEROR SHALL BE LIMITED TO A MAXIMUM OF TWO PRICE ESCALATIONS PER CONTRACT PERIOD UNLESS OTHERWISE SPECIFIED IN THIS REQUEST.

H. THE OFFEROR SHALL PROVIDE TO THE CITY WRITTEN NOTICE OF ANY REQUESTED PRICE CHANGES WHICH BECOME EFFECTIVE UPON WRITTEN ACCEPTANCE BY THE CITY PURHCASING OFFICE.

I. IF THE OFFEROR RECEIVES ANY PRICE DE-ESCALATIONS FROM THE SUPPLIER OF GOODS SOLD TO THE CITY THROUGH A CONTRACT RESULTING FROM THIS REQUEST, THE OFFEROR IS RESPONSIBLE FOR NOTIFYING THE CITY WITHIN TWENTY-FOUR (24) HOURS OF SUCH DE-ESCALATIONS, AND PASSING THOSE PRICE CHANGES ON TO THE CITY IMMEDIATELY.

INSTRUCTIONS FOR
LOCAL PREFERENCE CERTIFICATION FORM

1. **ALL INFORMATION MUST BE PROVIDED.** A 5% local preference is available for this procurement. To qualify for this preference, 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. **LOCAL PREFERENCE PRECEDENCE OVER STATE PREFERENCE.** The local preference takes precedence over the State Resident Business Preference and only one of the two preferences will be applied to any one offer. If it is determined that the local preference applies to one or more Offerors in any solicitation, the State Resident Business Preference will not be applied to any offers.

3. **PHYSICAL LOCATION MUST BE STATED.** To qualify for the local preference, a business must have a location in the Albuquerque Metropolitan Area (Abq. Metro 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.

4. **ADDITIONAL REQUIREMENT.** To qualify for this preference, the principal Offeror (i.e. the business, NOT the individual signing the form) if it is a corporation, must be a New Mexico corporation with its articles of incorporation filed with the New Mexico Public Regulation Commission.

5. **DEFINITIONS.** The following definitions apply to this preference:

   - The Abq. Metro Area includes all locations within the City of Albuquerque and Bernalillo County, and within any municipality (i.e. incorporated city, town or village) continguous to the City of Albuquerque and Bernalillo County.

   - A resident of the Abq. Metro Area is a person who occupies a dwelling in the Area and who manifests an intent to maintain that dwelling on a permanent basis.

   - A principal Offeror is a single Offeror; a business which is the prime contractor or one of the prime contractors and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.

6. **ADDITIONAL DOCUMENTATION.** If requested, a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form.

LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: _____

Business Name: _____

Business Location (<u>in Abq. Metro Area</u>): _____

_____

Business Type: SELECT ONE

☐ Corporation -- Indicate state of incorporation. ☞ _____

☐ Partnership -- Indicate "general" or "limited". ☞ _____

☐ Sole Proprietorship (Single Owner with employees)

☐ Individual (Single Owner/No employees)

☐ Other -- Indicate status. ☞ _____

Additional Information: (PROVIDE IF BUSINESS IS A CORPORATION)

Date of incorporation in the State of New Mexico: ☞ _____

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 10 days of notice, the necessary documents to substantiate the information provided on this form.

Signature of Authorized Individual: _____ ☞

Printed Name: _____

Title: _____

Date: _____

9/24/02

YOU MUST RETURN THIS FORM <u>WITH</u> YOUR OFFER

CITY OF ALBUQUERQUE
Purchasing Division

OFFEROR COMMENTS FORM

Bid No._____

It is requested that offerors provide any additional information relating to their offer that will assist in the evaluation of such without having to ferret out information concerning the goods or services you intend to provide.

Information pertains to the following (please check applicable box):

- ☐ **Equivalent Product**
- ☐ **Clarification**
- ☐ **Exception(s) to Requirements**
- ☐ **General or Miscellaneous Comments**

If additional space is required, please use reverse side of the form or attach additional document(s).

_____	_____	_____
Name of Offeror	**Signature (Authorized Representative)**	**Date**

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 Conditions or the specifications of this bid, the order of applications shall be the Specifications, Supplemental 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. <u>Preparation of Offer:</u>

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: The Request for Bid Form provides space for the Offeror to identify the payment terms that the Offeror is offering. Terms of less than twenty (20) days will not be considered. The discount term shall not begin until the goods, services or construction have been delivered and accepted and the correct invoice 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. <u>Determination of whether the tax is due and payment of the tax is the responsibility of the Offeror</u>. Applicable taxes are to be included in each invoice due and may not be billed more than sixty (60) days after providing the 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 successful Offeror 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 Specifications Exception 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 Offeror 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 Offeror's providing the goods, services or construction pursuant to the offer or by reason of any act or omission, neglect or misconduct of the Offeror, the agents, employees or subcontractors of the Offeror or the agents or employees of any subcontractor of the Offeror. 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 Offeror 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 nonconfidential 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) working 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. <u>Clarification of Offers</u>:

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. <u>Submission of Offer</u>:

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 eleventh (11th) floor of the Albuquerque/Bernalillo County Government Center, 1 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, or facsimile Offer shall be accepted.

10. <u>Civil Rights Compliance</u>:

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. <u>Americans with Disabilities Act Compliance</u>:

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. <u>Withdrawal of Offers</u>:

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. <u>Opening of Offers</u>:
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. <u>Disqualification of Offer</u>:

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 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 other evidence of acceptance by the City is provided to the Offeror. A Recommendation of Award 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. Local and Resident Preference: A five percent (5%) Preference may be afforded an Offeror who qualifies in accordance with the City's Public Purchases Ordinance. If no offers are received which qualify for a Local Preference, a 5% Resident Business Preference may be afforded an Offeror who has been certified by the State of New Mexico Purchasing Division, in compliance with State laws.

Information regarding the Public Purchases Ordinance and the application of the Local or Resident preference can be obtained by contacting the Purchasing Division at (505) 768-3344.

For consideration for the Local Preference the Offeror must complete the Local Preference Certification Form in accordance with the form instructions and return the Local Preference Certification Form with its offer.

To qualify for the Resident Preference, the Offeror must provide its assigned Resident Certification Number with its offer (an appropriate place is designated in the Request). If an Offeror does not provide its assigned Resident Certification Number with its offer, the offer shall not be considered as made by a resident business and no preference shall be applied during the analysis of that offer.

NOTE: Your State Tax Number is NOT your Resident Certification Number.

20. <u>Goods Produced Under Decent Working Conditions</u>:

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. <u>Protest Process</u>:

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. <u>Delivery, Acceptance and Guarantee</u>:

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 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. <u>Inspections</u>:

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. <u>Invoices and Payments</u>:

The Contractor shall submit an accurate invoice, in duplicate, for each purchase. Invoices shall refer to the Purchase Order Number, the Release Form 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. <u>Default/Termination for Cause</u>:

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.

26. <u>Termination for the Convenience of the City</u>:

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.

27. <u>Termination for Lack of Appropriations</u>:

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 ear 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.

(6 / 23 / 04)