

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 solicitation, these General Instructions, Terms, and Conditions shall govern the procurement of the items specified in this solicitation and provides terms and conditions for the resulting contract. In the event of a conflict between these General Instructions, Terms, and Conditions, Solicitation Instructions found on the SicommNet cover page for this solicitation or the Specifications attached to this solicitation, the order of precedence shall be the Specifications, the Solicitation Instructions, 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. In the event of inconsistencies or contradictions between language contained in this solicitation and an offer submitted in response, the solicitation will prevail.
2. **Definitions:** As used in this solicitation, 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 a written agreement for the procurement of goods, services, construction or concessions resulting from this solicitation. A purchase order, this solicitation and the applicable offer constitute a Contract.
 - C. "Contractor" means an Offeror who has been awarded a Contract.
 - D. "Greater Albuquerque Metropolitan Area" means all locations within the City of Albuquerque and Bernalillo County.
 - E. "Local Business" means a business that maintains its principal office and place of business in the Greater Albuquerque Metropolitan Area. 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 is a location where the business conducts its daily operations, for the general public, if applicable.
 - F. "Offeror" means a business that submits a response to a competitive solicitation.
 - G. "Purchase Order" means a document issued by the Purchasing Division directing the Contractor to deliver goods, services or construction.
 - H. "Purchasing Office" means the Purchasing Division of the Department of Finance & Administrative Services of the City.
 - I. "Purchasing Officer" means the person charged with the responsibility of administering the City Purchasing Office.
 - J. "Resident Business Preference" means the preference described in Section 13-1-21 NMSA 1978, as currently enacted or hereafter amended.
 - K. "Resident Contractor Preference" means the preference described in Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.
 - L. "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 which 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.
 - M. "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.
 - N. "Small Business" means a local business which employs an average of fewer than 20 full-time employees in the calendar year prior to the solicitation. 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.

3. **Preparation of Offer:**

- A. **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.
- B. **Delivery Time:** Delivery time stated in the Specifications shall apply. Deviations by the Offeror shall be stated in the comments area or in an uploaded document with your offer. Time, if stated in number of days, will be consecutive calendar days.
- C. **Payment Terms:** Payment terms are net thirty (30) days unless otherwise approved by the City. Discounts for early payment may be offered and accepted by the City, but will NOT be used as a factor in determining the lowest responsive offer. The discount term shall not begin until the goods, services or construction have been delivered and accepted and the correct invoice is received.
- D. **Agency:** In the event that an offer is signed by an agent, the City reserves the right to require evidence of the agent's authority before accepting the offer.
- E. **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 solicitation. 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.
- F. **Design Conformance - OSHA:** The design of all equipment offered shall be in conformance with all applicable regulations of the federal Occupational Safety and Health Act in effect at the time of delivery.
- G. **Licenses and Certifications:** The Offeror must provide proof in a manner acceptable and within the time period specified in the solicitation or by the Purchasing Office, but prior to award unless otherwise specified in the solicitation, 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 solicitation.
- H. **Equivalent Offers:** Where a product is characteristic of a sole manufacturer, or where a brand name or model 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 should be specified in the offer and a 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.
- I. **Exceptions to Specifications:** An Offeror may state any exceptions taken to this solicitation in the comments area on the SicommNet cover page for this solicitation or in an uploaded document submitted with its offer. The City may accept the Offeror's exceptions which it deems to be not material. If an exception is determined to be material, the City may reject the offer or request that the exception be withdrawn. If the exception is determined to be materials and is not withdrawn, the offer will be rejected. If no exceptions are stated in the offer, the Offeror will be required to furnish the items exactly as specified and to comply with all other requirements of the solicitation.

4. **Certifications:**

- A. **Debarment or Ineligibility Compliance:** By submitting its offer in response to this solicitation, 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.
- B. **Ethical Conduct:** By submitting its offer in response to this solicitation, the Offeror certifies that:
 - 1) 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 solicitation;
 - 2) It has not retained a person to solicit or secure a City contract for a contingent fee;
 - 3) It has not taken any action in restraint of free competitive bidding in connection with this solicitation;

- 4) It has not in any way violated the ethical conduct or other provisions of the City's Public Purchases Ordinance; and
 - 5) 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 the Contract.
- C. **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 VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 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 City's affirmative action policies and practices. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Resources Department.
- D. **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.
- E. **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 any 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].
- F. **Registration Information.** In the event that the Purchasing Office finds that an Offeror has provided inaccurate registration information allowing the Offeror an unfair advantage, the Offeror must correct the information upon receipt of written notification from the City. If the change is not made within 15 consecutive calendar days of the date of notification, the Purchasing Office may remove the Offeror from the City's vendor database and the Offeror will be unable to participate in further solicitations until the information is corrected.
5. **Public Inspection of Offers:** 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 must be separated and clearly marked "Confidential". Prices, makes and models or catalog numbers of the items offered, deliveries and terms of payment shall be publicly available 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, however, that if a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) is received, which request encompasses such materials, they will be disclosed. The City assumes no responsibility to maintain the confidentiality of any materials submitted in response to this solicitation.
 6. **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.
 7. **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, 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 solicitation 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 required spaces or attach required documents where information 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 solicitation.
 - G. The Offeror failed to submit with its offer, bid bonds or other material requirements of the solicitation 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. The City determines that an offer contains any misrepresentations whatsoever.
8. **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.
9. **Nonconforming/Conditional, or Counter Offers:** An offer which is nonconforming or conditional, whether in part or in whole, will be rejected.
10. **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 deadline for the receipt 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.
11. **Rejection/Cancellation of Solicitation:** This 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.
12. **Protest Process:**
- A. ***Request Documents:*** Protests concerning the Specifications of this solicitation or other matters relating to the solicitation documents must be received by the Purchasing Officer no later than ten consecutive calendar days prior to the deadline for the receipt of offers.
 - B. ***Recommendation of Award:*** Protests concerning other matters relating to this solicitation must be filed with the Purchasing Officer not later than 5:00 p.m. of the fifth business day following the date of the email notification of 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. Protests shall contain at a minimum the following:
 - 1) Name and address of the protesting party
 - 2) The solicitation 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.

13. **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 Office is provided to the 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 solicitation 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 solicitation.
- D. **Preferences:** Prior to determining the recommended Offeror, the Local, Small Business, Resident Contractor or Resident Business Preferences of five percent (5%) each shall be applied to the amount bid or quoted or the proposal score of all qualified offers in accordance with the City's Public Purchases Ordinance. The applicable definitions of Local Business, Small Business, Resident Contractor Preference and Resident Business Preference are contained in Section 2 above. These preferences will be applied to qualified offers as follows utilizing information provided by the Offeror with its vendor registration. The City reserves the right to request additional evidence to support this registration information at any time. For additional information regarding preferences contact the City's Purchasing Division at (505) 768-3320.
- 1) The Local Preference is applied to all requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services or for the award of concession contracts.
 - 2) The Small Business Preference is applied to all requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services.
 - 3) The Resident Contractor Preference is applied to all requests for bids or requests for proposals for the award of construction, in accordance with state law.
 - 4) The Resident Business Preference is applied to a request for bids or request for proposals for the purchase of goods or services, but only if no offers have been received in response to the solicitation from Offerors eligible for the local preference.
 - 5) Preferences are not applied to solicitations in excess of \$5,000,000; for a federal aid construction project; or when the expenditure of federal funds designated for the Contract is involved.

14. **Contract Changes:**

- A. **Contract Changes:** In no case shall a Contract be changed without the prior written approval of the Purchasing Officer.
- B. **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.
- C. **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. The Contractor, however, 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.
- D. **Debarment/Cancellation of Contract:** Upon receipt of notice of debarment 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 below.

- E. **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 Contract. 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 Contract, to include, but not by way of limitation, price margin above Contractor cost; or
- 2) By quotation from the Contractor, which quotation is validated to be competitive by solicitation of comparable quotes within the market if necessary; 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 Contractor, another vendor based on the lowest price quoted, or to acquire the items through a separate solicitation.

- F. **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) consecutive 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 the section, 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) consecutive 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, if in the best interest of the City.
- 10) All approvals required by this subsection must be in writing by the City Purchasing Officer.

15. **Use by Other Public Governmental Agencies:** With the agreement of the Contractor, other public governmental agencies may purchase from the Contract, unless otherwise stated, subject to the following:

- A. Extension of the use of the City Contract shall in no way impede on the Contractor's ability to fulfill the pricing, terms and conditions of the Contract with the City; and
- B. The City shall have no responsibility to verify whether the other public governmental agency is a legitimate entity to which it may extend this option or whether the entity is authorized under its applicable laws, rules and regulations to utilize the Contract.

16. **New Material:** All materials, supplies, equipment, and vehicles provided 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.

17. **Graffiti Free:** The Contractor will be required to furnish graffiti free equipment, facilities or other items as may be required to complete the services specified in this solicitation. Failure of the Contractor to comply with this requirement may result in a cancellation of the Contract.
18. **Delivery, Acceptance and Guarantee:**
- A. ***No Delivery before Purchase Order is Issued:*** No vendor including the Contractor 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 the Contract 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.
19. **Inspections:** The City reserves the right to inspect materials provided by the Contractor to determine their quality, fitness and suitability. Inspection of these materials may be conducted whenever the City considers it necessary.
- All items of tangible personal property, services or construction found inferior to the quality specified in this solicitation, 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.
20. **Warranties:** All materials furnished by the Contractor 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.
- Materials furnished by the Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials. The Contractor shall provide any such warranties preferably with its offer, but in any event, prior to award of the Contract.
- The Contractor agrees that the items of tangible personal property, services or construction furnished under the Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such items. Further, the Contractor 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 provision of this solicitation. The Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance of the goods, services or construction.
- The Contractor guarantees that the materials supplied are capable of the performance required in the Specifications in this solicitation and agrees to make such changes, adjustments or replacements as are immediately necessary in order for the materials to meet the requirements at no cost to the City. If defects or specification failures are discovered, the City shall have the right, notwithstanding acceptance and payment, to require the unit or item to be properly furnished in accordance with the Specifications and applicable drawings at the cost and expense of the Contractor or the Contractor's surety.
21. **Force Majeure:** Neither the Contractor nor the City shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government not directly related to this Contract, acts or omissions of a military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.
22. **Removal of Debris and Cleaning the Area:** The Contractor shall, during the progress of any work required under this solicitation, remove and dispose of all debris and keep the work premises clean and safe. When the work is complete, the Contractor shall remove all construction equipment and surplus materials (except materials that are to remain the property of the City as provided in the Specifications) and leave the premises in a clean condition satisfactory to the City.

23. **Responsibility for Damage:** The Contractor shall be responsible for any damage caused during removal or installation services or at any time during the performance of the Contract. Damage shall be reported immediately to the designated City representative.
24. **Risks:** All risks of deterioration, destruction, and loss of materials and equipment stored at the site of the work required under the Contract shall be borne by the Contractor.
25. **Working Conditions:** The City is not responsible for obstacles, unfavorable conditions, or hazards, which may be encountered by the Contractor, both above and below ground. These conditions are part of the risk and responsibility of the Contractor.
26. **Indemnity:** The Contractor 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 Offeror 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.
27. **Patent Indemnity:** If any item furnished pursuant to the Contract 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.
28. **Insurance.** Unless this requirement has been waived by the City's Risk Manager, the Contractor shall procure and maintain at its expense until final payment by the City for services covered by the Contract, insurance in the kinds and amounts listed below with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the services, 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:

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. The kinds and amounts of insurance required are set out below and additional insurance may be required as set out in the Specifications or Solicitation Instructions.

- 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 (the "Act"). If the Contractor employs fewer than three employees and has determined that he is not subject to the Act, the Contractor will certify, in a signed statement, that the Contractor is not subject to the Act. The Contractor will notify the City and comply with the Act if he becomes subject to the Act during the term of this Agreement.

D. **Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

29. **Invoices and Payments:** 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 solicitation. Invoices are to be mailed to:

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

with a copy to the applicable department.

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

Unless otherwise stated in the specification, the Contractor shall not receive any compensation until all services have been completed, final inspection has been made, the work has been accepted by an authorized representative of the City and complete and correct invoices have been received by the City following the invoicing process detailed herein. Progress payments will not be made to the Contractor unless otherwise specified in this solicitation.

30. **Title:** Title to all items of tangible personal property, services and construction provided pursuant to the Contract shall pass to the City at the time of payment free and clear of all liens, claims, security, interest and encumbrances.
31. **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. 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 the 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.
32. **Default/Termination for Cause:** If, through any cause, the Contractor fails to fulfill the Contractor's obligations under the Contract in a timely and proper manner, or if the Contractor, violates any of the covenants, agreements or stipulations of the 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 the Contract 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.
33. **Termination for the Convenience of the City:** The City may terminate the Contract at any time by giving at least thirty (30) consecutive calendar 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.
34. **Termination for Lack of Appropriations:** Funding for the Contract has been appropriated by the City Council for the City's current fiscal year. Notwithstanding any other provisions in the Contract, its continuation beyond the end of the 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.

35. **Assignment, Transfer and Subcontracting:** The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the City's Purchasing Officer. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
36. **Construction and Severability:** If any part of the Contract is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of the Contract so long as the remainder of the Agreement is reasonably capable of completion.
37. **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 the Contract.
38. **Compliance with Laws:** The Contractor shall, in performance of the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations.
39. **Governing Law/Venue:** This Contract is governed by the laws of the State of New Mexico. The parties agree that the state and federal courts sitting in New Mexico will have exclusive jurisdiction over any claim arising out of the Contract or this procurement and each party consents to the exclusive jurisdiction of such courts.