RETURN BID FORM TO:
City of Carlsbad
Attn: Purchasing Manager
101 N. Halagueno Street (FED EX, UPS)
P.O. Box 1569 (USPS)
Room # 116
Carlsbad, NM 88220

Invitation to Bid

Bid Title: RUNWAY CLOSURE MARKER

Bid Number: 2016-03

Formal Sealed Bid Opening

Place: City of Carlsbad Municipal Building
101 N. Halagueno St., Room 202

Bid Closing Date: 1/29/16 **Time:** 2:20 p.m.

Bid Bond Required ___ **Yes** **X** **No**

If you have questions regarding this Invitation to Bid please contact:
Matt Fletcher, Purchasing Manager at 575-234-7905
Or
Email to msfletcher@cityofcarlsbadnm.com

Bidder MUST complete and sign the following in order for Bid to be valid:

Company Name: _____
Address: _____ City _____ State ____
Telephone #: _____ _____
Federal Tax ID# _____ _____
Email Address: _____

Contractor License # (if applicable) _____

Resident Bidder/Veterans Business Certification # _____

Acknowledgment of Addendum (if applicable) 1. ___ 2. ___3. ____4. ___ (please check mark)

Signature: _____ Print or type name: _____

Title: _____

Additional Bidder Information

Applications for in-state preference will no longer be processed through the State Purchasing Division. All resident businesses, veterans, and contractors will have to obtain preference number(s) with the NM Department of Taxation and Revenue. In order for the appropriate preference to be applied to any solicitation, there must be no federal funds involved, and vendor must submit a copy of their preference certificate with each solicitation. Applications are available for download at:

http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx

Veterans Only: The Resident Veterans Preference Certification enclosed herein must be completed and returned with bid in order to receive the preference.

Instructions to Bidders

Bids, whether hand delivered at the time of the bid opening or mailed in, must be submitted in a sealed envelope with the bid number and opening date clearly indicated on front of the envelope.

Sealed bids will be received at the address shown on page 1 of this document, until the specified date and local time, then publically opened and read aloud at the bid opening location shown in the bid documents.

Bids received after the bid opening time and date listed cannot be considered and will be returned to the bidder unopened.

The City of Carlsbad reserves the right to reject all bids received if deemed to be in the best interest of the municipality.

Bids for products should include any applicable shipping, freight, delivery or installation fees.

Bidders claiming either the New Mexico Resident Bidders Preference or Veteran's Preference must submit a copy of the preference certification with their bid. Bid's received without this documentation will not be eligible to receive the preference.

When applicable, bids where State Wage Rates are in effect, the bidder must submit a copy of its current Dept. of Workforce Solutions Registration.

The Campaign Contribution form must be completed and signed and returned with the bid as required by State Statute. Bids received without this form may not be accepted. **Campaign Contribution form must be signed and returned even if you made no contributions.**

This Bid is subject to the "Terms and Conditions," listed below and "Additional Bidding Instructions" if any.

TERMS AND CONDITIONS

1. **General**: When the Purchasing Manager or designee issues a purchase order in response to the Vendor's bid, a binding contract is created.

2. **Variation in Quantity:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.

3. **Assignment:**

a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the Purchasing Manager or designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.

b. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this bid are hereby assigned to the City.

4. City Furnished Property: City furnished property shall be returned to the City upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise or receipt of the invoice, whichever is later.

6. **Inspection:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Vendor's risk and expense, promptly after notice of rejection.

7. **Inspection of Plant:** The Purchasing Manager or designee may inspect, at any reasonable time, the plant of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

8. **Commercial Warranty:** The vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the vendor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall 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 order. **Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**

9. **Taxes**: The unit price shall exclude all state taxes.

10. **Packing, Shipping, Invoicing and Payment Terms:**

a. The City's purchasing document number (P.O. number) and the Vendor's name, and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.

b. The Vendor's invoice shall be submitted duly certified and shall contain the following information: purchase order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for partial shipments.

c. The City cannot accept invoices for goods or services not yet received. All invoices must be submitted after delivery of goods and/or performance of services.

d. Payment terms will be net 30 days from the date that invoice is approved for payment. Payments are generally approved within 15 days of receipt of the invoice. In the event that payment is not approved, the City will notify the vendor in writing within 15 days of receipt of the invoice as to the reasons that payment is not being approved and the desired resolution being sought. Once the issue is resolved, payment will be made within net 30 days from the date of resolution.

e. Invoices may be submitted by USPS mail to:

City of Carlsbad
Attn: Accounts Payable
P.O. Box 1569

Carlsbad, NM 88221-1569
Or
via Email to: invoices@cityofcarlsbadnm.com

11. **Default:** The City reserves the right to cancel all or any part of this order without cost to the City, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include but are not restricted to, acts of God or the public enemy, acts of the City, State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule. The rights of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

12. **Non-Collusion:** In signing this bid the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City Purchasing Manager or his/her designee.

13. **Nondiscrimination:** Vendor doing business with the City of Carlsbad must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

14. **The Procurement Code:** Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

15. **Condition of Goods**: All bid items are to be NEW and of most current production, unless otherwise specified.

16. **Payment for Purchases:** Except as otherwise agreed to: late payment charges may be assessed against the City in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

17. **Workers' Compensation:** The Contractor agrees to comply with state laws and rules pertaining to Workers' Compensation benefits for its employees. If the Contractor fails to comply with Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. **Bid Submittals**: Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the front of the envelope and returned to the City of Carlsbad Purchasing Department. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

19. **Contractor Personnel:** Personnel proposed in the Contractor's written proposal to the City of Carlsbad are considered material to any work performed under this Bid Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Procuring Agency shall retain the right to request the removal of any Contractor's personnel at any time.

20. **Subcontracting:** The Contractor shall not subcontract any portion of the Price Agreement without the prior written approval of the City of Carlsbad. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Bid Agreement, nor shall any subcontracting obligate payment from the City of Carlsbad.

21. **Records and Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Bid Agreement's term and effect, and retain them for a period of three (3) years from the date of final payment under this Bid Agreement. The records shall be subject to inspection by the City Purchasing Office and/or designee. The City shall have the right to audit billings, both before and after payment. Payment for services under this Bid Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

22. The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.

Important Bidding Information

All Bidders must notify the City Purchasing Manager or his/her designee if any employee(s) of the City of Carlsbad have a financial interest in the Bidder:

(Check one) **____No financial interest** **____ Yes financial interest**

If yes specify by name: _____

Bid tabulations will be posted to our website within 24 hours after bid opening date. To access go to http://www.cityofcarlsbadnm.com/purchasing.cfm, click on Bid Results.

Failure of Bidder to complete bidding documents, in accordance with all instructions provided, is cause for this office to reject their bid.

Brand names and numbers are for reference only; equivalents will be considered. If bidding "equivalent" bidders must be prepared to furnish "complete data" upon request, preferably with bid, to avoid delay in award.

Specifications on the bid are not to exclude any bidder or manufacture. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him from submitting a proposal on this bid, it is requested that his opinion be made known to the City Purchasing Manager or his/her designee, in writing, at least seven (7) days prior to the bid opening date.

Bidders must, upon request of the City Purchasing Manager or his/her designee, provide information and date to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The City Purchasing Manager or his/her designee reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the City of Carlsbad. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Awarding of Bids

Determination of Lowest Bidder- Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the City in accordance with the specifications and terms & conditions set forth in the Invitation to Bid. The City Purchasing Manager reserves the right to award this Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the City of Carlsbad.

The City Purchasing Manager or his/her designee reserves the right to accept and/or reject any and all bids, to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the City of Carlsbad.

Special Notice- To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the City Purchasing Manager or his/her designee.

F.O.B. Destination- Means goods are to be delivered to the destination designated by the user which is the point at which the user accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause bid to be declared nonresponsive.

Bid Agreement Terms and Conditions

Article I– Statement of Work
Under the terms and conditions of this Bid, the City of Carlsbad may issue orders for items and/or services described herein.

The terms and conditions of this Bid shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be listed under Article IX - Price Schedule. All orders issued hereunder will bear a purchase order number. It is understood that no guarantee or warranty is made or implied by either the City of Carlsbad Purchasing Manager or the user that any order for any definite quantity will be issued under this Bid Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each purchase order issued.

Article II-Term
The term of this Bid Agreement for issuance of orders shall be as indicated in specifications.

Article III -Specifications
Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX - Price Schedule. Purchase Orders issued against this schedule will show the applicable price, item(s), and number(s); however they may not describe the item(s) fully.

Article IV- Shipping and Billing Instructions
Contractor shall ship in accordance with the instructions of this form. Shipment shall be made only against specific orders which the user may place with the contractor during the term indicated in Article II - Term. The Contractor shall enclose a packing list with each shipment listing the purchase order number, and the commercial parts number (if any) for each item. Delivery shall be made as indicated on the purchase order. If vendor is unable to meet stated delivery terms the City Purchasing Manager must be notified.

Article V- Termination
This Bid Agreement may be terminated by either party upon written notice to the other at least thirty (30) days in advance of the date of termination. Notice of termination of the Bid Agreement shall not affect any outstanding orders.

Article VI- Amendment
This Bid Agreement may be amended by mutual agreement of the City of Carlsbad Purchasing Manager or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Bid Agreement shall not affect any outstanding orders issued prior to the effective date of the Bid Award as mutually agreed upon, and as published by the City Purchasing Manager or his/her designee. Amendments affecting price adjustments and/or the extension of a Bid Agreement expiration date are not allowed unless specifically provided for in the bid and price agreement specifications.

Article VII- Issuance of Purchase Orders
Only purchase orders authorized by the Purchasing Manager are valid under this Bid Agreement.

Article VIII- Packing (if applicable)
Packing shall be in conformance with standard commercial practices.

Article IX- Price Schedule
Prices as offered in the bidding documents and recorded in the bid tabulation hereto attached are firm.

BID SPECIFICATIONS (All bid specifications are considered minimum unless otherwise stated)
Any variance from the bid specifications listed below must be explained in writing. Please attach additional pages if necessary and provide the item number for each variance.

ITEM	DESCRIPTION	CONFORMITY (Check One) If Does Not Conform is checked, please attach documentation describing how the product differs from the specifications.
001	ETL certified to FAA AC 150/5345-55, AC 150/5370-2 and NTSB Safety Recommendation A-03-05	Conforms _____ Does Not Conform _____
002	3-year, 3,000-hour engine warranty	Conforms _____ Does Not Conform _____
003	Easily set up by one person in two minutes, without tools	Conforms _____ Does Not Conform _____
004	Four folding arms each open to a 14-foot length	Conforms _____ Does Not Conform _____
005	20 spotlights deliver over 170,000 candelas at beam center	Conforms _____ Does Not Conform _____
006	Visible 10-25 miles from runway under average conditions	Conforms _____ Does Not Conform _____
007	Selectable brightness levels to suit environmental conditions	Conforms _____ Does Not Conform _____
008	Photocell dimming for night operation	Conforms _____ Does Not Conform _____
009	Four rear-mounted lamps allow visual monitoring from back side	Conforms _____ Does Not Conform _____
010	Powered by a three-cylinder, liquid-cooled Mitsubishi diesel engine and Marathon brushless generator	Conforms _____ Does Not Conform _____
011	Operates 140 hours between fuel fills	Conforms _____ Does Not Conform _____
012	Highway tow-able, with a standard 2" hitch coupler	Conforms _____ Does Not Conform _____

013	2200-pound, DOT-compliant trailer	Conforms _____ Does Not Conform _____
014	3 swivel leveling jacks, one tongue jack	Conforms _____ Does Not Conform _____
015	Adjustable light beam angle	Conforms _____ Does Not Conform _____
016	Optional rear hitch, allow tandem towing of 2 units	Conforms _____ Does Not Conform _____
017	Light Assembly: Arm dimensions: 14 feet diagonal, 10 feet vertical Front lamps: (20) PAR38 Rear monitor lamps: (4) PAR38 Lamp intensity: 170,000 center-beam candelas Lamp visibility: Exceeds FAA specification of 5 nautical miles minimum at beam center. 1.5 nautical miles minimum for +/- 15 degrees azimuth and 0-10 degrees elevation Lamp life: 4200 hours Flash rate: 2.5 seconds on/2/5 seconds off Flasher type: Solid-state zero-crossing switch Flasher bypass: Automatic upon flasher failure Frame: 4 inch x 4 inch aluminum tubing Paint: Yellow epoxy Powder-coat Photocell: Dims lamps during night operation Photocell override: Yes Elevation angle: Adjustable 0-10 degrees Set up time: 2 minutes Operable w/o generator, 120 VAC	Conforms _____ Does Not Conform _____
018	Warranty: Engine: 2 years of 2000 hours, 3 years of 3000 hours on major components Generator: 1 year unlimited hours, and 2 years of 2000 hours Light Assembly: 1 year mechanical parts, 2 years electrical parts, excluding lamps	Conforms _____ Does Not Conform _____
019	Engine: Manufacturer: Mitsubishi Model: L3E-W26 1ML Speed: 1800 RPM Type: Diesel, 3-cylinder, liquid-cooled Horsepower: 12.7 hp at 1800 RPM Fuel Consumption: 0.41 gallons per hour Start/Charging: Electric starter, alternator Battery: 12V Low Oil Shutdown High Temp Shutdown Engine Hour Meter Glow Plug	Conforms _____ Does Not Conform _____

020	Generator: Manufacturer: Marathon Electric Type: 4-pole, brushless Model: 332csa5214 Output power: 6.0 kw Power Factor: 1.0 Frequency: 60 Hz Output voltage: 120/240V, single phase Voltage regulation: +/- 5% Output current: 50/25A	Conforms _____ Does Not Conform _____
021	Chassis: 2200 lb. axle 2-inch ball hitch Three 2000 lb. leveling jacks Side jack outriggers, 11-foot-6 inch span DOT-compliant marker and tail lights ST175/80D13 highway-rated tires Safety chains with hooks All steel tubing construction Powder-coated steel engine housing Lockable engine cabinet doors External emergency engine stop Removable trailer drawbar	Conforms _____ Does Not Conform _____
022	AC Power Distribution: Main Breaker: 30A, 2-pole 120V Light Assembly Breaker: 30A,2-pole 120V Outlet Breakers: 20A (2) 120V Twist-Loc: 1 receptacle 120V GFI Duplex: 2 receptacles	Conforms _____ Does Not Conform _____
023	Capacities: Fuel Tank: 57 gallons Run Time: 120 hr full load, 140 hr RCM-D only Coolant: 4.5 qt Engine oil: 3.5 qt	Conforms _____ Does Not Conform _____
024	Size and Weight: Dimensions: 114 inches (length) x 65 inches (width) x 68 inches (height) Dry Weight: 1265 lbs. Shipping Weight: 1450 lbs	Conforms _____ Does Not Conform _____
025	Environmental Specifications: Operating temperature: -40 F to 116 F Operating humidity: 0 to 100% Maximum Wind Load: 50 mph	Conforms _____ Does Not Conform _____
026	Rear Ball Hitch	Conforms _____ Does Not Conform _____

027	Protective Cover (Hitch Cover)	Conforms _____ Does Not Conform _____

	Total Bid Amount (Items 1 – 27) $ _____	

New Mexico Resident Business Preference

The State of New Mexico Procurement Code mandates a New Mexico Resident Business Preference on all bids and request for proposals (RFP).

Qualified resident businesses will be given a 5% preference on all bids. When bids are evaluated, New Mexico Businesses registered with the Department of Taxation and Revenue, will have its bid reduced by a factor of 5%.

Qualified resident businesses will be given a 5% preference on all RFP's. When proposals are evaluated, New Mexico resident businesses that are registered with the Department of Taxation and Revenue, will receive an additional points equivalent to 5% of the total points possible for award.

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. All resident businesses, veterans and contractors will have to obtain a preference number with the NM Department of Taxation & Revenue.
For additional information please call 505-827-0951.

Qualifications

A. To receive a **resident** business **preference** pursuant to Section 13-1-21 NMSA 1978 or a **resident** contractor **preference** pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid **resident** business certificate or valid **resident** contractor certificate issued by the taxation and revenue department.

B. An application for a **resident** business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:

(1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a **resident** business or **resident** contractor certificate pursuant to this section during that time period;

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were **residents** of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a **resident** contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are **residents** of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are **residents** of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a **resident** business or **resident** contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were **residents** of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a **resident** business or **resident** contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a **resident** business or **resident** contractor **preference** for a bid or proposal and the **resident** business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate or a **preference** pursuant to Section 13-1-21 or 13-4-2 NMSA 1978 for a period of five years from the date on which the taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty of up to fifty thousand dollars ($50,000) for each violation.

G. In a decision issued pursuant to Subsection E or F of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years.

History: 1953 Comp., § 6-5-32.1, enacted by Laws 1969, ch. 184, § 1; 1979, ch. 72, § 2; 2011 (1st S.S.), ch. 3, § 2.

Application of Preference

A. For the purposes of this section:

(1) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(2) "formal bid process" means a competitive sealed bid process;

(3) "formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;

(4) "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(5) "**resident** business" means a business that has a valid **resident** business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

(6) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a **resident** business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a **resident** business based on the **resident** business possessing a valid **resident** business certificate; or

(2) if the contract is awarded based on a point-based system, a **resident** business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the **resident** business possessing a valid **resident** business certificate.

D. When a joint bid or joint proposal is submitted by both **resident** and nonresident businesses, the **resident** business **preference** provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

E. When bids are received for both recycled content goods and non-recycled content goods, the public body shall deem the bids submitted for recycled content goods of equal quality to be five percent lower than the bids actually submitted. A bid calculation pursuant to this subsection for a **resident** business shall not also receive the bid calculation **preference** pursuant to Subsection B of this section.

F. The procedures provided in Sections 13-1-172 through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section.

G. This section shall not apply when the expenditure includes federal funds for a specific purchase.

History: 1978 Comp., § 13-1-21, enacted by Laws 1979, ch. 72, § 1; 1981, ch. 104, § 1; 1988, ch. 84, § 1; 1989, ch. 310, § 1; 1995, ch. 60, § 1; 1997, ch. 1, § 2; 1997, ch. 2, § 2; 1997, ch. 3, § 1; 2000, ch. 41, § 1; 2011 (1st S.S.), ch. 3, § 1.

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than $1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $1M but less than $5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

_____ _____

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business

The representations made in the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"**Pendency of the procurement process**" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"**Prospective contractor**" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"**Representative of a prospective contractor**" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

Mayor Dale Janway
Councilman Nick Salcido
Councilman Wes Carter
Councilwoman Sandra Nunley
Councilman J.R. Doporto
Councilman Lisa Anaya Flores
Councilman Jason Shirley
Councilman Janell Whitlock
Councilman Dick Doss
Municipal Court Judge David Redford

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

_____

Amount(s) of Contribution(s) _____

_____

Nature of Contribution(s) _____

_____

Purpose of Contribution(s) _____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____

Signature Date

_____

Title (Position)