INVITATION TO BID NUMBER: T-2742  
TITLE: CNM Westside Campus Phase II, Landscape Project

DUE DATE: November 24, 2008  
TIME: 3:00PM Local Time (MDT)

BUYER: Greg Van Wart  
Phone: (505) 224-4546  
Fax: (505) 224-4548  
gvanwart@cnm.edu

A non-mandatory Pre-Bid meeting will be conducted on Tuesday, November 18, 2008 from 11:00 AM to noon local time at the CNM Westside Campus Phase II Building, 10549 Universe Blvd NW, Albuquerque, NM 87114.

NUMBER OF RESPONSES REQUIRED: One Original and One Copy

FREIGHT TERMS: FOB Destination Freight Included

PAYMENT TERMS: Net 30 Days

INSTRUCTIONS TO BIDDERS
The Central New Mexico Community College (CNM) invites you to submit a bid on the material and/or services specified within this Invitation to Bid. Please read carefully all instructions, specifications, terms and conditions. Failure to comply with the instructions, specifications, terms and conditions of the Invitation may result in your bid being declared non-responsive. The purchase of materials and/or services awarded under this Invitation are subject to CNM's General Terms and Conditions as well as all statements contained in this Invitation to Bid. All terms and conditions of the Invitation to Bid will remain unchanged for the duration of any resultant agreement(s) and will supersede and take precedence over any bidder agreement forms. Additional or different terms proposed by the vendor are hereby rejected. New Mexico criminal law prohibits bribes, gratuities and kickbacks (13-1-28 through 13-1-199, NMSA 1978).

To bid on the goods or services specified herein, type or print the information requested in the spaces provided on the response form. All blank spaces for bid prices, manufacturer’s name and product number offered, delivery, warranty, etc. must be written in ink or typed. Corrections shall be initialed in ink by person signing the bid. When bidder makes mistakes in calculating total price where quantities are involved, the unit price shall prevail. If you wish to offer more than one bid for a single item or group of items specified, copy the response form and fill in all spaces by typing or printing in ink. Clearly label the top as an alternate bid, and submit all responses in the same envelope as the original bid. Submit the number of copies of your bid specified above. Each copy is to include all supporting documentation. Failure to submit the required number of copies may result in your bid being considered non-responsive.

The completed bid package must be placed in a sealed envelope and submitted to the above address no later than the time and date specified above. Failure to properly identify this RFB # and Bid Due Date and Time on the lower left outside corner of your sealed proposal envelope may result in either premature opening of your proposal or failure to open it upon the correct closing date and time.

Note: Any and all clarifications of instructions, specifications, scope, requirements, terms and conditions, insurance, bonds, or bid preparation, etc. shall be made only by the Buyer listed above. All requests for clarification or exception to instructions, terms and conditions, specifications, requirements, scope, insurance, bonds, or bid preparation, etc. must be made in writing, addressed to the Buyer listed above, and submitted no later than five (5) days prior to the bid due date. Technical questions concerning the requirements of the requester should be directed to the technical clarification contact listed above. If appropriate, CNM Purchasing shall issue a written Amendment/Addendum which shall thereafter become part of this Invitation to Bid. No oral interpretations shall be binding upon CNM unless reduced to a written amendment issued by CNM Purchasing prior to the bid due date and time.

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SECTION A
STANDARD BID TERMS AND CONDITIONS

1. ACCEPTANCE. 
   Equipment and/or Services - Right to reject; specifications. 
   (I) All equipment and/or services furnished will be subject to 
   inspection and testing by buyer and buyer's agents upon arrival and 
   after installation. Any equipment and/or services found by buyer in 
   its sole discretion to be not in accordance with the specifications, 
   drawings, plans, instructions, performance criteria, samples or other 
   description furnished or adopted by buyer for the order or otherwise 
   not in conformance with the terms of the order shall be subject to 
   rejection, return and back charge as appropriate, together with the 
   necessary costs of handling and shipping. Buyer's payment of all or 
   any part of the purchase price prior to such inspection, testing and 
   non-acceptance of the equipment and/or services involved shall not 
   constitute a waiver of any of buyer's rights hereunder. 
   (II) When supplier believes that the work and equipment are "finally 
   completed", it shall notify buyer in writing and upon receipt of said 
   notice, buyer shall inspect the work and either accept such work as 
   being "finally completed" or identify in writing to supplier that the 
   work is not finally completed in the opinion of buyer and state 
   specifically why buyer believes the work is not finally completed. 
   The work and equipment shall be considered finally completed 
   following successful start-up of the equipment and full operation of 
   such equipment for a reasonable number of days or for such period of 
   time set forth in the applicable Purchase Order, and at that time 
   supplier shall submit a final payment application for all amounts 
   remaining due and owing to supplier under the applicable Purchase 
   Order. 

2. ACKNOWLEDGMENT OF AMENDMENT/ADDENDUM. 
   Bidders shall acknowledge receipt of any amendments/Addenda to 
   this Invitation by identifying the amendment number and date in the 
   space provided on the form labeled “Signature of Firm's Authorized 
   Representative". 

3. ADDRESSES FOR NOTICES. Any notice required to be given or 
   which may be given under this Invitation or the resultant price 
   agreement shall be in writing and delivered in person or via first class 
   mail to the following address: 
   Central New Mexico Community College 
   Purchasing Department 
   525 Buena Vista, SE 
   Albuquerque, NM 87106 

4. ALTERNATE BIDS. The brand names, part and or catalog numbers 
   are used to describe the standard of quality, performance and 
   characteristics desired and are not intended to limit or restrict 
   competition. Alternate bids will be accepted and considered, unless 
   otherwise specified in the supplementary bid terms and conditions, 
   provided they are equal to and meet all specifications of this 
   Invitation which may include all specifications of the Brand used to 
   identify the quality of the goods and/or services requested. If offering 
   a brand, part or catalog number other than that listed, please indicate 
   items offered and include literature and or technical specifications. 
   Failure to do so may cause offer to be declared non-responsive. CNM 
   reserves the right to make the final determination of whether an 
   alternate bid is equal. It is the contractor's responsibility to provide, 
   as part of the bid, descriptive literature and specification information 
   on all alternates bid. If the bid is not clearly identified as an alternate 
   item, it is understood that the items are bid as specified. 

5. AWARDS. CNM reserves the right to make multiple awards of the 
   items, projects and/or sections of this Invitation. Price agreements 
   may be awarded on a unit basis for each individually numbered item to 
   the lowest responsible bidder; or when a group of items have been 
   consolidated for uniformity, it may be necessary to bid all inclusive 
   items to receive consideration. 

6. AWARD OF BIDS. CNM reserves the right to award this bid based 
   on price and any other evaluation criteria contained herein; to reject 
   any and all bids or any part thereof, and to accept the bid that is in the 
   best interest of CNM. 

7. BID NEGOTIATION. Bidders will not be afforded an opportunity 
   for discussion and revision of bids. 

8. BID OPENING. Bid will be opened publicly on the bid due date 
   and time specified on the bid cover sheet in the Purchasing 
   Department Office. Anyone may attend the opening. 

9. BID SECURITY. Bid security shall be required in a bond equal to 
   5% of the offered cost or the equivalent amount in a cashier's check. 
   The bond shall be provided by a surety company authorized to do 
   business in the State of New Mexico. The bid security will be 
   returned to the successful contractor upon completion of the work. 
   The bid security of the unsuccessful bidders will be returned upon 
   award of the resultant price agreement. 

10. CANCELLATION. CNM reserves the right to cancel without 
    penalty this Invitation, the resultant price agreement or any portion 
    thereof for unsatisfactory performance, unavailability of funds, or 
    when it is in the best interest of CNM. 

11. CHANGES/ALTERATIONS AFTER AWARD. Changes or 
    alterations after the award can only be made if agreed to in writing by 
    CNM. 

12. CLEAN UP. It is the contractor's responsibility that the job site be 
    kept clean and free of rubble while work is performed under the 
    resultant price agreement. Upon completion of the work, all areas 
    shall be cleared of all contractor's equipment, excess materials and 
    rubble, and the site shall be left broom clean. Disposal of any debris 
    shall be to an appropriate disposal site in accordance with any laws 
    applicable to the type of material being disposed. 

13. CONTRACTOR GUARANTEE. The contractor shall guarantee all 
    materials, equipment and workmanship furnished and or installed to be 
    free of defects and shall agree to replace solely at his/her expense any 
    and all defective equipment, parts, etc. within a one year period after 
    the date of acceptance of the items and or installation by CNM, unless 
    otherwise agreed to in writing at the time of award. 

14. CONTRACTOR SCHEDULE REQUIRED. The contractor shall 
    include a proposed schedule for completion of work under this 
    Invitation. It should contain an itemized break down of all items and 
    projects, including testing dates if applicable. 

15. DAMAGE AND SECURITY OF CNM PROPERTY. The 
    contractor shall be responsible for all damage to persons or property 
    that occurs as a result of his/her fault or negligence, or that of any 
    of his/her employees, agents and or subcontractors. He/she shall save 
    and keep harmless CNM against all loss, cost, damage, claims, 
    expense or liability in connection with the performance of the resultant 
    price agreement. Any equipment or facilities damaged by the 
    contractor's operations shall be repaired and or restored to their 
    original condition at the contractor's expense, including but not limited 
    to cleaning and painting. The contractor shall be responsible for 
    security of all his/her equipment and for the protection of work done 
    under the resultant price agreement until final acceptance of the work.
16. DELIVERY. Delivery is an important consideration and may be a factor in determining the award. Please state your earliest delivery date in the space provided on the response form.

17. DELIVERY DELAYS. If after award, the contractor becomes aware of possible problems that could result in delay in the agreed-to delivery schedule, the contractor must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the contractor of his/her contractual obligations. However, failure to notify CNM promptly will be a basis for determining the contractor responsibility in an otherwise excusable delay.

18. DISCREPANCIES. If any bidder is of the opinion that the bid specifications as written preclude him/her/it from submitting a response to this Invitation to Bid, it is specifically requested that the bidder’s opinion be made known to the Buyer, in writing, at least seven (7) days prior to the established bid opening date.

19. DISRUPTION OF NORMAL ACTIVITY. All work shall be performed so as not to interfere with normal CNM activities. When it is necessary to disrupt normal activities, the schedule of work and the areas to be affected must be approved by CNM's authorized representative prior to commencement of the work.

20. EMPLOYEE CERTIFICATION. The contractor and all contractor's employees utilized on the work to be performed under this Invitation must have the proper certification(s) and license(s) to comply with State and local requirements connected to this invitation. The contractor shall use only fully qualified and approved service technicians to perform inspections, service and or repairs under this Invitation.

21. EQUIPMENT REQUIRED. The contractor shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work under this Invitation except as otherwise noted in the Specifications.

22. FORCE MAJEURE. Neither party to the resultant agreement will be liable to the other for any failure or delay in performance under the resultant agreement due to circumstances beyond its reasonable control including, but not limited to, acts of God, accidents, labor disputes, acts or omissions and defaults of third parties, and official, government or judicial action not the result of negligence of the party failing or late in performing

23. GENERAL TERMS AND CONDITIONS. CNM's General Terms and Conditions are an equal and integral part of this Invitation.

24. CONTRACT. CNM’s purchase order shall be considered the binding agreement/contract. In the event of any inconsistent or incompatible provisions, the purchase order (excluding contractor's bid) shall take precedence, followed by the provisions of the Invitation to Bid, and then lastly, the terms of the vendor’s bid response.

25. GOVERNING LAW. This Invitation and the resultant price agreement will be interpreted and governed by the Laws of the State of New Mexico.

26. INSPECTIONS. The contractor shall be responsible for securing at his/her expense, all required inspections to comply with Federal, State, and or local regulations governing the work performed under this Invitation. CNM will inspect all work done under this invitation to verify compliance with specifications contained herein. The contractor shall call for all required inspections and have a representative present at all inspections.

27. INSURANCE REQUIREMENTS. The contractor is required to carry insurance meeting the requirements in the Exhibit labeled "INSURANCE REQUIREMENTS" or as noted in the specifications. Contractor must submit the Certificate of Insurance to the appropriate Buyer prior to commencing work under the resultant price agreement. Insurance must remain in effect for the entire term of the resultant price agreement and must be extended to coincide with any future price agreement extension. This Invitation to Bid Number must appear on the Certificate of Insurance. Note: A potential contractor or the Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If a contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the contract may be canceled immediately.

28. INVITATION IS ENTIRE AGREEMENT. This Invitation constitutes the entire agreement between the parties with respect to its subject andshall not be modified, altered nor amended in any way except as provided for in this Invitation.

29. LATE SUBMISSIONS. Late submissions of bids will not be considered unless it is determined by CNM that the late receipt was due solely to mishandling by CNM or if the bid is the only one received. All other late submissions will be returned unopened.

30. LICENSES/PERMITS/EASEMENTS. The contractor shall be responsible for obtaining, at his/her expense, all easements, right-of-ways, accesses, licenses, permits, and utility locations required to perform the work under this Invitation.

31. MODIFICATIONS. Only modifications received prior to the time specified for the closing will be accepted. No modifications will be accepted following the opening. Technical clarifications of the offer may be requested by the Buyer following the opening.

32. NEW MATERIALS REQUIRED. All materials and equipment delivered and or installed under this Invitation shall be new and be the standard products of a manufacturer regularly engaged in the production of the materials and equipment (unless otherwise specified in the supplementary bid terms and conditions). Where two or more units of the same class of materials and or equipment are required, the units shall be the products of the same manufacturer. Any manufacturer's data supplied with the items shall be submitted to CNM's authorized representative.

33. NUMBER FOR BID clarification. The Bidder should include a local or toll-free number for bid clarifications. Failure to do so may result in the bid being declared non-responsive.

34. OSHA REGULATIONS. The contractor shall abide by Federal Occupational Safety and Health Administration (OSHA) regulations and the State of New Mexico Environmental Improvement Board occupational health and safety regulations that apply to the work performed under this Invitation. ALL PRODUCTS CONTAINING HAZARDOUS SUBSTANCES MUST BE PROPERLY LABELED AND ACCOMPANY MATERIAL SAFETY DATA SHEETS. The contractor shall defend, indemnify and hold CNM free and harmless against any and all claims, loss, liability and expense resulting from any alleged violations of said regulations including but not limited to fines, penalties, judgments, court costs and attorney fees.

35. OWNERSHIP OF MATERIAL. During the term of the resultant agreement, ownership of all data, material, and documentation originated and prepared by the contractor for CNM shall belong exclusively to CNM.
36. **PACKAGING.** Packaging of materials shall be suitable to insure that the materials are received in an undamaged condition. All material returns will be at the contractor's expense.

37. **PAYMENT DISCOUNTS.** CNM will take advantage of payment discounts offered whenever possible; however, payment discounts will not be used as a means to determine the lowest responsible bidder.

38. **PERFORMANCE AND PAYMENT BONDS.** A performance bond and a payment bond, covering materials and labor, each in the amount of 100% of the resultant price agreement cost is required. The bond must be executed by the bidder with a surety company authorized to do business in New Mexico or other suitable sureties approved by the State Board of Finance. The performance and payment bonds must be received by the buyer issuing the award within 14 days of the award and must reference this Invitation to Bid Number on the face of the documents.

39. **PERIOD FOR BID ACCEPTANCE.** The Bidder agrees, if his/her bid is accepted within 90 calendar days of the closing date, to furnish the goods and services at the prices set forth in his/her bid, delivered to the designated point(s) within the specified time in the delivery schedule. Failure to comply may result in removal from the bidlist. An additional time period may be requested elsewhere in this Invitation.

40. **POTENTIAL COSTS UNSPECIFIED.** The contractor shall include in his/her bid all material and labor costs known to be required to complete the work under this Invitation including any materials, labor or other costs that are not specifically identified in the specifications. Any unspecified costs should be identified and included as a separate item in the price bid.

41. **PUBLIC INFORMATION.** All information, except that marked as confidential, will become public information at the time that the Bid is opened. Confidential information must be marked "CONFIDENTIAL" in red letters in the upper right hand corner of the sheets containing the confidential information. Price and information concerning the specifications cannot be considered confidential.

42. **RELEASES.** Upon final payment of the amount due under the terms of the resultant agreement, the Contractor shall release CNM, its officers and employees from all liabilities, claims and obligations arising from or under the terms of the resultant agreement. The Contractor agrees not to purport to bind CNM to any obligation not assumed herein by CNM unless CNM has expressly authorized the Contractor to do so and then only within the strict limits of that authority.

43. **REPORTS AND INFORMATION.** At such times and in such forms as CNM may require, there shall be furnished to CNM such statements, records, reports, data and information, as CNM may request pertaining to matters covered by all resultant agreements to this Invitation to Bid.

44. **RESIDENTIAL PREFERENCE.** In evaluating bids for purchases over $20,000 using State funds, residential preference of 5% will be used in compliance with Sections 13-1-21 of the New Mexico Statutes 1978 Annotated, Chapter 13. Federal law prohibits the use of residential preference when the expenditure involves Federal funds.

45. **RESPONSIBLE BIDDER.** CNM reserves the right to conduct any investigations deemed necessary to determine the responsibility of a bidder (i.e., prove that his/her financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids). Bidder shall provide audited financial statements if requested by CNM.

46. **RESPONSIVENESS OF BIDS.** Bidders are hereby expressly instructed that all bids in response to this solicitation shall meet all specifications and requirements of this solicitation.

47. **SCHEDULE DELAYS.** If after award, the contractor becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule, the contractor must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the contractor of his/her contractual obligations. However, failure to notify CNM promptly will be a basis for determining the contractor responsibility in an otherwise excusable delay

48. **SEVERABILITY.** If any provision of the resultant agreement is found invalid or unenforceable, the remainder of the resultant price agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant agreement will not be affected.

49. **SIGNATURE.** The response must be signed by an authorized representative in order for bid to be considered responsive. Compete and return the form labeled “Signature of Firm’s Authorized Representative” with bid response.

50. **SITE FAMILIARITY.** The contractor shall be responsible for thoroughly inspecting the site and work to be done prior to submitting a bid. The contractor warrants by this submission that he/she has thoroughly inspected the site and work to be done and that his/her offer includes all costs required to complete the work. The failure of the contractor to be fully informed regarding the requirements of this Invitation will not constitute grounds for any claim, demand for adjustment or the withdrawal of a bid after the opening.

51. **SITE INSPECTION.** The site(s) referenced in this document are available for inspection. Arrangements can be made by calling the contact for Technical Clarification shown on the cover page. Note, bidders shall not consider any comments made by employees of CNM to be modifications to the bid specifications unless distributed as a written amendment to this bid by CNM’s Purchasing Department. All requests for clarification must be submitted in writing to CNM’s Purchasing Department to receive consideration. Such requests must be submitted no later than five (5) days prior to the bid due date.

52. **STATUS OF CONTRACTOR.** The Contractor is an independent contractor performing services for CNM and neither he/she nor his/her agents or employees shall, as a result of the resultant agreement, accrue leave, retirement, insurance, bonding authority, use of CNM vehicles, or any other benefits, prerequisites or allowances normally afforded only to employees of CNM. The contractor acknowledges that all sums received under the resultant agreement are personally reportable by him/her for income, self-employment and other applicable taxes.

53. **STATE AND LOCAL ORDINANCES.** The contractor shall perform work under the resultant price agreement in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the contractor. Where the drawings and or specifications indicate materials or construction in excess of the code requirements, the drawings and or specifications shall govern. The contractor shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.
54. **SUBMISSIONS OF SAMPLES/DRAWINGS/LITERATURE.** It may be necessary to test samples or have demonstrations to make an award. All samples, when required, shall be furnished free of expense to CNM. Returns shall only be made at the Bidder’s request and expense. Bid samples or descriptive literature should not be submitted unless expressly requested; and, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature shall be submitted at the Bidder’s risk.

55. **TAXES.** CNM is exempt from Federal Excise Taxes and from New Mexico Sales Taxes on Materials, except construction materials used by a contractor. Services are not exempt. Taxes on services should be included as a separate line item and not included in your base price bid. Applicable taxes are excluded from the evaluation of the bid.

56. **TECHNICALITIES.** CNM reserves the right to waive any technical irregularities in the form of the bid of the low bidder which do not alter price, quality or quantity of the services, construction or items of tangible personal property bid.

57. **TELEGRAPHIC/FACSIMILE BIDS.** Telegraphic/Facsimile bids will not be considered. However, bids may be modified by telegraphic/facsimile notice, provided that the notice is received by the time and date specified for the closing.

58. **WITHDRAWAL OF BIDS.** Bids may be withdrawn by written notice, telegram or in person by a bidder or an authorized representative any time prior to the award. Bids requiring bid security may result in forfeiture of the security if the bid is withdrawn following the opening.

59. **WORKMANSHIP/COOPERATION.** All work shall be done in a neat, workman-like manner using acceptable equipment and methods. The contractor will cooperate with CNM and other contractors and coordinate his/her work involving other contractors through CNM's authorized representative.

60. **EXCLUSIVE RIGHTS.** Under no circumstances shall this Agreement be construed or deemed to be a contract whereby CNM grants Contractor exclusive right to furnish CNM its needs or requirements for services described herein.

61. **TERMINATION.** Termination for cause. If the contractor, for any cause, fails or omits to carry out the work in an acceptable manner, CNM may give notice in writing of such failure or omission and of a reasonable time within which to cure the deficiency. Contractor shall be required to take corrective measures within such time. Contractor's failure to comply with such notice and to cure the deficiency as provided in the notice shall subject the Agreement to immediate termination by CNM. In the event of a for-cause termination, CNM shall terminate the Agreement by delivering to the Contractor a written notice of termination. The effective date of termination shall be the date stated in the notice or, if no date is stated, then the fifteenth (15) business day after delivery of the notice. Within ten (10) calendar days of the effective date of termination, Contractor shall deliver to CNM all documents and any other materials developed under the Agreement. Upon delivery of such notice, the Contractor shall have the right to receive payment for services performed to termination date, including reimbursement then due.

62. **SUBCONTRACTORS.** Any work subcontracted by the contractor shall require the prior written approval of the subcontractor by CNM.
1. Inspection and Audit. a. CNM may inspect, at any reasonable time, any part of Seller's plant or place of business which is related to performance of this Purchase Order. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Final inspection of product and services will be made at the destination. Any testing or inspection procedures required by the specification are in addition to CNM's rights under this paragraph.

b. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. Contractor shall maintain detailed records of all materials or supplies delivered to CNM under this Purchase Order, including serial numbers and other appropriate identifiers. These records shall be subject to internal and external audit. CNM shall have the right to audit billings both before and after payment. Payment under the resultant Agreement shall not preclude CNM from recovering excessive, erroneous or illegal payments previously made to the Contractor.

2. Warranties. Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express and implied, are incorporated herein.

3. Acceptance and Rejection. If prior to final acceptance, any materials, supplies or service are found to be defective or as not as specified, or, if CNM is entitled to revoke acceptance of them, CNM may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price at CNM's option. Seller shall reimburse CNM for all incidental and consequential costs related to the rejected materials, supplies or service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive CNM's right to claim damages for breach.

4. Assignment. This order is assignable by CNM. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of CNM.

5. Changes. CNM's Purchasing department may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without prior written approval of CNM's Purchasing department. Any claim of Seller for an adjustment under this paragraph must be made in writing within thirty (30) days from the date of receipt of Seller's notification of such change, unless CNM waives this condition. Nothing in this paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.

6. Termination and Delays. CNM, by written notice stating the extent and effective date may terminate this order for convenience in whole or in part, at any time. CNM shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount to be approved by CNM, and not otherwise recoverable from other sources by Seller, with respect to the undelivered or unaccepted portion of this order. Provided, however, compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Seller's actual cost and may not include anticipated profits.

CNM may terminate this order by written notice in whole or in part for Seller's default if Seller refuses or fails to comply with the provision of this order, or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, CNM may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by CNM, including incidental and consequential damages.

If, after notice of termination, CNM determines Seller was not in default, or if Seller's default is due to failure of CNM, termination shall be deemed for the convenience of CNM.

If, after notice of termination, CNM determines Seller was not in default, or if Seller's default is due to failure of CNM, termination shall be deemed for the convenience of CNM.

As used in this paragraph, the word "Seller" includes Seller and its subsuppliers at any tier.

7. Equal Employment Opportunity. Contractor shall not discriminate with regard to hiring, termination or other incidents of employment on the basis of race, sex, national origin, religion, age or handicap.

8. Indemnification and Insurance. Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of CNM. In any event, CNM's liability shall be subject to the limitations of the New Mexico Tort Claims Act. Seller shall indemnify and hold harmless CNM, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses, including attorney's fees, incurred in connection with or resulting from such suit or action.

Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order.

9. Patent and Copyright Indemnity. Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use, or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold CNM harmless from any cost, expense, damage, or loss resulting therefrom.

10. Discounts. Any discount time will not begin until the materials, supplies, or services have been received and accepted and correct invoice received by CNM's Purchasing Department. In the event testing is required, the discount time shall begin upon the completion of the tests.

11. Penalties. The Procurement Code, Section 13-1-28 et seq., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

12. Title and Delivery. Title to the materials and supplies passed hereunder shall pass to CNM at the F.O.B. point specified subject to the right of CNM to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval from CNM's Purchasing Department. Time of the essence and the order is subject to termination for failure to deliver on time.

13. Payment Charges. Late payment charges shall be paid in the amount and under the conditions stated in Section 13-1-158, NMSA 1978.

14. Other Applicable Laws. Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

15. OSHA Regulations. The contractor shall abide by Federal Occupational Safety and Health Administration (OSHA) regulations and the State of New Mexico Environmental Improvement Board Occupational Health and Safety regulations that apply to the work performed under this Invitation. ALL PRODUCTS CONTAINING HAZARDOUS SUBSTANCES MUST BE PROPERLY LABELED AND ACCOMPANYED BY MATERIAL SAFETY DATA SHEETS. The contractor shall defend, indemnify and hold CNM free and harmless against any and all claims, loss, liability and expense resulting from any alleged violations of said regulations including but not limited to fines, penalties, judgments, court costs and attorney fees.

16. Debarment/Suspension. In performing the services and/or furnishing the goods specified within this purchase order, the vendor/contractor certifies that it is not suspended, debarred or declared ineligible from entering into contracts with the Executive Branch of the Federal Government, any State agency or local public body; nor is in receipt of a notice of proposed debarment or suspension from the Executive Branch of the federal Government, any State agency or local public body.

SECTION 2
GOVERNMENT SUBCONTRACT PROVISIONS
If this order is subcontract under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this order. In the event of any conflict between the terms and condition of Section 2 and any other provisions of this order the terms and conditions of Section 2 shall prevail. The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated herein by reference. For purposes of this Purchase Order, in the following clauses, the term "contract" shall mean "this order", the term "contractor" shall mean "Seller" and the term "Government" and "Contracting Officer" shall mean "CNM" and the "Director of Purchasing," respectively.

The following provisions of the Federal Acquisition Regulations (FAR) apply regardless of the amount of this order:

- * Anti-Kickback Procedures: 52.203-7
- Buy American Act 52.222-1
- * Contract Work Hours and Safety Standards Act-Overtime Comp. 52.222-4
- * Equal Employment Opportunity 52.222-26
- Notice to the Government of Labor Disputes 52.222-1
- Preference for U.S. Flag Air Carriers (For internal air travel) 52.224-63
- Restriction on Subcontractor Sales to the Government 52.203-6
- Service Contract Act of 1965 (Reserved) 52.222-41
- * Termination for Convenience of Government (Education and other Nonprofit Institutions) 52.249-5(a)(7)

CNM reserves all administrative, contractual, and legal remedies against Seller in case of any breaches of the contract.

* On contracts funded by federal grants, only the Special Terms and Conditions clauses identified by the asterisk (*) are incorporated into this contract.
SECTION C: SCOPE OF WORK AND SPECIFICATIONS FOR BID #T-2742

Central New Mexico Community College (CNM) Purchasing Department is soliciting bids to provide all material, labor and any and all associate costs for “CNM Westside Campus Phase II, Landscape Project” on behalf of CNM’s Physical Plant Department (PPD)/Operations. Bidders are encouraged to submit prices on any or all items as their ability to furnish dictates. All prices shall be F.O.B. Destination and shall include all charges that may be imposed in fulfilling the terms of this agreement. All freight, insurance, and other associated costs are to be included in the unit costs bid. The bidder should present in detail all products and services offered in response to this invitation. It is the bidder’s responsibility to make sure all products proposed are adequately described. Any offer which proposes like quality, design or performance will be considered, providing sufficient descriptive literature, specification sheets, etc. are included to properly evaluate the equivalency. It should not be assumed that the buyer has specific knowledge of the products proposed, but has sufficient technical background to conduct an evaluation when presented complete information. Sample products and/or additional information to support an “or approved equal” may be required at no charge to CNM. Such items shall be delivered to the Purchasing Department within three (3) working days of the request. CNM WILL BE THE SOLE JUDGE OF EQUIVALENCY. Note: Return in duplicate Sections D, E and F, retaining all remaining pages for your files.

Technical questions concerning the requirements of the end user should be directed to the CNM Buyer, Greg Van Wart, email at gvanwart@cnm.edu or by telephone at 224-4546. All technical issues/questions will be directed to the end user for clarification prior to issuance of an Addendum.

A non-mandatory Pre-Bid meeting will be conducted on Tuesday, November 18, 2008 from 11:00 AM to noon local time at the CNM Westside Campus Phase II Building, 10549 Universe Blvd NW, Albuquerque, NM 87114. Part of the meeting will be to walk through the site.

Scope of Work:

Project is located at CNM’s Westside Campus Phase II, 10549 Universe Blvd NW, Albuquerque, NM 87114.

Landscape improvements to Arroyo at Westside Campus Phase II:

- Clean-up the arroyo and remove weeds and excess soil and gravel and haul away.
- Re-shape the sides of the arroyo and fill in any erosion.
- Using large existing rocks, place at head walls and re-shape around the bridges, head walls and culverts to lessen the slope.
- Place a weed barrier (such as GOETECK) over the entire area.
- Place 2 inch to 4 inch cobblestones on the bottom of the arroyo stream bed and around the head walls and other drainage areas.
- Place 2 inches of ¾ inch brown gravel over the slopes and the area not covered by cobblestone

NOTES:

1) The successful Contractor must meet the appropriate license(s) as required per the State of New Mexico Regulation & Licensing Department, Construction Industries Division (CID).

2) Reference EXHIBIT D, map of CNM Westside Campus Phase II, showing location of the Landscape Project including the arroyo and bridges.
SECTION D: RESPONSE FORM FOR BID #T-2742

Company Name _________________________________

Residential Preference number ______________________

Lump sum bid per the attached Specifications and drawings:

Lump Sum: $ ___________________  $ ___________________
  (award made on this)  Figure  Written

NMGRT (5.8125 %): $ ___________________  $ ___________________
  Figure  Written

Total: $ ___________________  $ ___________________
  Figure  Written

The following subcontractors will work on the construction of this project if this bid is accepted. Failure to list all subcontractors may result in this bid being declared non-responsive (listing threshold: $5,000.00).

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<th>TRADE</th>
<th>NAME AND LICENSE #</th>
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NOTE: If more sub-contractors need to be listed, they may be listed on the back of this response form

1) **Bid Security** equal to 5% of bid price is required with the bid (see Section A, page 2, paragraph 9).

2) **Performance and Payment Bonds**: Provide Performance and Payment bonds per Section A, page 4, paragraph 38, 14 days after date of award (date of issuance of the Purchase Order), or prior to commencing work.

3) **Insurance**: Provide Insurance per Section A, page 3, paragraph 27, and CNM’s EXHIBIT A, Insurance Requirements, page 11, 14 days after award and prior to commencing work.

4) **Project is to start thirty (30) days from date of award (Purchase order date) and completed two (2) weeks after award**.

5) **Delivery**: State earliest delivery/installation completion date ________________________________.

6) **CID License recommendations are TBA via addendum at a later date.**
SECTION E
SIGNATURE OF FIRM'S AUTHORIZED REPRESENTATIVE

By signing below, contractor acknowledges that it is a competent firm capable of providing the items and/or services requested, is properly licensed for providing the items or services specified, has read this Invitation to Bid, understands it, and agrees to be bound by its terms and conditions. Contractor hereby agrees to furnish items and/or services, at the prices quoted, pursuant to all requirements and specifications contained in this document, upon receipt of an authorized purchase order from the purchasing department, and further agree that the language of this document shall govern in the event of a conflict with its bid. The undersigned, being duly authorized to sign bidding documents and act on behalf of the contractor in an official capacity, certifies that the items and/or services offered on this Invitation to Bid meets or exceeds all specifications, terms and conditions as described in this Invitation to Bid without exceptions. I understand that items and/or services not meeting all specifications, terms and conditions will be rejected and all costs shall be borne by the contractor.

Please fill in all spaces below:

Company Name__________________________
Address__________________________
City, State, Zip__________________________
Phone Number__________________________
FAX Number__________________________

Contact Person for Clarification of Bid Response__________________________

Residential Preference Number (Applies to BIDS over $20,000 only)__________________________
NM Tax ID__________________________
Federal Tax ID__________________________
Applicable NM License Numbers__________________________

Is your firm a "New York state business enterprise"? Yes______ No______ If yes, provide supporting documentation.

Acknowledgment of Amendment/Addendum
Specify Number(s) and Date(s) #  date  #  date  #  date  #  date  #  date

Printed/Typed Name and Title of Individual Signing__________________________
Signature of Member Authorized to Sign for Firm__________________________

DEBARMENT/SUSPENSION STATUS & NON-COLLUSION AFFIDAVIT FORM

DEBARMENT/SUSPENSION STATUS
1. The vendor/contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice of proposed debarment from any State agency or local public body.
2. The vendor/contractor agrees to provide immediate notice to CNM's Purchasing Department in the event of being suspended, debarred or declared ineligible by any State or Federal department or agency, or upon receipt of a notice of proposed debarment that is received after the submission of this bid but prior to the award of the purchase order/contract.

NON-COLLUSION AFFIDAVIT
The undersigned, duly authorized to represent the persons, firm and/or corporation joining and participating in the submission of the foregoing bid (such persons, firm and/or corporation hereinafter being referred to as the vendor/contractor), being duly sworn, on his/her oath, states that to the best of his/her belief and knowledge no person, firm, or corporation, nor any person duly representing the same joining and participating in the submission or the foregoing bid/proposal, has directly or indirectly entered into any agreement or arrangement with any other vendor/contractors, or with any employee of CNM, or any person, firm or corporation under contract with CNM whereby the contractor, in order to induce the acceptance of the foregoing bid by CNM has paid or is to pay any other vendor/contractor or to the aforementioned persons anything of value whatsoever, and that the vendor/contractor has not directly or indirectly entered into any agreement or arrangement with any other vendor/contractor which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing bid.

CERTIFICATION
The undersigned hereby certifies that he/she has read the above Non-Collusion Affidavit and Debarment/Suspension Disclosure Statement and that he/she understands and will comply with these requirements. The undersigned further certifies that he/she have the authority to certify compliance for the vendor/contractor named below.

Signature__________________________
Title__________________________
Printed/Typed Name__________________________
Company__________________________
Address__________________________
City/State/Zip__________________________
SECTION F
SMALL AND SMALL DISADVANTAGED BUSINESS CERTIFICATION

1.0 Small Business - An enterprise independently owned and operated, not dominant in its field and meets employment and/or sales standards developed by the Small Business Administration. See 13 CFR 121.201

1.a Small Disadvantaged Business - a Small Business Concern owned and controlled by socially and economically disadvantaged individuals; and

(1) Which is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals and

(2) Whose management of daily operations is controlled by one or more such individuals. The contractor shall presume Black Americans, Hispanic Americans, Native Americans (such as American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans and other minorities or any other individual found to be disadvantaged by the Administration pursuant to Section 8 (a) of the Small Business Act and

(3) Is certified by the SBA as a Small Disadvantaged Business.

1.b Women-Owned Business Concern - A business that is at least 51% owned by a woman or women who also control and operate it. Control in this context means exercising the power to make policy decisions. Operate in this context means being actively involved in the day-to-day management.

1.c HUBZone Small Business Concern - A business that is located in historically underutilized business zones, in an effort to increase employment opportunities, investment and economic development in those areas as determined by the Small Business Administration’s (SBA) List of Qualified HUBZone Small Business Concerns.

1.d Veteran-Owned Small Business Concern - A business that is at least 51% owned by one or more veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more veterans and the management and daily business operations of which are controlled by one or more veterans.

1.e Service Disabled Veteran-Owned Small Business - A business that is at least 51% owned by one or more service disabled veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more service disabled veterans and the management and daily business operations of which are controlled by one or more service disabled veterans. Service disabled veteran means a veteran as defined in 38 U.S.C. 101 (2) with a disability that is service connected as defined in 13 U.S.C 101(16).

Company Name: ______________________________________________ Telephone: __________________________
Street Address: ______________________________________________ County: ___________________________
City: __________________________ State & Zip: ______________________
Is this firm a (please check): [ ] Division [ ] Subsidiary [ ] Affiliated? Primary NAICS Code __________________

If an item above is checked, please provide the name and address of the Parent Company below:

_______________________________________________________________________________________________________________________

Signature and Title of Individual Completing Form: ____________________________________________________________

Date __________________________

Check All Categories That Apply:
[ ] 1. Small Business
[ ] 2. Small Disadvantaged Business (Must be SBA Certified)
[ ] 3. Woman Owned Small Business
[ ] 4. HUBZone Small Business Concern (Must be SBA Certified)
[ ] 5. Veteran Owned Small Business
[ ] 6. Disabled Veteran Owned Small Business
[ ] 7. Historically Black College/University or Minority Institution
[ ] 8. Large Business

Please return this form to: CNM Community College Purchasing Department A Bldg, Room A-128 525 Buena Vista SE Albuquerque, NM 87106 (505) 224-4546 (voice) (505) 224-4548 (fax) NOTE: This certification is valid for a one-year period. It is your responsibility to notify us if your size or ownership status changes during this period. After one year, you are required to re-certify with us.

Notice: In accordance with U.S.C. 645(d), any person who misrepresents a firm's proper size classification shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

If you have difficulty determining your size status, you may contact the Small Business Administration at 1-800-U-ASK-SBA OR 202-205-6618, You may also access the SBA website at www.sba.gov/size or you may contact the SBA Government Contracting Office at 817-684-5301. (Rev. 3/8/04)

BID #T-2742, Advertise Wednesday, November 12, 2008
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EXHIBIT A: INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE
The Contractor shall furnish the Owner one copy each of Certificates of insurance herein required for each copy of the resultant Agreement, showing the coverage, limits of liability, covered operation, effective dates of expiration of policies of Insurance carried by the Contractor. The Contractor shall furnish to the Owner copies of limits. The Certificates of Insurance shall be in the form of AIA Document G-705 or similar format acceptable to the Owner. Such certificates shall be filed with the Owner and shall also contain the following statements:

1. The Governing Board of Central New Mexico Community College, Central New Mexico Community College, its agents, servants and employees are held as additional insured.

2. "The insurance coverage certified herein shall not be canceled or materially changed except after forty five (45) days written notice has been provided to the Owner."

COMPENSATION INSURANCE:
The Contractor shall procure and shall maintain during the life of any resultant agreement Worker's Compensation insurance as required by applicable State law for all of the Contractor's employees to be engaged at the site referred to in this solicitation in case of any such work sublet, the Contractor's Worker's Compensation insurance. In case any class of employee engaged in work on the project under this contract is not protected under a Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor or sub-subcontractor to provide Employer's Insurance in an amount of not less than $500,000.

CONTRACTOR'S PUBLIC LIABILITY INSURANCE:
The Contractor shall maintain insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 et.seq. NMSA 1978". The insurance must remain in force for the life of the contract including all contract extension or renewals. The limits effective July 1, 1992 are:

$400,000 per person/$750,000 per occurrence plus $300,000 for medical and $100,000 for property damage for a total maximum liability of $1,150,000 per occurrence.

CONTRACTOR'S VEHICLE LIABILITY INSURANCE:
The Contractor shall procure and shall maintain during the life of this contact Vehicle Liability Insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-1-1 et. seq. NMSA 1978". The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective July 1, 1992 are:

Bodily Injury    $750,000. Each Occurrence
Property Damage  $100,000. Each Occurrence

SUBCONTRACTOR'S AND SUB-SUBCONTRACTOR'S PUBLIC AND VEHICLE LIABILITY INSURANCE:
The Contractor shall either:

(1) Require each subcontractor or sub-subcontractor to procure and maintain during the life of the subcontract or sub-subcontract Public Liability Insurance of the types and amounts specified above or,

(2) Insure the activities of the subcontractors or sub-subcontractors in the Contractor's policy as required under this Article.

GENERAL:
All insurance policies are to be issued by companies authorized to do business under the laws of the state in which the work is to be done and acceptable to Owner.

The Contractor shall not violate, or permit to be violated, any conditions of any said policies, and shall at all times satisfy the requirements of the insurance companies writing said policies.
EXHIBIT B: MODIFICATION CHANGE REQUEST (MCR)

Project Name: _________________________ Project No: _________ Contract Date: ______________

Current Date: ________________________ CNM PO# _____________ MCR Log Number: ______________

Contractor: ________________________ CNM Project Manager: _________________________

Project A/E: ____________________________ Phone: (_____) _________________________

Who Has Requested Work Be Done: ________________________ Initial _____________
i.e. contractor, subcontractor, owner, etc.

Description and reason for Change:
First why, then how

Attachment(s) ___Yes ___No

Requested Time Adjustment: ______ Days

Reasons for changes:  Field Conditions Owner Request A/E Error/Omission Regulatory Other

(The Project Manager as well as the Purchasing Director must approve change requests that exceed $3,000.00. Note: Any change requests that involve time extensions beyond three (3) days shall require signature of Purchasing Director.)

Contractors Cost: (Include backup.)

Estimated Not-to-exceed Amount $___________ Initial _________ Date ______________

(Includes all parts, labor, material, equipment, overhead, markup, insurance, etc.)

_______ Do Not Proceed

_______ Proceed with Estimate of Construction Costs Only!

_______ Proceed with the Work, Change Order Documents to Follow, A.S.A.P.!

Change orders must be submitted using change order forms. No change orders shall be binding upon CNM unless signed by the CNM Purchasing Director. Change orders in excess of $100,000.00 are not binding upon Owner unless also signed by the CNM Comptroller and the CNM Vice President for Administrative Services.

Supporting documentation is required, i.e. quotes, invoices, etc., for change orders exceeding $3,000.00. CNM reserves the right to request supporting documentation for change orders less than $3,000.00. Actual invoices, payroll reports, quotes, etc. may be requested by owner to support the not to exceed amount of change order.

Modification Change Request to be submitted with five (5) originals.

CNM - Review of Content and/or Feasibility:

Contractor ________________________ Date ________________ Initial ________ Date ________________

Architect ________________________ Date ________________ Initial ________ Date ________________

CNM, Facilities Project Manager ________________________ Date ________________
EXHIBIT C: CNM CHANGE ORDER TERMS AND CONDITIONS

1. The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work or work to be deleted. This proposal will be itemized for the various components of Work and segregated by labor, material, and equipment. The Owner will require itemized change orders and contractor pricing certifications on all Change Order proposals from the Contractor, subcontractors, sub-subcontractors regardless of tier, and major material suppliers. Details to be submitted will include a material and labor quantity take-off and related pricing information and extensions (by drawing if applicable).

2. Labor: Estimated labor costs to be included for self-performed Work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers whom the Contractor reasonably anticipates will perform the Change Order Work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order Work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentage Fee.

3. Labor Burden: Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits, and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs and assigned risk rebates. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. Labor burden shall not be considered to include costs of small tools, comprehensive general liability insurance, auto insurance, or umbrella insurance all of which shall be considered covered by the Markup Percentage Fee.

4. Material: Estimated material Change Order prices shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the Change Order Work. Estimated material prices shall reflect the Contractor's reasonably anticipated cost reductions due to available trade discounts and/or volume rebates.

5. Equipment: Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order Work (defined as tools and equipment with an individual purchase cost of more than $750). However, the aggregate rentals chargeable for any one piece of equipment shall be limited to 75% of its fair market value at the time the Change Order is priced.

6. Markup Percentage Fee: With respect to Lump Sum Change Order Proposals, the Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not to exceed 15% of the net amount of (1) direct labor and allowable labor burden costs applicable to the Change Order or extra Work; (2) material and equipment incorporated into the change or extra Work, and (3) rental cost of major equipment necessary to complete the change in the Work.

7. The Markup Percentage Fee to paid to any Contractor (regardless of tier) on any Subcontractor Work shall be a single percentage not to exceed 5% of the total allowable cost of sublet Work.

8. Sales and use tax (if applicable) shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable by the Contractor shall be added after computing the Change Order amount before tax.

9. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the Change Order Work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; general liability and excess umbrella insurance; pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than $750).

10. The application of the markup percentages referenced in the preceding paragraphs 6 and 7 will apply to both additive and deductive Change Orders. In those instances where changes involved both additive and deductive work, the additions and deductions will be netted and the markup percentage will be applied to the net additive or deductive amount.
11. In no event will any amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Variables attributable to labor hours will be accounted for when estimating labor hours anticipated to do the work.

12. The Contractor's proposals for changes in the Contract Sum or Contract Time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed Work should be started immediately to avoid damage to the Project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal Change Order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed Work on a cost-plus basis with a price "not-to-exceed" the Contractor's unacceptable lump sum proposal. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost credit, and or time extensions will be determined by negotiations as soon as practicable thereafter and incorporated in a Change Order to the Contract.