

CITY OF ALAMOGORDO
REQUEST FOR PROPOSALS
RFP NO. 2011-009
APPLICATION SERVER REPLACEMENT

SEALED PROPOSAL SUBMISSION DEADLINE
NO LATER THAN 3:00 P.M., JULY 7th, 2011

Interested parties may secure a copy of the RFP and any updates from:
City of Alamogordo
Purchasing Department
2600 N. Florida
Alamogordo, NM 88310
(575)-439-4115

Or at
http://ci.alamogordo.nm.us/coa/Finance_Accounting/purchasing/Bids_and_Requests_for_Proposals.htm. Please contact the Purchasing Office @ (575) 439-4115 to be included in the procurement distribution list in order to receive amendments to the RFP.

**Application Server Replacement
FOR THE CITY OF ALAMOGORDO, NEW MEXICO**

The City of Alamogordo hereby requests sealed proposals from qualified offerors for the Application Server Replacement. Written proposals will be received at the Office of the Purchasing Manager, 2600 N. Florida Ave., Alamogordo, NM until 3:00 p.m. MST on Wednesday, July 7th, 2011

CONTACT WITH CITY OF ALAMOGORDO OFFICIALS

Potential offerors are encouraged to submit written questions in advance of the proposal due date. The identity of the offerors submitting the questions will not be revealed. **All questions shall be in written form to the attention of the Purchasing Manager.** Questions may be faxed to (575) 439-4117 or emailed to tpalkki@ci.alamogordo.nm.us. The deadline for submission of written questions is 3:00 P.M. MST on Tuesday June 28, 2011. Responses to all written questions will be in the form of an amendment and distributed to all potential offerors.

SUMMARY SCOPE OF WORK

The City of Alamogordo is seeking to procure Application Server Replacement. This server will accommodate software applications requiring access to a sequel server. This server is a consolidation of multiple versions and licenses into a single point of access. The physical DB files will reside on the mass storage device described as a separate item within this RFP.

PROPOSAL FORMAT

Organization

Provide a cover letter introducing the firm and the individual that will act as the firm's primary contact for this project. Describe the organization, date founded, and ownership of the firm as well as any subsidiaries and affiliates relevant to the City. Describe the experience of the firm and the personnel in providing the referenced products.

References

Firm's past performance on similar projects. Offerors shall provide a minimum of three (3) references including customer name of firm, point of contact, phone number, scope of work performed, and time frame in which similar products were provided. Preference will be given to governmental references within the continental United States.

Specifications

Offerors shall provide detailed specifications of the offered products for comparison to the specifications outlined in this Request for Proposals.

Warranty

Offerors shall provide detailed warranty information for the offered products. This information must include procedures for contacting the offeror for warranty work and shipping information (paid by offeror, paid by City, pro-rated, etc.)

Cost of Product

Offerors shall provide the specified products in a cost breakdown format.

Other Requirements

Offerors shall submit proposals in one (1) original, and five (5) copies. Proposals shall be limited to a maximum of thirty (30) pages, excluding cover sheets and section divider tabs. Sealed proposal envelopes shall be clearly marked "**RFP NO. 2011-009 Application Server Replacement**" on the outside of the envelope. Failure to comply with this requirement shall result in rejection of the proposal.

Format for Proposal

1. Maximum of thirty (30) pages, including title, index, etc.
2. Front cover with proposal title, date, and firm's name (cannot include any other text); not included in 30-page limitation.
3. Back cover without any text; not included in 30-page limitation.
4. Bound on left-hand margin.
5. 8 1/2" x 11" paper.
6. Printed on one side of sheets only.
7. Five (5) copies of the proposal are required.
8. Transmittal letter, if any, to be included in the 30-page limit.
9. No other material to be included.

Offerors shall complete attachment 1 – Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count). **NOTE: Failure to comply with this requirement shall result in rejection of the proposal.**

CRITERIA FOR EVALUATION

Proposals will be rated based on the following criteria:

- | | |
|---|------------------|
| 1. Organization and references | 30 points |
| 2. Product Specifications (met or exceeded) | 40 points |
| 3. Warranty (met or exceeded) | 10 points |
| 4. Cost | 20 points |

Award shall be made to the firm whose proposal is determined to be in the best interest of the City taking into consideration the criteria listed below:

1. General quality and adequacy of response including completeness and thoroughness.
2. Responsiveness to terms and conditions.
3. The listing of any exceptions of conditions detailed by the offeror to the specifications.
4. Technical competence of the firm to perform the work based on qualifications and experience of personnel and the firm as well as references provided.
5. Reasonableness of cost estimates based on the individual elements of cost, as well as the total cost.

TERMS AND CONDITIONS

This procurement will be conducted in accordance with the City of Alamogordo Code of Ordinances 2-13-010 through 2-13-330.

1. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

2. Amended Proposals

Offerors may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. City of Alamogordo personnel will not merge, collate, or assemble proposal materials.

3. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Purchasing Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

4. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

5. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Purchasing Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the City Purchasing Manager shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

6. No Obligation

This procurement in no manner obligates the City of Alamogordo or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

7. Termination

This RFP may be cancelled at any time and any and all proposals may be rejected in whole or in part when determined such action to be in the best interest of the City of Alamogordo.

8. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the awarded vendor. The City of Alamogordo's decision as to whether sufficient appropriations and authorizations are available will be accepted by the awarded vendor as final.

9. Legal Review

The City of Alamogordo requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Purchasing Manager.

10. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the City of Alamogordo and the State of New Mexico.

11. Basis for Proposal

Only information supplied by the City of Alamogordo in writing through the Purchasing Manager or in this RFP should be used as the basis for the preparation of offeror proposals.

12. Contract Terms and Conditions

The City of Alamogordo reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into and become part of the contract.

Should an offeror object to any of the City of Alamogordo's terms and conditions, as contained in this Section, that offeror must propose specific alternative language. The City of Alamogordo may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the City of Alamogordo and will result in disqualification of the offeror's proposal.

The City of Alamogordo reserves the right to increase or decrease quantities of the requested products based on available funding.

The City of Alamogordo will use its standard agreement for Professional Services; see Attachment No. 2.

13. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the City of Alamogordo.

14. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Alamogordo and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.

15. Right to Waive Minor Irregularities

The Purchasing Manager reserves the right to waive minor irregularities. The Purchasing Manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Purchasing Manager.

16. Notice

The New Mexico criminal statutes impose civil and criminal penalties for bribes, gratuities and kick-backs.

17. Agency Rights

The City of Alamogordo reserves the right to accept all or a portion of an offeror's proposal.

18. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the City of Alamogordo.

19. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the offeror's possession and the version maintained by the City of Alamogordo, the version maintained by the City of Alamogordo shall govern.

20. Bribery and Kickbacks

As required by Section 13-1 -191, N.M.S.A. 1978, it should be noted that it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employees (Section 30-4-1, N.M.S.A., 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, N.M.S.A.); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-40-1, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, N.M.S.A., 1978).

21. Responsibility of Offeror

At all times, it is the responsibility of the Offeror to see that their proposal is delivered to the City of Alamogordo by the date and time set for the opening of the proposals. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

22. Costs of Preparing and Submitting Proposals

The City of Alamogordo will not pay for any costs associated with the preparation or submission of proposals.

23. The City of Alamogordo may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this RFP may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondents under its contract with the City of Alamogordo, pursuant to terms and conditions stated therein.

Specifications for Application Server Replacement

1. Directions.
 - A] There are multiple servers / items described individually.
 - B] Quote on each server / item separately within the package.
 - C] Related required equipment that all servers will share as needed to perform their assigned tasks is listed in item 2.

2. General Directions that will pertain to all servers within this RFP.
 - A] Quote only on the following brands, no other brand will be considered. If quote will cover more than one brand of server please separate the quotes by brand, mixed brands on quotes will not be considered.
 - 1] IBM Server
 - 2] Dell Server
 - 3] HP Server
 - B] Operating System - OS CD media and Driver CD media required to accompany the system when delivered.
 - 1] MS Windows Server 2008 Enterprise
 - C] Must connect to a KVM switch
Model: TRIPP-LITE
16 port console w / IP switch
B020-016-17-P
 - D] Warranty Period minimum 5 year parts / 1 year labor.
 - E] 4 post rack mount with slide out rails.
 - F] Hardware:
 - 100/1000 Ethernet – minimum 1 port / preferred 2 port
 - 1 USB port in front panel for easy access (minimum)
 - DVD/CD RW
 - Onboard Video
 - One 9 pin Serial port (rear)
 - USB ports (rear)
 - Optional: One Parallel port (rear)
One PS/2 keyboard / One PS/2 mouse port

Server 1
MSSQL2008

Intel Xeon 6500 series or higher
3.0GHz or higher

OS: MS Windows Server 2008 Enterprise 64 bit
User License Count: 55

MS Sequel Server 2008 SP2 or latest service pack
User License Count: 55

RAM	48 GB
System HDD	1 TB
	1 TB mirrored / or RAID

Database Storage HDD: SAN/NAS (will connect to)

This server will accommodate software applications requiring access to a sequel server. This server is a consolidation of multiple versions and licenses into a single point of access. The physical DB files will reside on the mass storage device described as a separate item within this RFP.

- Active Network – Class (Recreation / Reservations application)*
- Questys Archival (Data archive and retrieval application)*
- Cemetery (Cemetery Management application)*
- DDSI (Digital Descriptor – Mug Shot management)*
- Time & Attendance – (tbd) will require sequel based server*

Server 2
TimeAttend

Intel Xeon 6500 series or higher
3.0GHz or higher

OS: MS Windows Server 2008 Enterprise 64 bit
User License Count: 50

RAM	48 GB
System HDD	1 TB
	1 TB mirrored / or RAID

Database Storage HDD: SAN/NAS (will connect to)

This server will process the base time and attendance software and application. The sequel database will be managed by the Server 1 description. Additional storage will be housed on the SAN/NAS description.

Server 3 MailSrv

Intel Xeon 6500 series or higher
3.0GHz or higher

OS: MS Windows Server 2008 Enterprise [64 bit if Version 8.0 / 32 bit if Version 6.5]
User License Count: 350 (325 currently owned. 25 new license addition.)

RAM	48 GB (64 GB)
System HDD	1 TB
	1 TB mirrored / or RAID

Database Storage HDD: SAN/NAS (will connect to)

Two (2) configurations listed (only one will be chosen).

Requirement: Must have the capability to run application software:
Novell GroupWise 6.5 Email
GroupWise Messenger

Option Consideration: (price separately)
Migrate from GW Version 6.5 to GW Version 8.0
Data conversion of active and archived emails from V6.5 to V8.0
MS Windows 2008 R2 special hardware/software requirement cost

This server processes the GroupWise Email system for both internal and external correspondence and GroupWise Instant Messaging.

*Two scenarios are presented above:
1] use existing GroupWise 6.5 version
2] upgrade from version 6.5 to v 8.0.*

The city currently owns 235 licenses of GW 6.5.

Server 4 PGMSrv

Intel Xeon 6500 series or higher
3.0GHz or higher

OS: MS Windows Server 2008 Enterprise 64 bit
User License Count: 100

RAM	48 GB
System HDD	1 TB
	1 TB mirrored / or RAID

Database Storage HDD: SAN/NAS

This server will process applications that are not extremely user intensive.

Black Berry GroupWise email connections – 18 active users.

DMS – Document Management Services – 5 active users.

LookingGlass – mapping and graphical application – 10 active users.

Cognos – Qrep Sungard reporter – 10 active users.

DDSI – Digital Discriptor – Mug Shot archival – 5 active users.

PHA – accounting software – 10 active users.

Cemetery – management application software – 3 active users.

Key DB – door key application management – 2 active users.

MISConfig – Miscellaneous storage for software drivers – 5 active users.

SAN/NAS Mass Storage Device

Additional brands may be quoted outside of the required server brands for mass storage device(s).

Device must be accessible to the above described (4 Servers)

Device must be accessible to an additional 4 Servers

2 Servers run MS Server 2000

2 Servers run MS Server 2003

6 TB w / Raid or higher

Hot Swap drives

Management software

License count – 350 users

4 post rack mount with slide rails.

Optional SAN/NAS Requirements:

What are the High Availability options to have a redundant mirrored copy of the SAN/NAS?

Hardware Requirements

Software Requirements

Licensing

Cost(s)

This device will enhance and eliminate mass data storage from the physical server.

This device is intended to organize and share common data amongst all users.

A second device that will be a redundant mirror of this device will assist with offsite backup and data retention.

UPS (Battery Backup Unit)

Rack mount battery backup unit per equipment request.

Approximately 6 (six) units.

Estimated run time 15 minutes minimum.

Optional MS Server Upgrade from older version(s) to MS Server 2008 SP2:

Community Development	MSWS 2000	25 users
Questys	MSWS 2003	5 users
Class	MSWS 2003	10 users

This software license section will provide updated licenses to the listed servers that are not currently in this replacement cycle. This software OS upgrade will assist staff in management of like systems and application OS compatibility.

Additional background information:

We currently own:

10 licenses of MS SQL 2000

5 licenses of MS SQL 2005

350 CAL's of MS Windows Server 2003

350 CAL's of Novell Netware 6.5

235 GroupWise 6.5 Email licenses
(not all users are assigned email accounts)

The above owned licenses must be considered for upgrade pricing for the purpose of migration from older versions to newer versions.

The city owned license count listed above does not include a license count for the three servers not included on the replacement list. For optional upgrade to the MS Server 2008 this following count must be added to the license count listed above.

10 CAL's of MS Windows Server 2000

15 CAL's of MS Windows Server 2003

ReCap Table

General Server Specs	Brand Names: IBM, Dell, HP for servers. If quoting on multiple brands, please provide a separated section per brand. 4 post rack w/rails	OS w/CD & Drivers MS Server 2008 Enterprise 64 bit (unless otherwise specified)	Must connect to KVM switch Tripp-Lite Bo20-016-17P Will connect to a SAN/NAS mass storage device(s).	Warranty Period 5 year parts 1 year labor	Intel Xeon 65xx or higher 3.0 GHZ or higher RAM 48GB System HDD: 1 TB primary 1 TB raid or mirror 100/1000 Ethernet (min 1 / prefer 2) USB ports (min 1 in front panel) DVD/CD RW Onboard Video 1 – 9 pin serial Optional: 1 parallel port, PS/2 ports
Server 1 MSSQL2008	(see additional background information below)	MS Server 2008 Enterprise 64 bit User License Count: 55	MS Sequel Server 2008 SP2 User License Count: 55	Include: General Server Specs as listed above.	
Server 2 TimeAttend	Will connect to the SAN/NAS mass storage device(s)	MS Server 2008 Enterprise 64 bit User License Count: 50	Will connect to Server 1 MSSQL2008	Include: General Server Specs as listed above.	
Server 3 MailSrv Option 1: 8.0 Upgrade Required	Will connect to the SAN/NAS mass storage device(s)	MS Server 2008 Enterprise 64 bit User License Count: 350 Upgrade pricing for 325 existing licenses & purchase additional 25 new licenses (350 total)	(see additional background information below)	Include: General Server Specs as listed above. Present and Quote any special hardware/software requirements that are needed for this scenario.	SPECIAL INSTRUCTIONS: Migrate from GW 6.5 to GW 8.0 Convert live and archive mailboxes.
Server 3 MailSrv Option 2: 6.5	Will connect to the SAN/NAS mass storage device(s)	MS Server 2008 Enterprise 32 bit User License Count: 350 Pricing for 325 existing licenses & purchase additional 25 new licenses (350 total)	(see additional background information below)	Include: General Server Specs as listed above. EXCEPTION: 32 bit OS	
Server 4 PGMSrv	Will connect to the SAN/NAS mass storage device(s)	MS Server 2008 Enterprise 64 bit User License Count: 75	Will connect to Server 1 MSSQL2008	Include: General Server Specs as listed above.	
SAN/NAS Mass Storage	Additional brands may be quoted outside of the server brands.	6TB w/Raid or higher. User License Count: 350	2 nd redundant device offsite.		

Battery Backup Units	Rack mount units	One unit per piece of equipment.	Approximately 6 units.	Estimated runtime 15 minutes minimum.	
Optional MS Server OS upgrade	Comm Dev Questys Class	Upgrade from:	MS Win Srv 2000 MS Win Srv 2003 MS Win Srv 2003	25 Users 5 Users 10 Users	Upgrade to: MS Win Srv 2008 Enterprise SP2
Optional GroupWise Email upgrade	As stated in Server 3 for Option 1	Migrate GW existing version 6.5 to version 8.0	235 existing license 15 new license Total License: 250	Technical support for migration. Convert post office and archive.	235 Users
Miscellaneous Information	Use MS Server 2008 Enterprise as a Windows Authentication Server...	What are the license requirements? User Count: 350	What is the cost of activation?	Any special requirements that need to be considered?	User connections & costs? Other server connections & costs?

SPECIAL CONDITIONS

1. All orders are F.O.B.: City of Alamogordo, Central Receiving, 2600 N. Florida Ave., Alamogordo, NM 88310, unless otherwise specified in the RFP.
2. Cost of freight will be incurred by the vendor and will therefore be reflected in the bid amount(s) quoted. All items will be F.O.B. location cited in here in RFP. Failure to include freight costs may result in rejection of the RFP.
3. Deliveries to 2600 N. Florida Avenue may be made between the hours of 8:00 a.m. to 12:00 a.m., and 1:00 p.m. to 2:30 p.m.

ATTACHMENT NO. 1

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. 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 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.

THIS FORM 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 either 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 un-reimbursed 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.

“Contact” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“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.

“**Person**” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“**Prospective contractor**” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes or is not required to submit a competitive sealed proposal because that person 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.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

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)

ATTACHMENT NO. 2

PURCHASE AGREEMENT

RFP NO. 2011-009 – APPLICATION SERVER REPLACEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2011, by and between the City of Alamogordo, a New Mexico municipal corporation (the "City") and [Insert Seller Name], an _____, with its principle place of business located at _____, ("Seller").

WITNESSETH

WHEREAS, City desires to purchase from Seller and Seller desires to sell to City certain computer hardware equipment.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Work and Acceptance of Purchase Order. Seller agrees to sell and City agrees to purchase (the "Equipment") as defined on Exhibit A, attached hereto. Seller agrees to provide the Equipment described in any purchase order in accordance with the applicable purchase order and with these Terms and Conditions ("Agreement"). Seller shall accept a purchase order by promptly shipping conforming Equipment in accordance with this Agreement. The terms and conditions set forth herein shall apply to all purchase orders, order acknowledgment, or any other documents of Seller, regardless of whether or not these terms and conditions are expressly referenced in any such documents. Any terms or conditions contained in any acknowledgment, invoice or other communication of the parties, which are inconsistent with the terms and conditions of this Agreement, are hereby rejected. Acceptance of Equipment by City is expressly limited by Seller's assent to the terms and conditions stated in this Agreement and City objects to the inclusion of any different or additional terms proposed by Seller.

2. Purchase Price. The City shall pay to the Seller based upon fixed prices for the Equipment described in any purchase order per the schedule outlined in Exhibit B, attached hereto. Prices as listed in Exhibit B ARE FIRM.

3. Payment of Invoice. Payments shall be submitted to the Seller at the address shown on the invoice. Payment shall be tendered to the Seller within thirty (30) days following receipt of an undisputed invoice. The parties interpret the term "undisputed invoice" to be an invoice in which the City has not disputed the invoice in writing sent to the Seller on the grounds of invoice error within thirty (30) days from the invoice date. Upon Seller's receipt of such disputed invoice notice, Seller will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the City from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Equipment may be shipped in a single lot, or in several lots, with the agreement of the City, and each such shipment shall be paid for separately. Pro rata payments shall become due as shipments are made. The City is not required to pay the Seller for any Equipment provided without a written purchase order from the City. In

addition, all Equipment must meet all terms, conditions, and specifications of this Agreement and other ordering document and be accepted as satisfactory by the City before payment will be issued.

4. Shipment. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the Equipment. Unless otherwise arranged between the City and Seller, the Seller shall make commercially reasonable efforts to ship all Equipment within 10 to 14 days after receipt of a purchase order, by a reliable and insured shipping company. If the City does not accept any Equipment, City shall return the rejected Equipment to the Seller. Unless otherwise agreed upon by the City, the Seller will be responsible for return shipping costs.

5. Title and Risk of Loss. Unless the Purchase Order specifies otherwise, title to and risk of loss for all Equipment delivered hereunder shall pass to the City FOB destination (i.e. customer's "ship to" address contained in the Purchase Order), notwithstanding any contrary term in Seller's documents. Risk of loss for nonconforming or rejected Equipment shall remain with Seller.

6. Inspection. All Equipment shall be subject to inspection by the City. Payment for any Equipment shall not constitute an acceptance thereof or a waiver of inspection rights, and said Equipment shall remain subject to the inspection rights of the City.

7. Rejection and Return of Products. City reserves shall the right to reject and return the Equipment, in whole or in part within thirty (30) days of receipt if any Equipment is found to be defective, or not in accordance with specifications, designated quantities or any term of the purchase order. Seller shall bear all fees, costs and expenses associated with the storage, maintenance and transportation of rejected Equipment. If the City rejects any Equipment, the City will have no further obligation with respect to such Equipment once the City has returned the rejected Equipment. Rejected Equipment shall not be replaced except upon receipt by Seller of a replacement purchase order.

8. Warranty. All manufacturers warranties supplied to Seller by the manufacturers of the Equipment described in Exhibit A will be passed through to City.

9. Representations and Liabilities. Seller shall be responsible for, indemnify and hold harmless the City, its employees, agents, guests, invitees, and tenants from any and all claims, damages, fees, expenses, and costs for personal injury and property damage caused by or resulting from Seller's performance hereunder, or from the actions or conduct of Seller, its employees, agents and representatives provided however, that Seller shall not be liable for special or consequential damages.

10. Term. The term of this Agreement for issuance of purchase orders shall not exceed one calendar year.

11. Termination. This Agreement may be terminated by either signing party upon written notice to the other at least thirty (30) days in advance of the date of termination. By termination pursuant to this provision, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notice of termination of the Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS. THIS ARTICLE

IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE SELLER'S DEFAULT OR BREACH OF THIS AGREEMENT.

12. Release. The Seller's acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Seller agrees not to purport to bind the City unless the Seller has express written authority to do so, and then only within the strict limits of that authority.

13. State Law. It is the intention of the parties that this Agreement and its performance hereunder shall be governed by and construed in accordance with the laws of the State of New Mexico and that, in any action, special proceeding or other proceeding that may be brought, arising out of, in connection with, or by reason of this Agreement, the laws of the State of New Mexico shall be applicable and shall be given to the exclusion of any other forum, without regard to the jurisdiction in which any action or special proceeding may instituted. Legal actions regarding this Agreement may be brought only in the State of New Mexico.

14. Force Majuere. Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party who performance is affected.

15. No Waiver. No provision of this Agreement may be waived except by agreement in writing, signed by the waiving party. A waiver of any term or provision of this Agreement shall not be construed as a waiver of any other term or provision.

16. Binding Effect. This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

Company Name

By: _____

NM Taxpayer Identification Number:

Federal Taxpayer Identification Number:

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

Date: _____ By: _____
Mark B. Roath, City Manager

ATTEST:

Reneé L. Cantin, City Clerk

APPROVED AS TO FORM:

Stephen P. Thies, City Attorney