



Finance Department
100 North Main, Suite 11
Lovington, NM 88260

Phone: (575) 396-8521
Fax: (575) 396-5684
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LEGAL NOTICE OF REQUEST FOR PROPOSALS
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
PROPOSAL #04 - (14-15)
DUE DATE: MARCH 24, 2015 - 3:00 P.M.

The Lea County Commissioners will receive sealed proposals for Airport Project Design & Engineering Services – Lea County Airports in the Finance Department at the address listed below.

The Request for Proposals and any future addenda may be obtained from Lea County's web site at www.leacounty.net, under "Procurement" or by contacting the Finance Department, Courthouse, 100 North Main, Suite 11, Lovington, New Mexico 88260-4030, kmclaughlin@leacounty.net, (575) 396-8521, Ext. 2356.

Gregg Fulfer, Chairman

Hobbs Daily News Sun

February 14, 2015

TERMS AND CONDITIONS
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
PROPOSAL #04 - (14-15)

DUE DATE: MARCH 24, 2015 - 3:00 P.M.

1. Failure to comply with all of the Instructions and Conditions may subject the proposal to rejection. The Terms and Conditions, and the Specifications and Contractual Terms will form part of the contract between the County and the successful offeror.
2. All proposals will be sealed, addressed and delivered to: The Finance Department, 100 N. Main, Suite 11, Lovington, New Mexico 88260-4030 by **MARCH 24, 2015 at 3:00 p.m. local time**. Please **mark the outside of the envelope "PROPOSAL #04"**. It is the offeror's responsibility to see that the proposal arrives on time. Late proposals, faxes, telephone offers, and emails will not be accepted.
3. All firms submitting proposals will be notified by letter of the Board's award which will be conditioned upon entering into a formal written contract acceptable to the County.
4. The proposal specifications indicate the minimum standard of quality, performance or other pertinent characteristics required. All variations and exceptions from minimum specifications must be listed on or attached to the proposal.
5. All proposals will be valid until the Proposal is awarded. Contents of any proposal will not be disclosed upon opening so as to be available to competing offerors during the negotiation process.
6. Proposals will be evaluated according to factors set forth on the attached pages. Each factor will be given the weight indicated.
7. The County reserves the right to waive technical irregularities in the form of the proposal which do not alter the quality or quantity of the services, and the County may reject any or all proposals when it is the best interest of the County to do so.
8. The Lea County Procurement Policy and the New Mexico Procurement Code 13-1-28 through 199, NMSA, 1978 will apply to this procurement and prevail over any inconsistent terms and govern all interpretations of contract documentation. In addition, criminal laws prohibit bribes, gratuities and kickbacks.
9. In submitting this proposal, the offeror represents the offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements which are part of this Request for Proposals.
10. In signing this proposal, the Offeror certifies that there has been no direct or indirect action in restraint of free competitive bidding in connection with this proposal submitted to Lea County.

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11. The County will negotiate a contract with the highest qualified business(es) as selected by the selection committee for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable.
12. This agreement is subject to New Mexico law, including but not limited to, the Procurement Code, the New Mexico Public Works Minimum Wage Act and all federal and state laws, rules and regulations pertaining to equal employment opportunity. The rights and obligations set forth herein are to be construed and interpreted according to said laws, regardless of whether they are expressly set forth herein. Should any provision herein be found to be legally unenforceable, it will not affect the legality or enforceability of the remainder of this contract, so long as the basic intent and object of this agreement is not undermined by the elimination of the objectionable provision(s).

The offeror agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the offeror fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated immediately by the contracting agency.

13. The offeror will save and hold the County harmless from all suits, actions, claims, losses and expenses, including attorney's fees brought on account of any injuries or damages sustained by any employee or person, including wrongful death, or damage to property as a result of any negligence, misconduct or omission by the offeror or employee or agent thereof connected in any way with offeror's performance under this contract.
14. It is expressly agreed and understood that the offeror is not authorized to act as an agent of the County or to enter into any contract on behalf of the County. It is also acknowledged that the offeror, its agents and employees, by virtue of award of this proposal, are not entitled to any fringe benefits available to the employees of Lea County.
15. The County may prematurely terminate this Contract if the Finance Director judges that the offeror has inadequately or unsatisfactorily met its obligation under this Contract. This agreement may be terminated by any party for cause upon 30-days written notice to the other participants in the contract. As used herein, the term "cause" will mean a material breach of the Agreement by a non-terminating party, or acts or conduct by a non-terminating party that substantially alters the terminating party's ability to benefit from this Agreement, which breach, acts, or conduct are not cured or remedied within the 30-day period following the giving of notice by the terminating party (which notice will detail the nature of the breach, acts, or conduct constituting the case for termination and specify the effective date of termination in the event such breach, acts, or conduct are not cured or remedied within 30 days following the giving of such notice).
16. The offeror agrees not to assign this Contract, or any part thereof, to any other person or business entity, without first receiving prior written consent of the County. The offeror is forbidden from using non-employees.

TERMS AND CONDITIONS
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
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17. Award of the proposal will not be altered, changed or amended except by an instrument in writing executed by the parties hereto.
18. Upon award, the agreement between offeror and the County will be governed by the laws of the State of New Mexico and enforced in the District Court of Lea County.
19. **After award, proposals are subject to public inspection.** Any confidential or proprietary information should be marked as such with a brief explanation as to why. All material submitted will become the property of Lea County and will not be returned.
20. The offeror will be required to carry:
 - a) General and professional liability insurance.
 - b) Automobile insurance.
 - c) Workers' Comp insurance as required by New Mexico State Statute.**Lea County will be listed as additional insured and the amounts of coverage will be negotiated by the parties in a final agreement.**
21. A multi-term bid is being sought. The County's payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Multi-term bids must have a provision allowing the County to terminate the agreement at will at any time, or at least to the end of each fiscal year, without penalty. There must be no "equitable or moral" duty to continue to make payments under the bid.
22. The County's policy on requests for copies of proposal information is as follows:
 - a) Terms and Specifications are available at no charge to vendors who will be responding directly to bids or proposals.
 - b) Submit a written request detailing what information you would like to receive.
 - c) There will be a charge of \$1.00 per page by check / money order made payable to Lea County at the following address:

Lea County
Finance Dept.
100 North Main, Suite 11
Lovington, NM 88260The fee must be paid before the information is released. Charges will apply to any sub-contractors requesting our mailing list. The sub-contractor may then contact vendors directly regarding information on the specifications.
23. According to state procurement regulations, any protest of the award must be submitted in writing within fifteen (15) days of written notice of award to:

**Finance Director
Lea County Courthouse
100 N. Main, Suite 11
Lovington, NM 88260**

SPECIFICATIONS AND CONTRACTUAL TERMS
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
PROPOSAL #04 - (14-15)
DUE DATE: MARCH 24, 2015 - 3:00 P.M.

A request for proposals is being solicited by Lea County, New Mexico for professional engineering / architectural and planning consultant services. These services will be valid for calendar year 2015, and may include all three (3) County airport facilities. Services may include preliminary design, final design and construction administration for county / state and/or federally funded C.I.P. projects. The airports are adjacent to the following communities:

- A. Jal, New Mexico
- B. Lovington, New Mexico
- C. Hobbs, New Mexico

The three (3) airports are owned and operated by Lea County. They qualify for Federal funding through the Federal Aviation Administration Airport Improvement Program and are also eligible for State funding through the New Mexico State Highway and Transportation Department - Aviation Division.

Proposals will be reviewed and evaluated by the Selection Committee and a recommendation will be made to the Lea County Board of Commissioners. The offeror shall **submit eight (8) copies of the proposal**. Proposals should not exceed 25 pages exclusive of cover sheets and table of contents.

SCOPE of WORK – Calendar Year 2015

The firm selected will provide engineering services on a per project basis as follows.

The contemplated projects are dependent upon federal AIP funding and State Aviation Division funding and approval of Lea County, so it shall be understood that some of the services related to the listed projects may be deleted. Any project not listed will not be eligible for federal AIP funding.

Projects may include, but are not limited to:

A. Lovington Airport / Zip Franklin Memorial

- Install Reflective Lighting on Parallel Taxiways
- Re-Habilitate and Upgrade Electric Vault
- Install AWOS
- Install Apron pavement rehab (all areas)

- Security Fencing for Airfield and Terminal Areas
- Seal Coat and Stripe Taxiways and Ramp Areas
- Rehab 3/21 Runway Lighting
- Install PAPIs on RW 3-21
- Pavement Markings and Signage
- Airfield Striping and Pavement Markings
- Acquire Property Interest of RPZs on Three Runway Ends (25 total acres)
- Develop Future Fuel Island/Remove Existing Fuel Island
- Runway 12-30 Hold Aprons (Run-Up Area)
- Prepare DBA program and goals
- Prepare and update SWPPP
- Acquire and install remote radar display (Standard Terminal Automation Replacement System).
- Miscellaneous Services as needed

B. Hobbs Airport (HOB)

- Electrical Vault improvement(s) and miscellaneous electrical updates
- Rehabilitate Pavement or Seal Coat Ramp Areas
- Install Additional Terminal Parking
- Rehabilitate Runway 12/30
- Rehabilitate Taxiway Lighting - PH I (A, B, C)
- Rehabilitate NW Ramp (39,000 SY)
- Rehabilitate NE Ramp (44,000 SY)
- Airport Layout Plan
- Safety Area Improvements – Northeast end of RW 3-21
- Acquire Property Interests for RW 3-21 Extension
- Install New Airfield/Terminal Emergency Generator
- Extend RW 3/21 and Taxiway D
- Relocate MALSR and Install PAPI-4 on RW 3
- Rehabilitate Runway 3/21
- Relocate Localizer RW 3/21
- Extend Taxiway A from Taxiway A to Taxiway D
- Safety Management Systems coordination
- GIS - Electronic ALP

- Terminal building expansion
- Terminal parking lot expansion and lighting
- Prepare DBA program and goals
- Prepare and update SWPPP
- Airfield Striping and Pavement Markings
- Other projects that may be approved over the 1-year period of this contract for services which will not be eligible for federal funding.

C. Jal Airport

- Reconstruct to Minimum 9/27
- Taxiway Lighting
- Mill/Overlay Parallel Taxiway
- Property Acquisition for Runway 1-19 Extension
- Runway 1-19 Extension and Taxiway Stub
- Rehabilitate Pavement or Seal Coat Ramp Areas
- Security Fencing for Airfield and Terminal Area
- Rehab Runway Lights 1-19
- Rehab Electric Vault
- Acquire Property Interest of RPZs on all Four Runway Ends
- Install PAPIs on RW 1-19
- Install GPS Approach Runway 1-19
- Install AWOS
- Apron Expansion and Taxiway Stub
- Airfield Striping and Pavement Markings
- Prepare DBA program and goals
- Prepare and update SWPPP
- Miscellaneous services as needed

Because of the anticipated electrical work that is going to be done, emphasis will be placed on firms that have in-house capabilities in this field. It is also of benefit to agree to have a local engineering point of contact.

Also, it is beneficial to have intimate knowledge of DBE Requirements and reporting methodology.

The County, at its option, may negotiate with the selected individual or firm to provide design and construction engineering services for individual capital improvement projects at the County airports.

In addition, the successful firm will assist in preparation of all necessary documentation for Federal and State of New Mexico pre-applications for project development through contract close out and requests for reimbursement. All other licensing and other required documentation will be the responsibility of the firm selected. Any and all negotiations for the scope of services and fees will follow the guidelines established in applicable F.A.A. Advisory circular.

Fees

The scope and fee structure for each project will be at a negotiated hourly rate for the services rendered. Do not include any information regarding your fee structure with your offer.

Term of Contract

The term of the contract will begin immediately following contract award and continue for one year with an option to renew for an additional year, up to four (4) consecutive years.

Any airport project still in progress after contract expiration will be required to be continued through completion. Those projects will be designated in writing by the Airports Supervisor. Such services shall be provided until the projects identified are completed. Those continuing services shall be rendered under the terms specified herein or pursuant to any contract entered into between the parties.

Lea County reserves the right to cancel the contract at any time should it be deemed in the best interest of Lea County with thirty (30) days prior notice to the engineering firm.

Proposal Contents

Please include the following information in your submittal:

1. The name of the principal member or officer of the firm who will be responsible for administration of the contract.
2. The name of the firm, address and telephone number of the office where the work will be performed.
3. The name (s) and registration number (s) of the New Mexico Registered Professional Engineer and Land surveyor, if applicable, who will be in direct responsible charge of the work.
4. A list of sub-consultants, including qualifications and areas of expertise.
5. A list of any current airport projects, with references.
6. List any and all work within the last five (5) years pertaining to airport planning, construction or project consultation. Include a summary of performance, based on cost and scheduling for each project.
7. A brief statement regarding expertise in coordinating Federal and State funding procedures plus applications for aid and regulatory compliances.

Evaluation Criteria:

Selection of the successful firm will be based upon recommendations from an Evaluation Committee as presented to the Lea County Board of Commissioners.

The selection committee shall select, ranked in the order of their qualifications, up to three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by Lea County. Lea County reserves the right to select the most qualified firm from the rankings of the selection committee, or may choose to interview the short listed firms.

Proposals shall be evaluated on the following criteria:	<u>Possible Points</u>
1. Specialized design and technical competence of the business, including a joint venture of association, regarding the type of service required.	40
2. Capacity and capability of the business to perform the work including any specialized services within the time limitations.	20
3. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of cost, quality of work and ability to meet schedules.	10
4. Proximity to or familiarity with the area in which the project is located.	5
5. Availability of the firm.	<u>25</u>
T O T A L	100

CONTRACT: Attached is the contract that will be entered into, along with any applicable attachments that the County deems beneficial/necessary.

Terms and Conditions incorporated herein by reference.

End of Specifications.

PROPOSAL FORM
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
PROPOSAL #04 - (14-15)
DUE DATE: MARCH 24, 2015 - 3:00 P.M.

Attach proposal, which addresses items listed in the instructions under "Proposal Contents".

The services offered meet specifications: _____Yes _____No

If the services offered do not meet specifications, all exceptions or variations are set forth on the following page.

I have read and understand the Terms and Conditions and Specifications and Contractual Terms. I agree to comply with such and warrant that the services offered are as represented in this Proposal Form.

Signature

Name (Typed/Printed)

Company

Position

Address

Telephone # Fax #

City, State, Zip

E-mail Address

Tax ID #

State of _____)

)ss.

County of _____)

_____ (name), being duly sworn, deposes and says that he/she is _____ (title) of _____ (company) and all foregoing questions and all statements herein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires: _____

Notary Public

OPTIONS, EXCEPTIONS OR VARIATIONS
LEA COUNTY, NEW MEXICO

AIRPORT PROJECT DESIGN & ENGINEERING SERVICES
LEA COUNTY AIRPORTS
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Please state each and every exception or variation to the specifications (if any) for service offered. PLEASE SIGN BELOW:

1) THERE ARE OPTIONS, EXCEPTIONS OR VARIATIONS. _____
Signature

2) THERE ARE NO OPTIONS, ETC. LISTED. The services offered on this Request For Qualifications meet or exceed all specifications, terms and conditions as described in said Request For Qualifications without exceptions. I understand services not meeting all specifications, terms and conditions will be rejected.

Signature

CAMPAIGN CONTRIBUTION DISCLOSURE FORM -- REQUIRED

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 a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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.

“Contract” 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 Code 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 Contribution(s) _____

(The above fields are unlimited in size)

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)

BID FORM
Resident / Veterans Preference Certification

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

Please check one box only

Veteran Resident Businesses:

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

Resident Businesses:

- I declare under penalty of perjury that my business is a New Mexico resident business allowing me the 5% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

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

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

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

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

Resident Business/Veteran Business Certificate Number: _____

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

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

A valid New Mexico Resident Business or New Mexico Veterans' Resident Business Certificate number must be provided in order to receive preference.

CONTRACT # _____
 Effective Date: _____

LEA COUNTY CONTRACT FOR GOODS AND SERVICES

This Contract is entered into between Lea County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Lea County.

Contractor Legal Name: _____

Services Summary Description: _____

Initial Period of Performance shall be through: _____

Pre-GRT, Total Annual Charges to this contract may not exceed: _____

This Contract complies with New Mexico and County procurement requirements as follows:

- RFP # _____, BOCC approval date _____
- Bid # _____, BOCC approval date _____
- "Qualified" Professional Service, \$60,000 or less annually. Qualifications attached.
- Three Written Quotes \$60,000 or less annually. \$20,000 or less annually.
- Sole – Source Emergency Procurement
- Other: Revenue; non-financial MOA; or _____

No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.

NOTICES: All correspondence regarding this contract shall be sent to:

Lea County Government	Contractor:
Department:	ATTN:
ATTN:	Title:
Street: 100 N. Main, Ste 4	Street:
City, State, Zip: Lovington, NM 88260	City, State, Zip:
Phone:	Phone:
Fax:	Fax:
Cell:	Cell:
Email:	Email:

ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED: For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under

Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an “as needed” basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

ARTICLE 2 - CONTRACT DOCUMENTS: The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor’s responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County’s solicitation documents, and the Contractor’s response to the solicitation, in that order, shall control the interpretation of the parties’ respective rights and obligations.

ARTICLE 3 - PERIOD OF PERFORMANCE: The period of performance of this Contract shall commence _____ **or date of last signature, whichever is later**, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to _____ additional years, not to exceed a total of _____ years.

ARTICLE 4 - PLACE OF PERFORMANCE: The Contractor shall provide the required services or goods for Lea County when and where appropriate or as required by the County.

ARTICLE 5 - COST AND PAYMENT: The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in “Notices” above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Lea County to the appropriate state agency.

ARTICLE 6 - AMENDMENTS: This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

ARTICLE 7 - ASSIGNMENT: The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

ARTICLE 8 - BINDING EFFECT OF CONTRACT: Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the

administrators, assigns, successors, and transferees of the contracting parties.

ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW: This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

ARTICLE 10 - CONFIDENTIAL INFORMATION: Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

ARTICLE 11 - CONFLICT OF INTEREST: The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

ARTICLE 12 - CONFLICTS OF LAW: If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

ARTICLE 13 - HIPAA COMPLIANCE: As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:
Non-Governmental Entity The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorneys fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the Contractor's performance under this contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the

term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

Governmental Entity: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

ARTICLE 15 - INDEPENDENT CONTRACTOR: Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

ARTICLE 16 - INSURANCE: For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. The County shall be named as an additional insured as stipulated. Contractor's who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

Required Insurance: As specified in the **RFP, BID documents or Attachment A.**

ARTICLE 17 - KEY PERSONNEL: The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Key personnel may not be changed without prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department.

ARTICLE 18 - MEDIATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

ARTICLE 19 - MERGER OF PRIOR CONTRACTS: This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or

otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

ARTICLE 20 - NON-APPROPRIATION: The County's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the County's budget. If the County does not appropriate sufficient funds or DFA does not approve the County's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The County Board's determination that sufficient funds have not been appropriated, through Board of County Commissioners or DFA action, is firm, binding, and not subject to review.

ARTICLE 21 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK: It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

ARTICLE 22 - PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 23 - PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

ARTICLE 24 - PROCUREMENT CODE: The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

ARTICLE 25 - PROPRIETARY INFORMATION: All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

ARTICLE 26 - RECORD KEEPING AND AUDITS: The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

ARTICLE 27 - RELEASE: The Contractor, upon final payment of amounts due under this

Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

ARTICLE 28 - SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

ARTICLE 29 - SOVEREIGN IMMUNITY:

Non-Governmental Entity: By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

Governmental Entity: By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

ARTICLE 30 - SUBCONTRACTING: This Contract is based on the personal skills and reliability of the Contractor as known by the County at the time of execution of this Contract. The Contractor shall not subcontract out any portion of the services to be performed under this Contract without the prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department. The written approval shall minimally include disclosure of the name of the individual(s) to be contracted, a statement of the individual(s) qualifications and a justification of the request to subcontract.

ARTICLE 31 - TERMINATION: The County may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

- a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.
- b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that can not be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

ARTICLE 32 - THIRD PARTY BENEFICIARY: It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not

a party to the agreement to maintain a suit based upon this Contract.

ARTICLE 33 - WAIVER: Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 34 - DUPLICATE ORIGINALS: This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

SIGNATURES:

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.

LEA COUNTY:

County Manager _____

Print Name and Title

Date: _____ Date: _____

* * * * *

Contractor's NM Taxation and Revenue Department ID Number: _____

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work			Required all Contracts
Attachment B – Cost per Unit Service			Required all Contracts
Attachment C – Contribution Disclosure			Required all Contracts
Attachment D – Related Party Disclosure			Required all Contracts
Attachment E – Debarment Certification			Required all Contracts
Attachment F - Non Collusion Affidavit			Required all Contracts
Attachment G – Insurance Certificates			By Attachment A Specifications
Attachment H – 1. Business License(s) 2. Professional Licenses 3. Staff Resumes			1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I – Procurement Method			Purchasing Dept. Determines
Attachment J - Other			Purchasing Dept. Determines