

COUNTY OF LUNA
REQUEST FOR PROPOSALS
INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS:

- A. “Addendum” means a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: “Addenda”.
- B. “Determination” means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§13-1-52 NMSA 1978).
- C. “Offeror” means any person, corporation, or partnership legally licensed to provide professional services in this state, who chooses to submit a proposal in response to this Request for Proposals.
- D. “Operator” means the Successful Offeror awarded the Agreement/Contract.
- E. “Procurement Manager” means the person or designee authorized by the County of Luna to manage or administer a procurement requiring the evaluation of proposals.
- F. “Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals (§13-1-81 NMSA 1978).
- G. “Responsible Offeror or Proposer” means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§13-1-83 NMSA 1978).
- H. “Responsive Offer or Proposal” means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a Request for Proposals include, but are not limited to, price, quality, quantity or delivery requirements (§13-1-85 NMSA 1978).
- I. The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror’s proposal.
- J. The terms can, may, should, preferably, or prefers identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS:

- A. Copies of Request for Proposals:
A complete set of the Request for Proposals may be obtained from the County of Luna as stated in the RFP Notice.
- (1) A complete set of the Request for Proposals shall be used in preparing proposals; the County of Luna assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.
 - (2) The County of Luna, in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.
 - (3) A copy of the RFP shall be made available for public inspection and shall be posted at the Office of the County Manager located at 700 South Silver Avenue, Deming, New Mexico 88031-0551.
- B. Interpretations:
- (1) All questions about the meaning or intent of the Request for Proposals shall be submitted to the Purchasing Agent of the County of Luna in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the County of Luna having received the Request for Proposals. Questions received less than five (5) days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
 - (2) Offerors should promptly notify the County of Luna of any ambiguity, inconsistency or error which they may discover upon examination of the Request for Proposals.
- C. Addenda:
- (1) Addenda will be mailed, by facsimile or hand-delivered to all who are known by the County of Luna to have received a complete set of Request for Proposals.
 - (2) Copies of addenda will be made available for inspection where ever Request for Proposals are on file for that purpose.
 - (3) No addenda will be issued later than five (5) days prior to the date for opening of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

3. PROPOSAL SUBMITTAL PROCEDURES:

- A. Number, Form and Style of Proposals
- (1) Offerors shall provide one (1) original and five (5) copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
 - (2) All proposals must be typewritten on standard 8 1/2 "x 11" paper and bound on the left hand margin.

- (3) Proposals shall contain a maximum of fifteen (15) pages, including title, index, etc, not including front and back covers.
- (4) Offeror may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.
- (5) 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.
- (6) A pre-proposal conference [] will be; or [x] will not be held at the County Commission Chambers on _____ at _____ am/pm.

B. Sub-consultants:

- (1) The Offeror shall list and state the qualifications for each sub-consultant the Offeror proposes to use for all sub-contracted work.
- (2) The Offeror is specifically advised that any person or other party to whom it is proposed to award a sub-contractor under this proposal, must be acceptable to the County of Luna after verification by the County of Luna of the current eligibility status, including, but not limited to, suspension or debarment by the County of Luna.

C. Prequalification Process

- (1) A business may be pre-qualified by the County Manager as an Offeror for particular types of service. Mailing lists of potential Offerors shall include, but shall not be limited to, such pre-qualified businesses (§13-1-134 NMSA 1978).

D. Debarred or Suspended Contractors

- (1) A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirement of §13-1-177 through §13-1-180, and §13-4-11 through §13-4-17 NMSA 1978, as amended, shall not be permitted to do business with the County of Luna and shall not be considered for award of the Contract during the period for which it is debarred or suspended with the County of Luna.

E. Submittal of Proposals

- (1) Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope.
- (2) The envelope shall be addressed to the Procurement Officer of the County of Luna. The following information shall be provided on the front lower left corner of the envelope: Project Title, Request for Proposals number, date of closing, and time of closing. If the Proposal is sent by mail, the sealed envelope shall have the notation “**SEALED PROPOSAL ENCLOSED**” on the face thereof.

- (3) Proposals received after the date and time for receipt of Proposals will be returned unopened.
- (4) The Offeror shall assume full responsibility for timely delivery of proposals at the County Procurement Office, including those proposals submitted by mail. Hand delivered proposals shall be submitted to the County Procurement Officer or his designee and will be time stamped at the time received, which must be prior to the time specified.

VIA MAIL	HAND- DELIVERED
County Procurement Office	County Procurement Office
County of Luna	County of Luna
P.O. Box 551	700 South Silver Avenue
Deming, NM 88031-0551	Deming, NM 88030

- (5) After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service and such other information as may be specified by the County Manager.
- (6) Oral, telephonic or telegraphic proposals are invalid and will not receive consideration.

F. Correction or Withdrawal of Proposals

- (1) A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.
- (2) Withdrawn proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

G. Notice of Contract Requirements Binding on Offeror

- (1) In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements which are a part of this Request for Proposal.
- (2) Laws and Regulations The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the project.

H. Rejection or Cancellation of Proposals

- (1) This Request for Proposals may be cancelled, or any or all proposals may be rejected in whole or in part, when it is in the best interests of the County of Luna. A determination containing the reasons therefore shall be made part of the procurement file. (§13-1-131 NMSA 1978).

4. CONSIDERATION OF PROPOSALS

- A. Receipt, Opening and Recording
- (1) Proposals received on time will be opened publicly or in the presence of two witnesses, and the name of the Offeror and address will be read aloud.
 - (2) The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§13-1-116 NMSA 1978).
- B. Proposal Evaluation
- (1) Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:
 - (a) acceptable
 - (b) potentially acceptable, that is reasonably assured of being made acceptable
 - (c) unacceptable (Offerors whose proposals are unacceptable)
 - (2) The County of Luna shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality of the services (§13-1-132 NMSA 1978).
 - (3) If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§13-1-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty-one (21) days after an award is made (§13-1-120 NMSA 1978).
 - (4). Selection Process
 - (a) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the County of Luna. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular request and may conduct interview with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach and their ability to furnish the required services.
 - (b) If fewer than three businesses have submitted a statement of qualifications for a particular RFP, the committee may:

- (i) rank in order of qualifications and submit to the County of Luna for award those businesses which have submitted a statement of qualifications;
- (ii) recommend termination of the selection process and request of new notices of the proposed procurement to be sent out (§13-1-104 NMSA 1978).

C. Negotiations (§13-1-122 NMSA 1978)

- (1) The County of Luna's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.
- (2) Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
- (3) The designee shall then undertake negotiations with the third most qualified business.
- (4) Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications, and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new Request for Proposals is initiated.
- (5) The County of Luna will publicly announce the business selected for award.

D. Notice of Award

- (1) After award by the County of Luna, a written notice of award shall be issued by the County of Luna with reasonable promptness (§13-1-100 and §13-1-109 NMSA 1978).

E. Contract Term

- (1) The contract period will begin upon successful negotiations with awarded Offeror. Upon the end of initial five (5) year term and upon successful negotiations the contract may be extended for an additional five (5) year term.

5. **POST-PROPOSAL INFORMATION**

A. Protests

- (1) Any Offeror who is aggrieved in connection with a solicitation or award may protest to the County Procurement Officer of Luna County in accordance with the requirements of the County of Luna's Procurement Regulations and the State Procurement Code. The protest should be made

in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§13-1-172 NMSA 1978).

- (2) In the event of a timely protest under this section, the County Manager and the County of Luna shall not proceed further with the procurement unless the County Manager makes a determination that the award is necessary to protect substantial interests of the County of Luna (§13-1-173 NMSA 1978).
- (3) The County Manager or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorney's fees (§13-1-174 NMSA 1978).
- (4) The County Manager or his designee shall promptly issue a determination relating to this protest. The determination shall:
 - a. state the reasons for the action taken; and
 - b. inform the Protestant of the right to judicial review of the determination (§13-1-183 NMSA 1978).
- (5) A copy of the determination issued under §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§13-1-176 NMSA 1978).

B. Execution and Approval of Agreement

- (1) The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

C. Notice of Proceed

- (1) The County of Luna will issue a written Notice to Proceed to the Offeror.

D. Offeror's Qualification Statement

- (1) Offeror to whom award is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§13-1-82 NMSA 1978).

6. OTHER INSTRUCTIONS TO OFFERORS

A. Equal Opportunity Employment

The County of Luna does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. Contractors shall be in compliance with the American with Disabilities Act requirements.

B. OSHA Requirements in Employment

The County of Luna shall contract with companies or firms whose operators and equipment meet OSHA (Occupational Safety and Health Administration)

standards in their field of expertise and shall also comply with the Luna County Loss Control Manual as if an employee of the County of Luna.

7. GOVERNING LAW

A. The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exist.

8. INDEPENDENT CONTRACTORS

A. The Offeror and his agents and employees are independent Contractors and are not employees of the County of Luna. The Offeror and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of County of Luna vehicles, or any other benefits afforded to employees of the County of Luna as a result of the Agreement.

9. BRIBES, GRATUITIES AND KICKBACKS

A. Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2 and §30-41-1 through §30-41-3 NMSA 1978) which prohibits bribes, kickbacks and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§13-1-28 through §13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

10. FEES

A. A monthly lease amount and a pro-rata share of common area maintenance charges will be negotiated with the Offeror selected.

11. FUNDING

A. This solicitation is subject to the availability of funds to accomplish the work.

12. CONTACT WITH COUNTY OF LUNA OFFICIALS OR STAFF MEMBERS

A. Prior to, and after submittal of proposal, prospective Offerors shall not make contact with any official or staff member regarding this RFP, other than contact to obtain a copy of this RFP.

13. OFFEROR'S AND SUB-CONSULTANT'S INSURANCE

A. The Offeror may carry such other insurance as he deems necessary to protect his own interests. He shall, at his sole cost and expense, procure and carry throughout the life of the agreement the insurance hereinafter specified. Such insurance shall cover both the Offeror and his Sub-consultants, or separate policies shall be provided for each Sub-consultant and shall be carried with an insurance company licensed to transact business in the State of New Mexico. The insurance shall be for the protection of the Offeror and Sub-consultants from claims under worker's compensation law, disability benefit laws or other employee benefit laws; from claims for damages to property, including loss of use thereof, any or all of which may arise out of or result from the Offeror's operations under the Contract Documents whether such operations be at the site of the work or elsewhere and whether they be carried on by the Offeror or by any sub-consultant or anyone directly employed by any of them or for whose acts any

of them may be legally liable. Such insurance shall be written for not less than the limits of liability set out below. Work may not be started on the project until the Certificate of Insurance on the form provided has been filed and approved with the County of Luna.

A. Comprehensive General Liability Insurance

The Offeror shall procure and maintain during the life of this Contract, and shall require Sub-consultants, if any, to procure and maintain during the life of this sub-contract, comprehensive general liability insurance in amounts of not less than One Million Fifty Thousand Dollars (\$1,050,000.00) for injuries, including death, to any one person and subject to the same limit each person, in amounts not less than One Million Fifty Thousand Dollars (\$1,050,000.00) in any one occurrence and in amounts not less than One Million Fifty Thousand Dollars (\$1,050,000.00) for property damages in any one accident. Such policies of insurance must include coverage under all sections of the schedule of hazards of the said comprehensive general liability policy form and must include collapse (c), explosion (x) and underground (u) liability coverage.

The above requirements shall include protection from:

- (1) Damage to, or destruction of public and private property located below the surface of the ground, including telephone conduit, power conduit, traffic signal cables, fire alarm circuits, gas mains, gas serve connections, sanitary sewers, house sewers or building sewer connections, water mains, water service connections, steam lines, petroleum products pipelines, storm sewers and inlet lines, and including all appurtenances thereto, injury or death to a trenching and beautifying with or without the use of mechanical equipment.
- (2) The collapse of, or structural damage to any building, house or structure, utility poles, curb and gutter and sidewalk on public or private property, destruction of or damage to other public and private property including injury or death to a person or persons caused by the Offeror's operations under the Contract. Removal of buildings, structures (including their supports), trees, and utility poles, excavations below the surface of the grounds, including blasting, trenching and beautifying with or without the use of mechanical equipment. "Other public and private property" as used above, shall include lawns, plants, flowers, trees, fences, yard walls, etc. The liability insurance shall include the standard assault and battery endorsement.

B. Owner's Protective Public Liability and Protective Property Damage Insurance

The Offeror shall procure and maintain during the life of this Contract, at his own expense, owner's protective public liability and protective property damage insurance in favor of the Owner in the amount not less than (1) the sum of Three Hundred Thousand Dollars (\$300,000.00) for damage to or destruction of property arising out of a single occurrence (2)

the sum of Five Hundred Thousand Dollars (\$500,000.00) to any person for any number of claims arising out of a single occurrence for all damages other than property damage, or (3) the sum of One Million Fifty Dollars (\$1,000,050.00) for all claims arising out of a single occurrence. This policy shall also include the standard assault and battery endorsement.

C. Worker's Compensation Insurance

The Offeror shall procure and shall maintain during the life of this Contract, Worker's Compensation Insurance in statutory or standard form in an amount covering all of its employees to be engaged in the work under this Contract, as required by the State of New Mexico or the regulatory requirements of the Offeror's licensing bureau. Such insurance policies must include coverage under Section §52-1-10 NMSA 1978 for safety devices.

D. Automobile Public Liability and Property Damage

The Offeror shall maintain automobile public liability insurance to protect him and the Owner from any and all claims arising from the use of the following in the execution of work included in this Contract.

- (1) Offeror's own automobile and trucks
- (2) Hired automobiles and trucks
- (3) Automobiles and trucks not owned by Contractor
- (4) BI/PD no less than Three Hundred Thousand Dollars (\$300,000.00)

E. Transit Insurance

The Offeror shall secure insurance to protect himself from damage to equipment in transit.

F. Approval of Insurance

Neither approval by the Owner of any insurance supplied by a Offeror or a Sub-consultant, nor a failure to disapprove that insurance shall relieve the Offeror or Sub-consultant of full responsibility to maintain in full force and effect the above described insurance or for liability, damages and accidents as set forth herein.

G. Proof of Insurance

Prior to the commencement of any work hereunder, Offeror shall furnish to the Owner proof of the insurances required in this Section. All such certificates of Insurance shall provide that the Insurance company(ies) will give Owner ten (10) days prior written notice before any material change in or cancellation of any such policy.