

**VALENCIA COUNTY  
STATE OF NEW MEXICO**

**INVITATION FOR BIDS (IFB)**

**Lease of  
Two (2) Tandem Axle Motor Graders**



**IFB #VCB-FY18-010**

**VALENCIA COUNTY PURCHASING  
444 Luna Ave., Suite 100A  
Los Lunas, NM 87031**

**ISSUED: April 2, 2018**

**BID OPENING: April 12, 2018 at 12:00 PM LOCAL TIME**

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## **I. INTRODUCTION**

This section provides general information that applies to this procurement.

### **A. PURPOSE OF THIS INVITATION FOR BIDS**

The County of Valencia wishes to lease two (2) 2017 model year or newer John Deere Model 772-G/GP, or equal performance alternative, tandem axle motor graders per the enclosed bid specifications, terms, and conditions. Reference to the John Deere Model 772-G/GP motor grader is being used solely for the purpose of describing the items desired and to establish the minimum required standards of quality, performance and desired features and characteristics; and is not intended to limit or restrict competition. Alternate product offers of equal performance will be considered provided that complete product specifications, literature and descriptions are provided with each bid submittal.

### **B. SUMMARY OF CRITICAL INFORMATION**

1. Deadline for receipt of sealed bids: **April 12, 2018 at 12:00 P.M., LOCAL TIME**
2. Address for Delivery of sealed bids: 444 Luna Ave., Suite 100A, Los Lunas, NM 87031
3. Bid Opening Time and Date: **April 12, 2018 at 12:00 P.M. LOCAL TIME**
4. Bid Opening Location: 444 Luna Ave., Suite 103 (Commission Room), Los Lunas, NM 87031

Potential Bidders are highly encouraged to read this entire solicitation as important information, including mandatory requirements, is contained in other places within this IFB.

### **C. SUMMARY SCOPE OF WORK**

The scope of work consists of providing the products or services specified herein.

### **D. SCOPE OF PROCUREMENT**

The scope of the procurement consists of furnishing and leasing two (2) 2017 model year or newer, tandem axle motor graders as specified elsewhere within this Invitation for Bids. Note, Valencia County is seeking bids for both 36 month and 48 month terms along with pricing options for standard and full service lease options. Acceptance and final Delivery will start the Lease Term which is estimated on or before April 30, 2018.

It is the intent of Valencia County to make a single source award based upon the bid option that is determined by Valencia County to be in its' best interest. Note, the lease term and lease option selected and awarded shall be contingent upon available funding.

**E. CHIEF PROCUREMENT OFFICER**

The County of Valencia has designated a Chief Procurement Officer who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement should be submitted to the Chief Procurement Officer in writing. Bidders may contact **ONLY** the Chief Procurement Officer regarding the procurement. Other County employees do not have the authority to respond on behalf of the County of Valencia.

**Rustin Porter**

Valencia County Chief Procurement Officer

<u>Delivery Address (Including sealed bid delivery):</u> 444 Luna Ave., Suite 100A // Los Lunas, NM 87031	<u>Mailing Address:</u> P.O. Box 1119 // Los Lunas, NM 87031
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Phone: (505) 866-2005

Fax: (505) 866-2424

E-mail: rustin.porter@co.valencia.nm.us

NOTE: All deliveries via express carrier (INCLUDING SEALED BID DELIVERY) should be addressed to Rustin Porter Delivery Address, above.

**F. DEFINITION OF TERMINOLOGY**

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

"Bidder" is any person, corporation, or partnership who chooses to submit a sealed bid.

"Board of County Commissioners" (also "BCC") means the elected board in whom all powers of the County are vested and who are responsible for the proper and efficient administration of the County government.

Chief Procurement Officer" means the person or designee authorized by the County to manage or administer a competitive procurement.

"Close of Business" means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

"Contract" or "Agreement" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Bidder who enters into a binding contract.

"County" means the County of Valencia, State of New Mexico.

"Determination" means the written documentation of a decision of the Chief Procurement Officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

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

"Heavy road equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars (\$1,000).

"Invitation for Bids" or "IFB" means all documents, including those attached or incorporated by reference, used for soliciting sealed bids.

"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required" which identify a mandatory item. Failure to meet a mandatory item or factor may result in the rejection of the submitted bid.

"MDT" & "MST" mean Mountain Daylight Time (MDT) and Mountain Standard Time (MST). Usage is dependent on which is in effect on the date specified.

"Procuring agency of the County" means the department or other subdivision of the County of Valencia that is requesting the procurement of services or items of tangible personal property.

"Product" means an item of tangible personal property which is defined in the New Mexico Procurement Code as tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

"Purchase Order" or "PO" means the document which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing, valid Contract.

"Purchasing" means the County of Valencia Purchasing Office or the Valencia County Chief Procurement Officer.

"Responsible Bidder" means a Bidder who submits a responsive bid and who has furnished required information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property called for in this Invitation for Bids.

"Responsive Bid" means a timely submitted bid which conforms in all material respects to the requirements set forth in the Invitation for Bids. Material respects of an Invitation for Bids include, but are not limited to, price, quality, quantity and delivery requirements.

"Services" means the furnishing of labor, time or effort by a Contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" does not include construction.

"State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the State of New Mexico.

"Successful Bidder" means the lowest priced Responsible Bidder to whom Valencia County, on the basis of the County's evaluation, makes an award. A Successful Bidder does not become a Contractor until the County signs the Contract signed and submitted by the Bidder. One or more Purchase Orders will accompany or follow the approval. **Successful Bidders should not provide products or services prior to their receipt of an approved Purchase Order.**

## **G. RESIDENT/VETERAN BUSINESS PREFERENCE**

### 1. Resident Business/Contractor Preference

The New Mexico Procurement Code provides for preference for resident businesses and contractors under certain conditions. If applicable, the preference will be provided to those bidders that have provided a valid resident business or contractor preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a resident business or contractor, that Bidder must submit a copy of their resident business or contractor preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

## 2. Resident Veteran Business/Contractor Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses and Contractors. [Please see Section V.C.4 for more information and especially note Appendix H.] In order for a Bidder to receive preference as a resident veteran business or contractor, that Bidder must submit a copy of their resident veteran business or contractor preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

## **H. PROCUREMENT LIBRARY**

The Procurement Library consists of the following documents which may be accessed by their associated Internet links:

**- New Mexico Procurement Code**

<http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>

**- Valencia County Procurement Policy**

[http://www.co.valencia.nm.us/departments/finance/pdf/R05\\_68A\\_ProcurementPolicy.pdf](http://www.co.valencia.nm.us/departments/finance/pdf/R05_68A_ProcurementPolicy.pdf)

(Specific references to the New Mexico Procurement Code or the Valencia County Procurement Policy, found in this IFB, may be reviewed by following the appropriate link above.)



## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section contains the schedule for the procurement, describes the major procurement events, and contains the general conditions and requirements that the Bidder agrees to by submitting a bid in response to this IFB.

### **A. SEQUENCE OF EVENTS**

The Chief Procurement Officer will make every effort to adhere to the following schedule:

<b>ACTION</b>	<b>RESPONSIBILITY</b>	<b>DATE</b>
1. Issue IFB	Chief Procurement Officer (PM)	April 2, 2018
2. Return of "Acknowledgment of Receipt" Form (Appendix A)	Potential Bidders (PB)	April 6, 2018
3. Pre-Bid Conference	N/A	N/A
4. Deadline to Submit Questions	PB	April 9, 2018
5. Response to Written Questions/ IFB Amendments	PM	April 10, 2018
<b>6. Submission of Sealed Bids</b>	<b>Bidders</b>	<b>April 12, 2018 12:00 PM Local Time</b>
7. Public Opening	Purchasing, Bidders, General Public	April 12, 2018 12:00 PM Local Time
8. Bid Tabulation	Purchasing	TBD
9. Contract Award*	Chief Procurement Officer/BCC*	April 30, 2018
10. Protest Deadline	Bidders	15 calendar days after knowledge of facts giving rise to protest.

\*Contract award is subject to approval of the Board of County Commissioners.

### **B. EXPLANATION OF EVENTS**

The following paragraphs further detail the activities listed in the sequence of events shown in Section II, Paragraph A.

#### 1. Issue IFB

This IFB is being issued by the Valencia County Chief Procurement Officer on behalf of the County of Valencia.

2. Return of “Acknowledgment of Receipt” Form

Potential Bidders should hand deliver or return by facsimile or e-mail or registered or certified mail the “Acknowledgement of Receipt” form that accompanies this document (See Appendix A). Potential Bidders that return the form will be notified of the posting of any questions and answers regarding the procurement and will be notified of any amendments to the IFB that might be issued. The form should be returned by the close of business on the date indicated in Section II.A (Sequence of Events), above. Failure to return this form shall constitute a presumption of receipt and rejection of the IFB and the potential Bidder may not receive any update notifications.

3. Pre-Bid Conference

There is **no** Pre-Bid Conference being held for this procurement.

4. Deadline to submit additional written questions

Potential bidders may submit additional written questions as to the intent or clarity of this IFB until the close of business on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Chief Procurement Officer (See Section I, Paragraph E.)

5. Response to written questions/IFB Amendments

Written responses to written questions and any IFB amendments will be posted to the Valencia County Purchasing Office web site (<http://www.co.valencia.nm.us/>, via the “Purchasing/Sell to County” link). Notification of such posting shall be provided to all potential Bidders that have returned the “Acknowledgement of Receipt” Form found at Appendix A.

6. Submission of Bids

**BIDS MUST BE RECEIVED BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO LATER THAN 12:00 PM LOCAL TIME ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. BIDS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL BE RETAINED UNOPENED AND NOT CONSIDERED.**

The date and time of receipt will be recorded on each bid. Bids must be addressed and delivered to the Chief Procurement Officer at the delivery address listed in Section I, Paragraph E. Bids must be sealed and should be labeled on the outside bottom left-hand corner of the package to clearly indicate that they are in response to the “Tandem Axle Motor Grader Lease IFB”, should reference “#VCB-FY18-010” and should show the opening date and time. Bids submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED**. A public log will be kept of the names of all persons or companies submitting bids.

## 7. Public Opening

All bids timely received will be opened and read aloud in a public forum at the Valencia County Commission Room (Room #103), 444 Luna Ave., Los Lunas, New Mexico on the date and time indicated in Section II.A (Sequence of Events), per NMSA 1978, Section 13-1-107 (1984). Bidders are encouraged to attend.

At the bid opening, the amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the Chief Procurement Officer, together with the name of each bidder, will be recorded, and the record and each bid will be open to public inspection.

If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our Public Bid Opening, please contact the Chief Procurement Officer (see Section I.E, above.) at least seven (7) days prior to the scheduled bid opening.

## 8. Bid Tabulation

After the public opening, the bids will be assessed for responsiveness. Responsive bids will be tabulated (price compared) to identify the lowest price(s) submitted. During this time, the Chief Procurement Officer may, at his/her option, initiate discussions with Bidders for the purpose of clarifying aspects of the bids, but bids may be accepted and considered without such discussion. Discussions SHALL NOT be initiated by the Bidders.

## 9. Contract Award

The Chief Procurement Officer anticipates the Board of County Commissioners will award the Contract on the date indicated in Section II.A (Sequence of Events), above. This date is subject to change at the discretion of the Chief Procurement Officer or the Board of County Commissioners.

## 10. Protest Deadline

Any protest by a Bidder must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978 and Valencia County Procurement Policy #401-01-3, Section 24. The Protests must be written and must include the name and address of the protestor and the Invitation for Bids number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from Chief Procurement Officer. The protest must be delivered to the Chief Procurement Officer.

Valencia County Purchasing  
Attn. Rustin Porter, Valencia County Chief Procurement Officer  
444 Luna Avenue, Suite 100A  
Los Lunas, New Mexico 87031

NOTE: Protests received after the deadline will not be accepted.

### **C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978) and Valencia County Procurement Policy (#401-01-3, Resolution 2005-68).

#### 1. Acceptance of Conditions Governing the Procurement

Bidders must indicate their acceptance of the Conditions Governing the Procurement in the Letter of Transmittal Form (see Appendix E).

#### 2. Incurring Cost

Any cost incurred by the bidder in preparation, transmittal, presentation of any proposal or material or negotiation associated with their response to this IFB shall be borne solely by the bidder.

#### 3. Prime Contractor Responsibility

Any Contract that may result from this IFB shall specify that the prime Contractor is solely responsible for fulfillment of the Contract with the County. The County will only make Contract payments to the prime Contractor.

#### 4. Subcontractors

Not Applicable.

#### 5. Amended Bids

A Bidder may submit an amended bid before the deadline for receipt of bids. Such amended bids must be complete replacements for a previously submitted bid and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble bid materials.

#### 6. Bidders' Rights to Withdraw Bid

Bidders will be allowed to withdraw their bids at any time prior to the deadline for receipt of bids. The Bidder must submit a written withdrawal request signed by the Bidder's duly authorized representative addressed to the Chief Procurement Officer. A low Bidder

alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the County.

#### 7. Bid Offer Firm

Responses to this IFB will be considered firm for ninety (90) days after the due date for receipt of bids.

#### 8. No Obligation

This procurement in no manner obligates Valencia County or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Chief Procurement Officer and other required approval authorities and one or more valid Purchase Orders are issued.

#### 9. Termination

This IFB may be canceled at any time and any and all bids may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

#### 10. Sufficient Appropriation

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

#### 11. Legal Review

The County requires that all bidders agree to be bound by the General Requirements contained in this IFB. Any bidder's concerns must be promptly brought to the attention of the Chief Procurement Officer.

#### 12. Governing Law

This procurement and any Agreement with bidders that may result shall be governed by the laws of the State of New Mexico.

#### 13. Basis for Bid

Only information supplied by the County in writing through the Chief Procurement Officer or in this IFB should be used as the basis for the preparation of bids.

14. Contract Terms and Conditions

The Contract between the County the Contractor is contained at Appendix B, Contract.

15. Bidder Qualifications

The County may make such investigations as necessary to determine the ability of the Bidder to adhere to the requirements specified within this IFB. The County will reject the bid of any Bidder who is not a responsible Bidder or fails to submit a responsive bid as defined in Sections 13-1-82 and 13-1-84 NMSA 1978.

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

16. Right to Waive Minor Irregularities

The County reserves the right to waive minor irregularities. The County also reserves the right to waive mandatory requirement(s) provided that all of the otherwise responsive bids failed to meet the same mandatory requirement(s) or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the County.

17. Change in Contractor Representatives

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately.

18. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities and kick-backs.

19. County Rights

The County reserves the right to accept all or a portion of a Bidder's bid and to award to the Bidder whose bid is deemed to be in the best interest of the County.

20. Ownership of Bids

All documents submitted in response to the IFB shall become the property of the County. However any technical or user documentation submitted with the bids of non-selected

Bidders may be returned after the expiration of the protest period, by request, and at the expense of the Bidder.

21. Ambiguity, Inconsistency or Errors in IFB

Bidders shall promptly notify the Chief Procurement Officer, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the IFB.

22. Competition

By submitting a bid, bidder certifies that they have not, either directly or indirectly, entered into any action in restraint of full competition in connection with the bid submitted to the County.

23. Use by Other Government Agencies

By submitting a bid, Bidder indicates that they understand and agree that other local public bodies and state agencies within the State of New Mexico, if allowed by their governing directives, may contract for the goods or services included in this procurement document with the awarded Contractor(s). Contractual engagements accomplished under this provision shall be solely between the awarded Contractor and the contracting government entity with no obligation or liability by Valencia County.

24. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of any Agreement resulting from this IFB shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County of Valencia.

25. Delivery and Failure to Meet Order Provisions

a. No Delivery Before Purchase Order is Issued: No Bidder, including a Bidder to whom an award is made, shall deliver any item of tangible personal property, commence services or start construction prior to the issuance of a Purchase Order or Notice to Proceed issued by the Valencia County Purchasing Department.

b. Failure to Meet Order Provisions: The County reserves the right to cancel all or any part of an order without cost to the County, if the Contractor fails to meet the provisions of that order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the County due to the Contractor's default.

26. County Furnished Property

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

27. Discounts

The Bid Form provides a space for the Bidder to identify prompt payment terms the Bidder is offering, if any. Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the Contract. Discounted time will be computed from the date of receipt of the merchandise, invoice or billing for services, whichever is later.

28. Packing, Shipping and Invoicing

a. The County's Purchasing Order number and the Contractor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

b. The Contractor's invoice shall be submitted and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.

c. Invoices must be submitted to the Valencia County Finance Department, Attn. Accounts Payable and NOT to the using agency.

29. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Bidder must have a valid e-mail address to receive this correspondence.

30. Use of Electronic Versions of this IFB

This IFB is being made available by electronic means. If accepted by such means, the potential Bidder acknowledges and accepts full responsibility to insure that no changes are made to the IFB. In the event of conflict between a version of the IFB in the potential Bidder's possession and the version maintained by the County, the version maintained by the County shall govern.



### 31. Samples

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

### 32. Award Rights

The County reserves the right to award this Invitation to Bid in total; by line item, by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in its judgment, best serves the interest of the County.

### 33. Delivery

All deliveries must be F.O.B. Destination – Freight Pre-Paid, unless otherwise indicated by the Chief Procurement Officer. **DELIVERY MUST BE NO LATER THAN MAY 31, 2018.**

### 34. New Materials

All bid items are to be NEW and of most current production, unless otherwise specified.

### 35. Addenda

Changes or amendments to specifications, conditions or provisions herein may be initiated ONLY through the Purchasing Department in the form of a written addendum. Any addenda shall become a part of this bid.

It is the responsibility of all persons or businesses considering submitting a bid in response to this solicitation to ensure that they have received all addenda prior to making a bid. Addenda will be posted to the Purchasing Department web site (<http://www.co.valencia.nm.us/>, via the "Purchasing/Sell to County" link) prior to the due date for the receipt of bids. All potential Bidders that have submitted the Acknowledgement of Receipt Form (at Appendix A) will be notified of the availability of such addenda.

## **III. RESPONSE REQUIREMENTS**

This section tells prospective Bidders how to prepare and submit their bid in response to this IFB.

**A. NUMBER OF RESPONSES**

Bidders may submit only one (1) response to this IFB.

**B. NUMBER OF COPIES**

Bidders shall deliver one (1) signed and sealed original bid and one (1) copy to the location specified in Section I.E on or before the closing date and time for receipt of bids.

**C. BID CONTENTS**

All bids **MUST** contain the following three (3) items:

1. **COMPLETED AND SIGNED Letter of Transmittal Form** (Found at Appendix E)
2. **SIGNED Contract** (Found at Appendix B)
3. **COMPLETED AND SIGNED BID FORM** WITH PRICE(S) (Found at Appendix D)
4. **COMPLETED AND SIGNED RESIDENT VETERAN PREFERENCE CERTIFICATION** (found at Appendix H).

Some bids **MUST** contain the following items, if required in Section IV, SPECIFICATIONS AND REQUIREMENTS:

5. Bid bond in proper format
6. Licenses/certifications or compliance forms
7. Any other items **REQUIRED** in Section IV, SPECIFICATIONS AND REQUIREMENTS.

Bids **MAY** contain the following **OPTIONAL** item:

7. Resident Business Preference Certificate (See Section I.G.1.)
8. Resident Veteran Business Preference Certificate (See Section I.G.2.)

Failure of Bidder to complete and submit required bidding documents, in accordance with all instructions provided, is cause for rejection of their bid. (A Bid Submittal Checklist is provided at Appendix G to assist Bidders in insuring they are submitting a complete and proper bid.)

#### **D. BID FORMAT**

1. To preclude any possible errors or misrepresentations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening. Failure to comply will be just cause for rejection of the bid.
2. The unit price(s) shall exclude all state and local taxes.

#### **E. BID SUBMITTAL REQUIREMENTS**

Bids must be submitted in a sealed envelope. The bid title, the bid number and the opening date and time should be clearly indicated on the bottom left hand side of the front of the envelope. The Bidder's name shall also appear on the envelope. Failure to properly label the bid envelope may necessitate the premature opening of the bid in order to identify the bid number.

### **IV. SPECIFICATIONS AND REQUIREMENTS**

This section details the minimum specifications for products or services sought by the County. It also provides information on the County's use and intent in providing the specifications, as well as instructions for potential Bidders that may not feel the specifications are fair, achievable or are otherwise unacceptable.

#### **A. INFORMATION**

1. Use of Brand Names and Numbers

Brand names and numbers are for reference only; equivalents will be considered. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

2. Equivalent Items Bid

If the Bidder offers an item other than the one specified, which the Bidder considers comparable, the manufacturer's name and model number of that item must be specified in the bid and sufficient performance specifications and descriptive data provided to permit

a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the bid.

### 3. Restrictive Specifications

Specifications stated in this request are not intended to exclude any Bidder. If any Bidder is of the opinion that the specifications as written preclude them from submitting a proposal on this bid, it is requested that their opinion be made known to the Chief Procurement Officer, in writing, at least seven (7) days prior to the bid opening date.

### 4. No Bid Form

We request that any potential Bidder that reviews this IFB and chooses not to respond complete and return the No Bid Form found at Appendix F prior to the deadline for the receipt of bids. Unlike an actual bid submittal, this form MAY be sent electronically, if desired, since the potential Bidder will not be participating in the procurement. This is NOT a requirement but will assist us in insuring the quality of this procurement and in improving the quality of future procurements. No Bid Forms will become a part of the procurement file and are subject to public release. No Bid Forms may be sent anonymously, if desired.

## **B. INTRODUCTION/SCOPE OF WORK**

Valencia County wishes to lease two (2) new, model year 2017 or newer, John Deere Model 772-G/GP, **or equal performance**, Tandem Axll Motor Graders. Note, reference to the John Deere Model number 772-G/GP product is being used for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Alternate product offers of equal performance will be considered provided that complete product specifications and descriptions are provided with your bid submittal.

**Note: Valencia County will require any and all bidders to acknowledge and include a non-appropriation of funds clause within any resultant operating lease agreement entered into between the county of Valencia and the successful bidder.**

### **Warranty information:**

All bid submittal's for the operating lease of two (2) Tandem Axle Motor Graders, per bid specifications, terms and conditions, must include a written explanation of the warranty. The written explanation must include a breakdown and description of specific parts covered under the warranty and the period of time that the parts are covered under the warranty. **In addition, all bidders are required to identify and specify any additional requirements the bidder/lessor may or will impose upon the lessor/County during the term of any resultant lease agreement.**

**C. MANDATORY SPECIFICATIONS**

1. John Deere Model #772-G/GP, or equal performance, Tandem Axle Motor Grader
2. Axle Configuration: Tandem - Four Wheel Drive and Six Wheel Drive Options
3. Model year: 2017 or Newer
4. Hours on meter: No more than 16 operational hours
5. Accommodation's for roller. Ability to accommodate roller attachments.

Note, Roller attachment (or adapters for current attachments) will be purchased at later date by county.

6. Rear scarifiers
7. Ripper: Shank holders 5 or more. 14 inch minimum Depth
8. Engine base power: Minimum 200HP
9. Steering wheel and/or joysticks
10. Skid Plates for undercarriage
11. Inspection: Bidder agrees to make the bid vehicles available for the performance of an independent inspection, arranged and paid for by the County, during the five (5) day business week starting on Monday, May 28, 2018.
12. Warranty: The manufacturer's standard 12 month warranty
13. Delivery: Delivery to Valencia County Road Department, 1209 Highway 314, Los Lunas, NM on or before December 14, 2015 at bidder's expense

**D. DESIRABLE OPTION**

1. Rear view camera

**E. LEASE TERM SPECIFICATIONS:**

All Bid lease options being considered for Valencia County must include the following information regarding the proposed lease **agreement options:**

- Annual cost of the lease per Grader (less New Mexico Gross Receipts Tax)
- Monthly cost of the lease per Grader (less New Mexico Gross Receipts Tax)

- Estimated/projected optional end of the lease residual or buy out amount per Motor Grader

Warranty information: All bids must include a written explanation of the warranty coverage to be provided during the lease term identifying specific parts covered under the warranty and the period of time that the parts are covered under the warranty. ***In addition, bidders are required to provide a complete and fully inclusive, itemized, breakdown and description of the manufacturer's required and recommended maintenance schedules, testing and requirements.***

Note, this IFB contains specific requests for information. In responding to this IFB, Bidders are encouraged to provide additional information if Bidder believes that information is to be relevant.

Submission of Bid/Bid Format. Bidders are to organize their bid in the order as stated in this section. The submission of Bids must be organized to include, but not be limited to, the following information:

1. Name, address, e-mail address, telephone numbers, and facsimile number of the Bidder.
2. Name, title, e-mail address, and telephone number of primary contact of the Bidder.
3. A signature of the Bidder or of an officer/employee who certifies that he/she has the authority to make the Offer.
4. A statement of the Bidder, if awarded the contract, will comply with the contract terms and conditions as set forth in this IFB.
5. Letter of acceptance of the proposed Master Lease Agreement (Reference Appendix C).
6. Equipment offered (2015 model year or newer). Note, heavy equipment bid must be currently under manufacture's standard equipment warranty.
7. Operating Lease Rates. Bidders are required to identify and include all costs associated with the monthly and annual operating lease rates bid (i.e., acquisition cost, interest, principle, insurance, all applicable taxes *{less gross receipts tax}*, delivery, registration, licensing, testing, set up, etc.).
8. Local service representation. Bidders are required to identify local manufacturer certified service and maintenance providers authorized to provide and perform any and all required maintenance during the term of any resultant lease agreement.
9. Statement of qualifications, including a description of your experience leasing heavy equipment.
10. List of references, a minimum of three (3) local customers that currently lease similar equipment through your company.
11. Provide a statement of qualifications, including a description of your experience in the heavy equipment leasing industry.
12. Delivery schedule. Provide guaranteed delivery after receipt of order (ARO)

## **F. OTHER REQUIREMENTS, SERVICES RELATED**

Bidder shall be required to submit any and all proposed/alternative required lease terms and conditions with their bid submittal. (Reference Appendix C)

## **G. PROPOSED EQUIPMENT**

Equipment offered (2017 model year or newer). Must be new and under manufacture standard warranty.

## **H. OTHER REQUIREMENTS, CONSTRUCTION RELATED**

Not applicable.

## **V. BID OPENING, PROCESSING AND AWARD**

This section describes how bids received are handled and assessed. It also describes how the award process works as well as the role of the Contract provided in Appendix B and the role of Purchase Orders that may follow Contract award.

### **A. BID RECEIPT**

Bids shall be accepted unconditionally per NMSA 1978, Section 13-1-105 (2005). Only those bids received before the deadline for the receipt of bids will be considered. Bids received after the deadline (“late bids”) will be retained in the procurement file, unopened, and shall not be considered for award.

### **B. BID OPENING**

Bids will be opened and read in public in accordance with Section 13-1-107 of the New Mexico Procurement Code. See Section II.B.7, above, for specific information.

### **C. EVALUATION PROCESS**

#### **1. Compliance Review**

After the required public opening and reading, all timely receive bids will be reviewed for compliance with the requirements and specifications stated within the IFB. Proposals deemed non-responsive to any mandatory requirement or specification may be disqualified.

#### **2. Clarifications**

The Chief Procurement Officer or Chief Procurement Officer may contact the Bidder for clarification of the response as specified in Section II.B.8.

3. Other Information Sources

The County may use other sources of information to confirm the validity of bids submitted and the ability of the Bidder to perform as specified in Section II.C.15.

4. Bid Tabulation

The bid price(s) on the Bid Form (Appendix D) from timely received and responsive bids will be tabulated (price compared) to identify the lowest price(s) bid. If applicable, the price(s) bid will be adjusted (for comparison and award purposes only) for those Bidders that have submitted a valid Preference Certificate with their bid.

5. Discrepancies in Price(s)

In case of an error in the Extended Price and Unit Price, the Unit Price shall govern.

6. Determination of Lowest Responsive Bid

After completion of the bid tabulation, the County will examine the results to determine which Bidder offers the lowest responsive bid to the County in accordance with the specifications and terms and conditions set forth in the Invitation for Bids.

7. Public Notification of Bid Tabulations and Contract Awards

Bid tabulations and awarded Contracts will be posted to our website within approximately two (2) weeks after the bid opening date. To access go to <http://www.co.valencia.nm.us/> and select the "Purchasing/Sell to the County" link on the right side of the page.

8. Note, Valencia County reserves the right to award this invitation for bid by line item.

**D. AWARD AND ORDER PROCESS**

1. Contracts awarded as a result of this solicitation shall be awarded to the responsible Bidder(s) whose *selected bid option* represents the best value and is in the County's best interest.

2. *Line Item. Valencia county reserves the right to award this invitation to bid based upon line item response.*

3. Contract Award. Upon selection for possible Contract award, the County will add the Contractor's name and signatory information to the signed Contract (Appendix B)



submitted by the Bidder and it will be submitted to the Board of County Commissioners with a recommendation for award.\* Once approved and signed by the Board of County Commissioners the Contract is officially awarded.

\*Bidders may place their company name and signatory information in the highlighted areas of the signed Contract they submit, if desired.

4. Order(s). A successful Bidder SHOULD NOT begin to deliver products or begin performance based solely on Contract award as detailed above. A successful Bidder may only deliver products or begin performance AFTER the receipt of an approved Purchase Order issued by the Valencia County Purchasing Department. Failure to comply is AT THE CONTRACTOR'S RISK and the County shall not be liable to pay for any products delivered or services performed prior to the issuance of an approved Purchase Order.

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

**INVITATION FOR BIDS**

**TANDEM AXLE  
MOTOR GRADER (2)**

**Valencia County IFB #VCB-FY18-010**

In acknowledgment of receipt of this Invitation for Bids, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix E.

**The acknowledgment of receipt should be signed and returned (by fax, e-mail, courier or hand delivery) to the Chief Procurement Officer no later than April 06, 2018.**

The firm listed below does/does not (circle one) intend to respond to this Invitation for Bids.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Invitation for Bids.

Please return to:

**Rustin Porter**  
Valencia County Purchasing  
444 Luna Ave, Suite 100A  
Los Lunas, NM 87031  
Phone: (505) 866-2005  
Fax: (505) 866-2424  
E-mail: rustin.porter@co.valencia.nm.us

**APPENDIX B**  
**CONTRACT**  
**VALENCIA COUNTY**

CONTRACT #VCB-FY18-010

THIS AGREEMENT is made and entered into by and between the Board of County Commissioners of Valencia County, State of New Mexico, hereinafter referred to as the "County" and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent, the Valencia County Manager and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall deliver products or perform the work outlined on the Bid Form (Appendix D) and incorporated herein by reference. Product(s) shall be delivered or work performed only upon receipt of a valid Purchase Order issued by the County that specifically identifies the products or services to be provided by the Contractor.

**2. Compensation.**

A. The County shall pay to the Contractor in full payment for product(s) accepted or services satisfactorily performed based on the price(s) found in the Bid Form (Appendix D).

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices **MUST BE** received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. The Contractor shall submit an accurate invoice for each purchase. Any reimbursement of taxes due to the Contractor shall be shown as a separate item. Invoices shall refer to the Purchase Order Number and shall be itemized unless otherwise specified by the County. Invoices are to be mailed to: Valencia County, Finance Department/Accounts Payable, P.O. Box 1119, Los Lunas, New Mexico 87031.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. **Term.**

This Agreement shall terminate upon acceptance by the County and payment for the specified product(s) or services.

4. **Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for product(s) delivered and accepted or work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for product(s) delivered or such work performed within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management. Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce

funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors providing product(s) or performing services for the County and are not employees of the County of Valencia. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Valencia as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the County of Valencia unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

**8. Subcontracting.**

Not applicable.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Valencia from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Valencia and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which

would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- i. in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;
- ii. this Agreement complies with Section 10-16-7(B) NMSA 1978 because (a) the Contractor is not a public officer or employee of the County; (b) the Contractor is not a member of the family of a public officer or employee of the County; (c) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (d) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- iii. in accordance with Section 10-16-8(C) NMSA 1978, (a) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (b) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;
- iv. in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- v. in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's

representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Thirteenth Judicial District Court in Valencia County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of product(s) delivered or services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments

**20. Disclaimer and Hold Harmless.**

The Valencia County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the Valencia County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Valencia County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Valencia from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County of Valencia and the New Mexico Association of Counties by certified mail.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that



or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**26. Non-Collusion.**

In signing this bid the Bidder certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the County.

**27. Survival.**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement

**28. Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**29. Force Majeure.**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance.

Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**30. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the Contract at a public meeting or unless it is executed by the Valencia County Manager, if the amount of the Contract is \$10,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully executed copy of the Agreement and one or more valid Purchase Orders issued by the County.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

Invitation for Bids No. VCB-FY18-010 and the Contractor's Bid Form are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- i. Any Contract amendment(s), in reverse chronological order; then
- ii. this Contract itself; then
- iii. the Invitation for Bids; then
- iv. the Contractor's Bid Form; then
- v. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the Contractor's bid).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The Contractor shall defend, at its own expense, the County of Valencia against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Valencia based upon the Contractor's trade secret infringement relating to any product or service provided under this Agreement, the Contractor agrees to reimburse the County of Valencia for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Valencia shall:

- i. give the Contractor prompt written notice of any claim;
- ii. allow the Contractor to control the defense or settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

**36. Escalation Clause.**

Price escalation due to increased cost to the Contractor is not allowed.

**37. Warranties.**

Contractor warrants the materials, supplies or services furnished to be exactly as specified, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. Materials furnished by Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials.

**38. Commercial Warranty.**

The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall

extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance.

**39. Inspection.**

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

**40. Inspection of Plant.**

The County may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this Contract.

**41. Late Payment Charges.**

Except as otherwise agreed to: late payment charges may be assessed against the user agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

**42. Overcharge Resulting from Antitrust Violations.**

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

**43. Contractor's Payment of Property Taxes.**

Contractor acknowledges that County has established a policy of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations to mitigate the economic burden otherwise imposed upon County and its taxpayers. Contractor warrants and certifies that it is presently not delinquent in the payment of its property tax obligations, and that it will not become delinquent during the term of this Contract.

**44. Termination For Failure to Comply with County's Tax Reduction Policy.**

Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure a property tax delinquency within 10 days of notice shall be grounds upon which County may terminate this Contract.

**45. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: \_\_\_\_\_, County Manager  
PO Box 1119  
Los Lunas, NM 87031

To the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the County Purchasing Agent below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Valencia County Manager

Printed Name: \_\_\_\_\_

Address: 444 Luna Ave.  
Los Lunas, NM 87031

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Valencia County Chief Procurement Officer

Printed Name: Rustin Porter, VC Purchasing Agent  
Address: 444 Luna Ave.  
Los Lunas, NM 87031

**APPENDIX C  
MASTER LEASE AGREEMENT**

Master Lease Agreement Number: #VCB-FY18-010

APPROVED FOR USE BY NEW MEXICO STATE AGENCIES AND LOCAL PUBLIC BODIES

THE PURPOSE OF THIS MASTER AGREEMENT IS TO SET FORTH UNIFORM GENERAL TERMS AND CONDITIONS UPON WHICH LESSOR SHALL LEASE TO LESSEE, AND LESSEE SHALL LEASE FROM LESSOR, \_\_\_\_\_ WHEN LEASE REFERS TO SOFTWARE LICENSED TO LESSEE IT SHALL BE UNDERSTOOD THAT SAID SOFTWARE SHALL CONTINUE TO BE OWNED BY LICENSOR AS MAY BE SET FORTH IN ANY APPLICABLE AND ATTACHED SOFTWARE LICENSE AGREEMENT. LESSEE AND LESSOR ARE SOMETIMES REFERRED TO IN THIS AGREEMENT INDIVIDUALLY AS A "PARTY" AND COLLECTIVELY AS THE "PARTIES".

This lease agreement is entered into by and between:

The LESSOR \_\_\_\_\_  
with its principal address at \_\_\_\_\_  
\_\_\_\_\_

and

The LESSEE Valencia County, New Mexico with its principal address at 444 Luna Avenue, Los Lunas, NM 87031. This lease agreement is made and entered into within THE STATE OF NEW MEXICO where said leased Equipment shall be located and it shall become effective on \_\_\_\_\_, 2018

LESSOR AND LESSEE AGREE THAT ANY LEASE ENTERED INTO UNDER THE PROVISIONS OF THIS MASTER LEASE AGREEMENT IS A "TRUE LEASE" WITH AN OPTION TO PURCHASE EQUIPMENT AT FAIR MARKET VALUE, AND IS NOT AN INSTALLMENT OR FINANCING AGREEMENT.

1. **COMMENCEMENT PROCEDURES:** Subject to other terms and conditions contained in this Master Agreement and the applicable Schedule(s) as may be attached hereto and made a part of this Master Agreement, Lessee shall enter into individual Leases (hereafter defined) with Lessor as follows:

- (a) Execution of Schedule. Lessor and Lessee mutually agree to enter into a Lease by executing a Schedule in the Form of Appendix A (the "Schedule") with such changes as Lessor and Lessee shall have agreed to as conclusively evidenced by their execution thereof. Each such Schedule shall specifically identify (by serial number or other identifying characteristics) the items of Equipment to be leased under such Schedule (other than items of system Software, which shall be deemed to be items of Software leased under the Schedule pursuant to which the related items of Equipment are leased). Each Schedule, when executed by both Lessor and Lessee, together with this Master Agreement, shall constitute a separate and distinct lease ("Lease") which incorporates in full the terms and conditions of this Master Agreement and which is, enforceable according to its terms. In the event of any conflict between the terms of this Master Agreement and such Schedule, the provisions of the Master Lease Agreement shall govern.
  
- (b) Acceptance; Initial Term of Lease(s). Lessee shall accept the Equipment subject to a Lease in accordance with Section 2. The Initial Term of each Lease shall begin on the Acceptance Date of the Equipment and shall continue for the period described in the applicable Schedule unless a Non-appropriation or other Cancellation provision shall have occurred. PURSUANT TO SECTION 13-1-150, NMSA 1978, THE PARTIES HERETO AGREE THAT THE TERM OF ANY LEASE SHALL NOT EXCEED A PERIOD OF FOUR YEARS IF THE ANNUAL LEASE PAYMENT AMOUNT IS UNDER \$25,000 PER YEAR OR EIGHT YEARS IF THE LEASE PAYMENT AMOUNT IS OVER \$25,000 PER YEAR, INCLUDING ALL RENEWALS AND EXTENSIONS.

- 2. **SELECTION; ACCEPTANCE OF EQUIPMENT.** Lessee acknowledges that the Equipment is of a size, design, capacity and manufacturer selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor and that the Manufacturer/Supplier is not an agent of Lessor. Lessee further acknowledges either (a) that Lessee has reviewed and approved any written purchase order, supply contract or purchase agreement ("Purchase Document"), covering the Equipment purchased from the Manufacturer/Supplier for lease to Lessee; or (b) that Lessor has informed or advised Lessee, in writing, either previously or by this Lease of the following: (i) the identity of the Manufacturer/Supplier; (ii) that the Lessee may have rights under the Purchase Document; and (iii) that the Lessee may contact the Manufacturer/Supplier for a description of such rights that Lessee may have under the Purchase Document. Lessee agrees to inspect all Equipment no later than thirty (30) days after the delivery thereof to Lessee or, if acceptance requirements for such Equipment are specified in the applicable Purchase Document, as soon as reasonably practicable after being advised by the Manufacturer/Supplier (seller) that such requirements have been met. Lessee further agrees to complete, execute and deliver to Lessor either (i) an Acceptance Certificate after its satisfactory completion of such inspection or (ii) written notification of any defects in the Equipment.

3. **DEFINITION OF TERMS.** All capitalized terms used in this Master Agreement have the meanings set forth below or in the Sections of this Master Agreement referred to below:

“Acceptance Date” means the date set forth in the Certificate of Acceptance as the date Lessee accepted the Equipment in accordance with Section 2 of this Master Agreement and in accordance with Laws of New Mexico, Section 13-1-158 NMSA 1978.

“Assignee” means any assignee of all or any portion of Lessor’s interest in this executed Master Agreement to Lease, any Schedule or any Equipment as may be mutually agreed to by the parties to this executed agreement.

“Casualty Loss” means, with respect to any Equipment, the condemnation, taking, loss, destruction, theft or damage beyond repair of such Equipment.

“Casualty Value” or “Full Insurable Value” means, as to any Equipment, the full replacement value of the Equipment (reasonable wear, tear and depreciation resulting from normal and proper use excepted).

“Daily Rent” means, as to any Lease, an amount equal to the per diem Rent payable under the applicable Schedule (calculated on the basis of a 360-day year and 30 day months).

“End-of-Term Notice” means, as to any Lease, a written notice delivered by Lessee to Lessor at least 90 days prior to the end of the Initial Term, any Renewal Term or any optional extension of the Initial Term or any Renewal Term setting forth Lessee’s elections pursuant to Section 4 of this Master Agreement with respect to the Equipment subject to such Lease. Each End-of-Term Notice shall specify with particularity the Units of Equipment to be purchased by Lessee (if any), as to which the Lease is to be renewed (if any) and that are to be returned to Lessor (if any).

“Equipment” means, as to any Lease, items of Hardware, Software or both as may be specified in the appropriate Schedule.

“Equipment Location” means, as to the Equipment, the address at which such Equipment is located from time to time, as originally specified in the applicable Schedule or in any subsequent notice delivered to Lessor if applicable.

“Fair Market Value” means the total price that would be paid for any specified Equipment in an arm’s length transaction between an informed and willing buyer under no compulsion to buy and an informed and willing seller under no compulsion to sell. Such total price shall not be reduced by the costs of removing such Equipment from its current location or moving it to a new location.

“Fair Rental Value”, if and when applicable, means the amount of periodic rent that would be payable for any specified Equipment in an arm’s length transaction between an informed and willing lessee and an informed and willing lessor, neither under compulsion to lease/rent. Such amount shall not be reduced by the costs of removing such Equipment from its current location or moving it to a new location.

“First Payment Date” means, as to any Lease, the date the first Rent payment with respect to the Initial Term of such Lease is due, as determined pursuant to the terms of the applicable Schedule.



“Fiscal Period” shall mean that period of time as defined in a Schedule.

“Fiscal Year” means, as to any Lease involving state agencies, July 1 to June 30 of any given year. “Fundamental Agreements” means, collectively, this Master Agreement, each Schedule and Acceptance Certificate and all other related instruments and documents.

“Hardware” means items of tangible personal property (equipment).

“Initial Term” means, as to any Lease, the initial term thereof as specified in the related Schedule.

“Lease” with regards to this Master Agreement has the meaning “true lease”.

“Lessee” means one that holds property under a lease.

“Lessor” means one that conveys property by lease.

“License Agreement” means any license agreement or other document granting the purchaser the right to use Software or any technical information, confidential business information or other documentation relating to Hardware or Software, as amended, modified or supplemented by any other agreement between the licensor and Lessor.

“Manufacturer/Supplier” means as to any Equipment, the Seller and the Manufacturer or licensor of such Equipment collectively, or where the context requires, any of them.

“Master Agreement” has the meaning specified in the preamble hereto.

“Material Agreements” means, collectively, all Fundamental Agreements, all other material agreements by and between Lessor and Lessee, Manufacturer/Supplier and Lessee, and Manufacturer/Supplier and Lessor, and any, financial statement, or financial data required to be provided by Lessee in connection with any Lease.

“Non-Appropriation” has the meaning specified in Section 7.

“Purchase Document” has the meaning specified in Section 2.

“Rent” means the payment by Lessee to Lessor of money for the lease of Equipment covered by the Schedule. “Software” means all software or computer programs that accompany or constitute all or a portion of any Equipment or are provided by or on behalf of any vendor or licensor to Lessee with respect to any Equipment, and all modifications, additions, supplements, translations, derivative works, and full or partial copies of any thereof, regardless who prepared the same, and code with respect thereto, whether embodied in or contained on magnetic tape, disk, semiconductor device, or any other device or machine.

“Taxes” means all license and registration fees and all taxes (Local, state and federal), fees levies, imposts, duties, assessments, charges and withholding of any nature, however designated including without limitation any value added, transfer, sales, use, gross receipts, business, occupation, excise, personal property, other than taxes measured by Lessor’s income.

“Term” means the term thereof as specified in the related Schedule.

“UCC” means the Uniform Commercial Code as enacted and in effect in any applicable jurisdiction.

“Unit of Equipment” means, as to the Equipment leased pursuant to any Schedule a) each individual item of PC Equipment leased pursuant to such Schedule, and b)

all Equipment leased pursuant to such Schedule other than PC Equipment taken as a whole.

4. **LESSEE'S END-OF-LEASE-TERM OPTIONS.** Lessee shall have the following options in respect of each Lease at the end of the Initial Term:
  - A. **Purchase Option.** Lessee may elect, by delivering to Lessor an End-of-Term Notice at least 90 days prior to expiration of the Initial Term, to purchase any or all Units of Equipment then subject to such Lease for an amount equal to the Fair Market Value of such Units of Equipment as of the end of the then applicable Term. Lessee's right to purchase said Equipment is contingent upon all of the following:
    - (1) No Lessee Default shall have occurred and be continuing;
    - (2) Lessor shall have received Lessee's notice of intent to purchase at least 90 days prior to the expiration of the Initial Term; and
    - (3) Lessee shall remit such Fair Market Value amount for Equipment to Lessor in immediately available funds on or before the last day of the then applicable Term. The Lease with respect to such Units of Equipment shall terminate and Lessor shall transfer all of its interest in such Equipment to Lessee "As is, Where is," without any warranty, express or implied, from Lessor.
  - B. **Return.** Lessee may elect, by delivering to Lessor an End-of-Term Notice at least 90 days prior to expiration of the Initial Term, to return any or all of the Units of Equipment then subject to such Lease. Lessee shall pack the Equipment to be returned to Lessor in accordance with manufacturer's guidelines and deliver such equipment to Lessor at any destination within the continental United States designated by Lessor. All dismantling, packaging, transportation, in-transit insurance and shipping charges shall be borne by Lessee. In the case of any Software or License Agreement subject to a Schedule, Lessee shall immediately de-install and deliver to Lessor all Software, together with the original Certificate of Authenticity issued by the licensor of such Software, if any, unless such Certificate of Authenticity was previously delivered to Lessor. All Equipment shall be returned to Lessor on the last day of the Initial Term in good repair and in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted.
5. **RENT; LATE CHARGES.** As Rent for the Equipment, Lessee shall pay Lessor the amounts on the due dates set forth in the Schedule. Lessor and Lessee agree that any interest on Late Payments shall be paid by Lessee in accordance with the payment provisions of the New Mexico Procurement Code, Section 13-1-158, NMSA 1978.
6. **CANCELLATION.** Consistent with applicable New Mexico Laws, Lessee reserves the right to cancel this Lease at the end of any Fiscal Year, without penalty. Unless some unforeseen circumstance arises which Lessee shall document, Lessee will give Lessor 60 days prior written notice of such termination. (Amended 10/10/01). (Amended 5/13/02).

7. **TERMINATION FOR NON-APPROPRIATION.** Notwithstanding anything in this Master Agreement to the contrary, in the event no funds or insufficient funds are appropriated and budgeted by Lessee's governing body or are otherwise unavailable in any Fiscal Year for the payment of Rent and other amounts due under any Lease, the Lease shall terminate on the last day of the Fiscal Period for which appropriations were received or other amounts are available to pay amounts due under the Lease without penalty or expense to Lessee. It is up to the state agency or local public body (the Lessee) to determine sufficiency of funds, which determination shall be accepted by the Lessor and is final. Lessee shall give Lessor or its assignee written notice at least forty-five (45) days in advance of such occurrence. (Amended 5/13/02)
8. In the event of such termination as reflected in Sections 6 and 7 above, Lessee shall immediately cease all use of the Equipment and shall immediately make arrangements with Lessor or its designee to de-install, disassemble, pack, crate, insure and return the Equipment to Lessor at any destination within the continental United States designated by Lessor. Any expenses and/or risks associated with returning equipment to Lessor shall be borne solely by Lessee. Such equipment shall be in good repair and in the same condition as when received by Lessee, reasonable wear, tear and depreciation resulting from normal and proper use excepted. (Amended 10/10/01).
9. **EQUIPMENT OWNERSHIP; LIENS; LOCATION.** As between Lessor and Lessee, Lessor is the sole owner of the Equipment and has sole title thereto; Lessee shall not make any representation to any third party inconsistent with Lessor's sole ownership of the Equipment. Lessee covenants with respect to each Lease that: A) it will not pledge or encumber the Equipment or Lessor's interest in the Equipment in any manner whatsoever nor create or permit to exist any levy, lien or encumbrance thereof or thereon except those created by or through Lessor; B) the Equipment shall remain personal property whether or not affixed to realty and shall not become a fixture or be made to become a part of any real property on which it is placed without Lessor's prior written consent, and C) Lessee shall maintain the Equipment so that it may be removed from any building in which it is placed without damage to the building or the Equipment. Lessee may relocate any Equipment from the Equipment Location specified in the applicable Schedule to another of its location upon prior written notice to Lessor specifying the new Equipment Location, provided Lessee remains in possession and control of the Equipment. Only Lessor or its designee shall provide for the moving of any leased equipment covered by this Master Lease Agreement. (Amended 10/10/01).
10. **ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES.** To the extent permitted and so long as no Event of Default has occurred and is continuing, Lessor hereby assigns to Lessee, for the total term of any Lease, all Equipment warranties provided by any Manufacturer/Supplier in the applicable Purchase Documents. Lessee shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in Lessee's name and at its expense. In the event Lessee is precluded from enforcing any such warranty in its name, Lessor, as owner of the

Equipment, shall, upon Lessee's request, take reasonable steps to enforce such warranties at costs to be borne by Lessor.

11. **EQUIPMENT USE AND MAINTENANCE. (THIS PROVISION SHALL NOT APPLY TO SOFTWARE MAINTENANCE WHICH SHALL BE ADDRESSED SEPARATELY IN A LICENSE AGREEMENT).** Lessee is solely responsible for the selection, installation, operation and maintenance of the Equipment and all costs related thereto, including shipping, if applicable. Lessee shall at all times operate and maintain the Equipment in good working order, repair and condition and appearance, and in accordance with the manufacturer's specifications and recommendations. On reasonable prior notice to Lessee, Lessor and Lessor's agents shall have the right, during Lessee's normal working hours, to enter the premises where the Equipment is located for the purpose of inspecting the Equipment and observing its use. If Lessor shall have provided to Lessee any tags or identifying labels, Lessee shall, at its expense, affix and maintain in a prominent position on each item of Equipment such tags or labels to indicate Lessor's ownership of the Equipment. Lessee shall, at its expense, enter into and maintain and enforce at all times during the Term of each Lease a maintenance agreement to service and maintain the related Equipment, upon terms and with a provider approved by Lessor. (Amended 10/10/01)
12. **ALTERATIONS AND ADDITIONS TO EQUIPMENT.** Lessee shall make no alterations or additions to Equipment, except those that a) will not void any warranty made by the Manufacturer/Supplier, result in the creation of any security interest, lien or encumbrance on the Equipment or impair the value of use of the Equipment either at the time made or at the end of the Term of the applicable Lease, and are readily removable without damage to the Equipment; or b) are required by any applicable law, regulation or order. All additions to the Equipment or repairs made to the Equipment, except Optional Equipment, become a part of the Equipment and Lessor's property at the time made; Optional Equipment which have not been removed prior to return of the Equipment shall become Lessor's property.
13. **INSURANCE.** Commencing upon acceptance and continuing throughout the Initial Term, Lessee agrees to keep the Equipment insured at Lessee's expense against all risks or loss from any cause, including without limitation, theft and damage. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may self insure against such risk provided that Lessor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. Lessee will provide to Lessor proof of such coverage. (Amended 10/10/01)
14. **RISK OF LOSS.** Commencing upon acceptance and continuing throughout the Initial Term, Lessee shall bear the entire risk of loss with respect to any Equipment damage, destruction, loss, or theft whether partial or complete. No event of loss shall relieve Lessee of its obligation to pay Rent under any Schedule. If any item of Equipment is damaged, Lessee shall promptly notify Lessor and, at Lessee's expense, within sixty (60) days of such damage, cause to be made such repairs as are necessary to return such item to its previous condition. In the event any Casualty Loss shall occur, on the next Rent

payment date Lessee shall pay Lessor the Stipulated Loss Value of the Equipment suffering the Casualty Loss. If Lessee pays the Stipulated Loss Value of the Equipment suffering a Casualty Loss, upon Lessor's receipt in full of such payment the applicable Lease shall terminate as to the Equipment suffering the Casualty Loss. After receipt of such Stipulated Loss Value by Lessor or its assigns, the Equipment for which Stipulated Loss Value was received shall be conveyed to Lessee AS IS, WHERE IS and free and clear of all liens and encumbrances created by or arising through Lessor, but otherwise, WITHOUT FURTHER WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR USE.

15. **TAXES.** Lessor shall report and pay all Taxes now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Rent or other charges payable hereunder, or otherwise upon or in connection with any Lease, whether assessed on Lessor or Lessee, other than any such Taxes required by law to be paid by Lessee. Lessee shall promptly reimburse Lessor for all such Taxes paid by Lessor and invoiced to Lessee, together with any penalties or interests in connection therewith attributable to Lessee's acts or failure to act.
16. **INDEMNIFICATION.** Lessor shall hold the State of New Mexico, participating entities and its agencies and employees harmless and shall indemnify the State of New Mexico, participating entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney costs for personal injury or damage of property arising from the acts or omissions of the Lessor, its agents, officers, employees or subcontractors. Lessor shall not be liable for damages that are the result of negligence by the State of New Mexico, the participating governmental entities, or its employees. To the extent permitted by law, procuring agencies, Lessees, are responsible for their own acts errors or omissions pertaining to this Indemnification provision.
17. **DISCLAIMERS.** Lessee leases the equipment from Lessor "As is, Where is". It is specifically understood and agreed that Lessor makes no representations or warranties, express or implied, including without limitation, any representation or warranties with respect to the design, compliance with specifications, quality, operation or condition of any Equipment or any part thereof. The merchantability or fitness of equipment for a particular purpose, or issues regarding patent infringement, title or like which are rightly the responsibility of the Manufacturer/Supplier.
18. **DEFAULT.** Lessee - The occurrence of any of the following shall constitute default under a Schedule: a) nonpayment by Lessee of Rent or any other sum payable by its due date; b) failure by Lessee to perform or observe any other term, covenant or condition of this Master Lease Agreement, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; c) insolvency by Lessee; d) any representation or warranty made by Lessee in this Master Lease Agreement, any Schedule or in any document furnished by Lessee to Lessor in

connection therewith or with the acquisition or use of the Equipment shall be untrue; or e) a termination of any applicable software license agreement.

Lessor – Any of the following shall constitute default by Lessor under this Master Lease Agreement: a) Lessor breaches its covenant of quiet enjoyment and fails or is unable to cure such breach within ten (10) days after written notice thereof from Lessee; b) Lessor fails to pay Manufacturer/Supplier within thirty (30) days after Lessor's receipt of a properly executed Acceptance Certificate and all other documentation necessary to establish Lessee's acceptance of such Equipment under a Lease; c) Lessor makes an assignment for the benefit of creditors.

19. **REMEDIES.** If a Default occurs, Lessor may do one or more of the following; (a) cancel or terminate this Lease; (b) require Lessee to immediately pay Lessor all Rent payments due up until the time of Default; (c) require Lessee to deliver, at its expense, the Equipment to Lessor in accordance with Section 4 (B) of this Master Agreement; (d) Lessor or its agent may peacefully repossess the Equipment without court order; or (e) Lessor may exercise any other right or remedy available at law or in equity. If Lessor Defaults, Lessee has the right to cancel or terminate this Lease effective immediately at no cost to the Lessee. In the event of Lessor's Default, Lessor shall be responsible for all costs associated with reclaiming and return of Equipment.
20. **ASSIGNMENT.** Lessor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Master Agreement, any Schedule or any Equipment, in whole or in part, without prior notice and consent of Lessee which shall not be unreasonably delayed. Each such Assignee will be entitled to all of Lessor's rights, however, unless otherwise agreed to by Lessor and Assignee, Assignee shall not be obligated to perform such obligations of Lessor under this Master Agreement. Lessee and Lessor further acknowledge that any assignment or transfer by Lessor shall not materially change Lessor's or Lessee's obligations under the assigned Lease. Without the prior written consent of Lessor, Lessee will not a) assign, transfer, pledge, hypothecate, or otherwise dispose of its rights or obligations under this Master Lease Agreement or the Equipment, b) sublet the Equipment, or c) permit the Equipment to be used for any purpose not permitted by this Master Lease Agreement. (Amended 4/4/02).
21. **GOVERNING LAW.** This Master Agreement and each Lease shall be governed by the Laws of the State of New Mexico.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS MASTER AGREEMENT ON THE DATES SPECIFIED BELOW.

LESSOR: \_\_\_\_\_

BY (Name and Title): \_\_\_\_\_ DATE: \_\_\_\_\_

LESSEE: \_\_\_\_\_

BY (Name and Title): \_\_\_\_\_ DATE: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS**

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Jhonathan Aragon, Chair, District V

\_\_\_\_\_  
Charles Eaton, Vice Chair, District IV

\_\_\_\_\_  
Helen Y. Cole, District I

\_\_\_\_\_  
David Carlberg, District II

\_\_\_\_\_  
David A. Hyder, District III

Attest:

\_\_\_\_\_  
Peggy Carabajal  
Valencia County Clerk

**APPENDIX D**

**Bid Form**

**Valencia County**

Tandem Axle Motor Grader (2)

To: Valencia County  
Attn. Rustin Porter, Purchasing  
444 Luna Ave., Suite 100A  
Los Lunas, NM 87031

From: \_\_\_\_\_  
Name of Bidder  
\_\_\_\_\_  
Mailing Address  
\_\_\_\_\_  
City, State & Zip

Responding to Invitation for Bid No. VCB-FY18-010 due not later than 12:00 pm local time April 12, 2018, the undersigned Bidder agrees to furnish and deliver the following product(s) or service(s) bid per the specifications upon receipt of a valid Purchase Order. We have stated hereon the prices at which we will furnish and deliver the specified product or services and will accept as full payment therefore the amount shown below.

**BID AS FOLLOWS:**

**\*\*Bid Lease Rates/Price** - Bidders are required to identify any and all costs associated with the monthly and annual lease rates bid (i.e., acquisition cost, interest, principle, insurance, all applicable taxes{*other than gross receipts tax*}, delivery, registration, licensing, testing, set up, etc.).

Bid rates for the operating lease of two (2) John Deere Model 772-G/GP, or equal performance, Tandem Axle Motor Graders;

**Bid Option #1:**

36 month *standard* operating lease:

**\*\*Annual cost of the lease \$ \_\_\_\_\_/yr. per Motor Grader (less applicable gross receipts tax).**

**\*\*Monthly cost of the lease \$ \_\_\_\_\_/ yr. per Motor Grader (less applicable gross receipts tax).**

Estimated/projected optional end of the lease Fair market value residual or buy out amount per Grader: \$ \_\_\_\_\_

Manufacturer make, model year, model number bid: \_\_\_\_\_



**Bid Option #2:**

48 month *standard* operating lease:

\*Annual cost of the lease \$\_\_\_\_\_/yr. per Motor Grader (**less applicable gross receipts tax**)

\*\*Monthly cost of the lease \$\_\_\_\_\_/month per Motor Grader (**less applicable gross receipts tax**)\_\_

Estimated/projected optional end of the lease Fair market value residual or buy out amount per Grader: \$\_\_\_\_\_

Manufacturer make, model year, model number bid:\_\_\_\_\_

**Bid Option #3:**

36 month *full service* operating lease (includes lessor providing and performing at lessee's site location all parts, labor, materials, supplies, testing, etc. required to adhere to and comply with manufacturer's required warranty and recommended maintenance schedules).

\*\*Annual cost of the lease \$\_\_\_\_\_/yr. per Motor Grader (less applicable gross receipts tax)

\*\*Monthly cost of the lease \$\_\_\_\_\_/Month per Motor Grader (less applicable gross receipts tax).

Estimated/projected optional end of the lease Fair market value residual or buy out amount per Grader: \$\_\_\_\_\_

Manufacturer make, model year, model number bid:\_\_\_\_\_

**Bid Option #4:**

48 month *full service* operating: (includes lessor providing and performing at lessee's site location all parts, labor, materials, supplies, testing, etc. required to adhere to and comply with manufacturer's required warranty and recommended maintenance schedules).

\*\*Annual cost of the lease \$\_\_\_\_\_/yr. per Motor Grader (less applicable gross receipts tax)

\*\*Monthly cost of the lease \$\_\_\_\_\_/month per Motor Grader (less applicable gross receipts tax).

Estimated/projected optional end of the lease Fair market value residual or buy out amount per Grader: \$\_\_\_\_\_

Manufacturer make, model year, model number bid:\_\_\_\_\_

**Bid Option #5:**

Blade replacement, as needed, whenever the mow board shows 1.5" or greater wear at any location/end along the mow board.

\*\*Additive annual cost: \$\_\_\_\_\_/yr. per Motor Grader

\*\*Additive monthly cost: \$\_\_\_\_\_/month per Motor Grader

**Payment terms (OPTIONAL):** Bidder offers a \_\_\_\_\_% discount for payments made within \_\_\_\_\_ days of acceptance of the goods or services shown on a correct and valid invoice. Terms of less than twenty (20) days will not be considered.

Please check your calculations before submitting your bid; the Agency will not be responsible for Bidder miscalculations.

Signature below verifies that Bidder has read, understands, and agrees to the terms and conditions of this solicitation, attachments, and addenda.

**Bidder hereby acknowledges receipt of Addenda**

**Number \_\_\_\_\_, Dated \_\_\_\_\_**

**Number \_\_\_\_\_, Dated \_\_\_\_\_**

**Number \_\_\_\_\_, Dated \_\_\_\_\_**

*(Add additional if needed)*

The representations herein are made under penalty of perjury. We hereby offer to sell the Agency the above product(s) or services at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

\_\_\_\_\_  
Bidder Name

\_\_\_\_\_  
Signature of Authorize Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

NM TAXATION AND REVENUE CERTIFICATE, RESIDENT BUSINESS # \_\_\_\_\_

NM TAXATION AND REVENUE CERTIFICATE, RESIDENT  
VETERAN BUSINESS # \_\_\_\_\_ and Appendix H (NM Veterans Business Certification  
Form)

APPENDIX E

LETTER OF TRANSMITTAL FORM

Items #1 to 3 MUST EACH BE RESPONDED TO. Failure to respond to all three items WILL RESULT IN THE DISQUALIFICATION OF THE BID!

1. Identity (Name) and Mailing Address of the submitting organization:

Three horizontal lines for providing the organization's name and mailing address.

2. For the person submitting the bid:

Table with 2 columns and 4 rows: Name, Title, E-Mail Address, Telephone Number.

3. Bidder must identify any employee(s) or elected official(s) of Valencia County that have a financial interest in the Bidder (one of the two must be selected):

\_\_\_ No Financial Interest \_\_\_ Yes, Financial Interest\*

\*Specify by name(s): \_\_\_\_\_

4. Declarations:

- I certify that I am authorized to contractually bind my company.
- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.
- I acknowledge receipt of any and all amendments to this IFB.
- I certify that my company/entity/organization commits to comply and act in accordance with (1) Federal Executive Orders and New Mexico State Statutes relating to the enforcement of civil rights, (2) Federal Code 5 USCA 7201 et. seq., Anti-Discrimination in Employment; (3) Executive Order No. 11246, Equal Opportunity in Federal Employment; (4) Title 6, Civil Rights Act of 1964; and (5) Requirements of the American with Disabilities Act of 1990 for work performed as a result of this IFB.

\_\_\_\_\_, 2018
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

**APPENDIX F**

**NO BID FORM**

**VALENCIA COUNTY GRADER LEASE  
IFB#VCB-FY18-010**

In an effort to make the procurement of Valencia County goods and services as competitive as possible, we are soliciting information from persons or businesses who cannot bid. Completion of this form will assist us in evaluating factors, which relate to the competitiveness of our bids. Please check any of the boxes below, which may apply. **THIS FORM IS OPTIONAL.**

- \_\_\_\_\_ Specifications - Restrictive, unclear, specialty item, etc.
- \_\_\_\_\_ Manufacturing - Unique item, production time for model or item has expired, etc.
- \_\_\_\_\_ Bid Time - Insufficient time to properly bid.
- \_\_\_\_\_ Delivery Time - Specified delivery time cannot be met.
- \_\_\_\_\_ Payment - Delay in payment process.
- \_\_\_\_\_ Miscellaneous - Do not wish to bid, do not handle this type of item(s), unable to compete, etc.

The intent in obtaining this information is to utilize it to adjust procedures, if appropriate and to obtain maximum participation in the competitive bid process. Vendor comments are not restricted to those items listed. Please submit any statement relative to this bid, which you feel has an impact on your inability to bid.

**VENDOR STATEMENT**

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Note: Return this form only if you are not submitting a bid

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Firm Name

**APPENDIX G**

**BID SUBMITTAL CHECKLIST**  
VCB-FY18-010

This checklist is provided as a courtesy to assist Bidders in insuring they submit a properly complete bid. It should NOT be returned with the bid. It is for information purposes only. This checklist is not guaranteed to be all inclusive. Bidders should carefully review the requirements of the IFB and their response before submitting their bid to the County.

<b>ITEM</b>	<b>REFERENCE</b>	<b>YES</b>	<b>NO</b>
Correct delivery address for bid?	I.E.		
Preference certificate included? (If bidder is qualified and desires preference eligibility.)	I.G and III.C		
Letter of Transmittal Form complete, <b>SIGNED</b> and included?	II.C.1 and Appendix E		
Contract <b>SIGNED</b> and included?	III.C.2 and V.D.3 and Appendix B		
Master Lease Agreement <b>SIGNED</b> and included	IV.E.5 and Appendix C		
Bid Form completed, <b>SIGNED</b> and included?	III.C and Appendix D		
Receipt of any and all addendums (if issued) acknowledged?	II.C.35 and Bid Form (Appendix D)		
Bid sent in <b>SEALED</b> envelope with proper labeling?	III.E		
Bid sent to <b>ARRIVE</b> prior to deadline?	II.A.6 and II.B.6		

**APPENDIX H  
RESIDENT VETERANS PREFERENCE CERTIFICATION**

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

**Please check one box only**

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

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this 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 \$5M allowing me the 7% preference discount on this solicitation. 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 section 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

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

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

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business.

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