County of Lincoln

Carrizozo, NM 88301

Request for Proposals (RFP)

Buck Mountain Communications Tower Site
RFP #20-21-002

Due: August 17, 2020

2:00 p.m. MDT

Request for Proposal (RFP)

Buck Mountain Communications
Tower Site
RFP #20-21-002

Table of Contents

I. INTRODUCTION
- **A. Purpose of this Request for Proposals**
- **B. Summary**
- **C. Proposal submission deadline**
- **D. Scope of work and deliverables**
- **E. Definition of terminology**

II. CONDITIONS GOVERNING THE PROCUREMENT
- **A. Sequence of events**
- **B. Explanation of events**
- **C. General requirements**

III. RESPONSE FORMAT AND ORGANIZATION
- **A. Number of Responses**
- **B. Number of copies**
- **C. Proposal format**

IV. SPECIFICATIONS
- **A. Information**
- **B. Preferences**
- **C. Mandatory Requirements & Preferences**
- **D. Evaluation**

Appendix A: Acknowledgment of receipt form
Appendix B: Sample Contract
Appendix C: Cost Response Form
Appendix D: Letter of transmittal Form
Appendix E: Campaign Contribution Disclosure Form
Appendix F: Resident Veterans Preference Certification

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The County of Lincoln, on behalf of the Board of County Commissioners, seeks sealed proposals from qualified companies that can do business in the State of New Mexico to build a communications tower as follows.

B. SUMMARY

Lincoln County, NM (Hereafter referred to as "The County" or "County") is requesting proposals for the Buck Mountain Communications Tower for the Lincoln County Office of Emergency Services Department. The project site is located on Buck Mountain, within the geographic boundaries of Lincoln County, New Mexico.

a. **Project Information:** The County will construct a communication tower site on Buck Mountain. The site construction includes complete site preparation; erect and installation of a 120 ft. self-supporting communications tower; shelter; generator, propane tank; pads and all related electrical and communication components; as indicated in scope of work on the construction documents.

b. **Construction Schedule:** Work shall commence on September 3, 2020 and completed on or before May 1, 2021, barring any acts of nature which are against the control of said contractor. Contractor shall notify Joe P. Kenmore, Lincoln County Emergency Services Director at 575-336-8600, when the contractor is to begin said project. Access to the site is secure and arrangements will need to be made. Bidder or contractor must provide an estimated time line for the installation of the site preparation; construction of pad sites; order, arrival and installation of the Tower, the prefabricated building, generator and propane tanks, and completion of the tower before and throughout the project.

c. **Insurance Coverage:** The offeror will be required to carry, at minimum, the following insurance coverage ***with "Lincoln County" <u>and</u> "if any others parties, will be identified at the time of contract" listed as co-insureds on all policies:***

   a) General and professional liability insurance in the amount of $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

   b) Automobile insurance in the amount of $1,000,000.00.

   c) Workers' Compensation insurance as required by state statute.

   d) The insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the contract whether performed by the contractor, their agents or employees, or by subcontractors. All insurance shall remain in full force and effect for the entire term of the contract. ***Proof of coverage must be provided prior to entering into a contract.***

e) **Performance and Payment Bonds**
The contractor shall provide Performance and Payment Bonds in an amount equal to 100% of the contract sum. Bonding companies shall be licensed in the State of New Mexico and shall be in good standing with the State Board of Insurance.

f) **New Mexico Wage Rates**
New Mexico (NM) Contractor's License and registration with NM Workforce Solutions must be submitted with Contractor's offer/bid. Contractor must follow the Department of Labor (DOL) Standards on Wage rates and ensure they have met the DOL's Project Requirements and the Department of New Mexico Workforce Solutions requirements.
http://www.contractor-licensing.com/new-mexico/contractors-licenses.html?gclid=CNDFj7as1roCFdJj7Aod22YAFw
http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks/ContractorRegistration

C. PROPOSAL SUBMISSION DEADLINE

All proposal are due and must be received on or before August 17, 2020 at 2:00 p.m. MT

All proposals submitted must in a sealed package or envelope; clearly marked on the outside front of the package with the RFP Title Buck Mountain; RFP #20-21-002; RFP due date; and the words "Sealed Proposal"! Proposals must be addressed to the attention of the Purchasing Agent and delivered by means of:

Physical Delivery to:
300 Central Avenue
Carrizozo, NM 88301

By US Mail to:
PO Box 711
Carrizozo, NM 88301

NOTE: Faxed or e-mailed delivery will not be accepted. All deliveries via express carrier (INCLUDING PROPOSAL DELIVERY) must be addressed to Toni Foligno, Purchasing Agent at the physical delivery address, above. Delivery to any other department or address could cause delays and may result in disqualification.

The Lincoln County Board of Commissioners or its Designee will review and make its final determination during their regular commission meeting scheduled for 8:30 am on August 18, 2020. The County reserves the right to accept or reject all or any part of any proposal, waive minor technicalities and award the proposal that best serves the interest of the County of Lincoln.

All correspondence regarding this solicitation, including technical questions, contractual terms and conditions, other than the final submittals of the RFP, shall be submitted via email to the following individuals: Toni Foligno, Lincoln County Purchasing Agent at TFoligno@lincolncountynm.gov and copied to Joe P. Kenmore at JKenmore@lincolncountynm.gov, with the subject line "Buck Mountain & YOUR COMPANY NAME" in the subject line.

D. SCOPE OF WORK AND DELIVERABLES

Lincoln County is seeking an appropriate firm to deliver, construct and install a functioning Communications Tower Site for Lincoln County Emergency Services as per specifications to the following:

1. 120 ft. SS Rev H Freestanding Saber Tower or equivalent, with foundation/pad.
    a. The Tower will be designed in accordance with EIA 222H Engineering Standards.
    b. The Tower will be capable of supporting (8) DB224 Model Antennas at various elevations; and (2) 18" dish; with an ice bridge and; 3ft Diameter 5.8ghz Standard Parabolic Antennas to be installed at the 80 ft or below level.
    c. All Tower Steel will be Hot Dip Galvanized. Engineering Drawings to be sealed by a registered NM Professional Engineer.
    d. Tower to Include Climbing Ladder, Safety Climb Device, and Waveguide Ladder with both ¾ inch and 3/8 inch holes to support all lines.
    e. Tower will not be required to have FAA lighting.
2. (1) 10x12 Thermobond or equivalent enclosed shelter made of fire resistant material with;
    a. a concrete foundation/slab.
    b. Shelter to include an integrated HVAC unit and;
    c. a 200 amp Service Panel;
3. (1) 50KW Propane Generator
    a. A. To include an Automatic Transfer Switch wall mounted inside the structure 10x12 structure.
    b. With a concrete pad (or combined with one for the propane tank)
4. (1) 500 Gallon Propane Tank
    a. with concrete pad(or combined with one for both the generator)
5. Electrical service for all related service, radios etc. to be installed and including pull antennas and hard line from an existing tower and move to the new tower.
6. The site prep and Construction/Erecting of Tower: projected to commence on September 3, 2020 and completed on or before May 1, 2021.

E. DEFINITION OF TERMINOLOGY

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

"Board of County Commissioners" (also "BOCC") 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.

"Board of County Commissioners" (also "BOCC") 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.

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

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

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

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

"Desirable" refers to the terms "may", "can", "should", "preferably" or "prefers," which identify a discretionary item or factor. (As opposed to a "mandatory" item or factor.)

"Evaluation Committee" means a body appointed by County management to perform the evaluation of offeror proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Manager and the Evaluation Committee for submission to appropriate approval authorities for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

"Finalist" is defined as an offeror who meets all the mandatory specifications of this Request for Proposal and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required," which identify a required item or factor. (As opposed to a "desirable" item or factor.) Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

"Offeror" is any person, or entity who chooses to submit a proposal.

"Procurement Manager" means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Page" means one (1) side of an 8 ½ X 11 inch sheet of paper. One (1) 8 ½ X 11 inch sheet of paper printed on both sides constitutes two (2) pages. (See, however, Section III. C for the one exception to the 8 ½ X 11 inch page size limitation.)

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

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

"Purchasing" means the County of Lincoln Purchasing Office or the Lincoln County Purchasing Agent.

"Purchasing Agent" or "PA" means the Purchasing Agent for the County of Lincoln.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal 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 proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity and delivery requirements.

"Statement of Compliance" and "Statement of Concurrence" mean an express, affirmative statement by the offeror in their proposal, which they agree with or agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE] Company agrees to comply with this requirement.", "The [NAME HERE] Company concurs with this requirement." and The [NAME HERE] Company agrees to participate as required."

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the general requirements governing the procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsibility	Date
1. Issue RFP	Procurement Manager (PM)	July 24, 2020
2. Return of "Acknowledgment of Receipt" Form for Distribution List	Potential Offeror (PO)	July 29, 2020
3. Deadline to submit written questions	Potential Offeror (PO)	August 5, 2020
4. Response to written questions/RFP Amendments	Procurement Manager (PM)	August 10, 2020
5. Submission of Proposal	Potential Offeror (PO)	August 17th, 2020 by 2:00 pm
6. Proposal Evaluation	Evaluation Committee (EC)	August 17, 2020 2:15 pm
7. Approval of BOCC/ Contract award*	Approval of BOCC/ Contract award*	August 18, 2020
8. Notification of Finalists	PM	August 19, 2020
9. Contract Negotiations	Tentative Winner/County	August 28, 2020
10. Protest Deadline	Offerors	Sept. 2, 2020
11. Start Performance	Winner	Sept 3, 2020

*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 RFP

This RFP is being issued by the Lincoln County Purchasing Agent on behalf of the Lincoln County Board of Commissioners. The RFP will be posted publically on July 23, 2020.

2. Return of "Acknowledgment of Receipt" Form for Distribution List

Potential Offerors 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) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by the close of business on the date indicated in Section II.A (Sequence of Events), above.

The procurement distribution list will be used to notify those that submitted the form of any written responses to questions and any RFP amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to submit written questions

Potential Offerors may submit written questions as to the intent or clarity of this RFP until 5:00 PM MDT on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Procurement Manager (See Section I, Paragraph C.)

4. Response to written questions/RFP Amendments

Written responses to written questions and any RFP amendments will be mailed or delivered to all parties recorded by LINCOLN COUNTY having received the Request for Proposals.

5. Submission of Proposal

OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN CLOSE OF BUSINESS ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. PROPOSALS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager/Agent at the delivery address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "Buck Tower" Request For Proposals and should reference "RFP #20-21-002" Proposals submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED.**

A public log will be kept of the names of all offerors submitting proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

6. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by County management and the Procurement Manager. This process will take place during the time period

indicated in Section II.A (Sequence of Events), above. During this time, the Procurement Manager may at his/her option initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Contract Award/ Approval of BOCC Contract

a) After review of the Evaluation Committee Report and the tentative contract, the Purchasing Agent anticipates the Board of County Commissioners will award the contract on the date indicated in Section II.A (Sequence of Events), above. Any contract awarded shall be awarded to the offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in this RFP.
b) Lincoln County Board of County Commissioners will approve award of RFP.

8. Notification of Finalists

The Evaluation Committee may select and the Procurement Manager may notify finalist offerors on the date indicated in Section II.A (Sequence of Events), above. Only finalists will be invited to participate in the subsequent steps of the procurement. The Evaluation Committee reserves the right not to utilize the finalist process if they deem it in the best interest of the County.

9. Contract Negotiations

If necessary, contract negotiations shall commence with the most advantageous offeror no later than the date indicated in Section II.A (Sequence of Events), above. In the event that the mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

The Evaluation Committee may select and the Procurement Manager may notify finalist offerors on the date indicated in Section II.A (Sequence of Events), above. Only finalists will be invited to participate in the subsequent steps of the procurement. The Evaluation Committee reserves the right not to utilize the finalist process if they deem it in the best interest of the County.

10. Protest Deadline

Any protest by an offeror must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978. The fifteen (15) day protest period for timely offerors shall begin on the day following the contract award and will end at close of business on the date indicated in Section II.A (Sequence of Events), above. Protests must be written and must include the name and address of the protestor and the Request for Proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Agent. The protest must be delivered to the Purchasing Agent at or to: The County of Lincoln

Attention Attn. Toni Foligno, Procurement Manager
P.O. Box 711
300 Central Avenue
Carrizozo, New Mexico 88301

NOTE: Protests received after the deadline of September 2, 2020 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 the Lincoln County Purchasing Policy, R-14-41.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix D). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

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

3. Prime Contractor Responsibility

Any contract that may result from this RFP 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

Use of subcontractors must be clearly explained in the proposal and each must be identified by name. The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the County Purchasing Office.

5. Amended Proposals

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

6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after the due date for the receipt of a best and final offer, if one is solicited.

8. Disclosure of Proposal Contents

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

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

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

9. No Obligation

This procurement in no manner obligates Lincoln 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 Procurement Manager and other required approval authorities.

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the County and the contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix B, Sample Contract. However, the County reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an offeror object to any of the County's terms and conditions, as contained in this Section or in Appendix B, that offeror must propose specific alternative language. The County may or may not accept the alternative language, at the County's sole discretion. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and could lead to disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording in order for the proposed alternate wording to be considered.

16. Offeror's Terms and Conditions

Offerors must submit with their proposal a complete set of any additional terms and conditions which they request are included in a contract negotiated with the County. The County may or may not accept the additional language, at the County's sole discretion.

17. Contract Deviations

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

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

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

20. 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.

21. 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.

22. County Rights

The County reserves the right to accept all or a portion of an Offeror's proposal.

23. Right to Publish

Through the duration of this procurement process and contract term, potential offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected offerors may be returned after the expiration of the protest period, by request, at the expense of the Offeror.

25. Ambiguity, Inconsistency or Errors in RFP

Offerors shall promptly notify the Procurement Manager, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the RFP.

26. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of any agreement resulting from this RFP 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 Lincoln.

27. Electronic mail address required

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

28. Use of Electronic Versions of this RFP

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

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offeror's may submit only one (1) response to this Request for Proposals "RFP".

B. NUMBER OF COPIES

Offerors shall deliver four (4) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals. The original copy should be clearly marked "ORIGINAL" on the front cover and shall contain original signatures.

C. PROPOSAL FORMAT

All proposals must be printed on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Each proposal should be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated with a tab for each item listed below.

a) Letter of Transmittal Form
b) Table of Contents
c) Proposal Summary (optional)
d) Response to Specifications/Scope of Work
e) Cost Response Form
f) Campaign Contribution Disclosure Form
g) Resident Veterans Preference Certification (if applicable)
h) Response to Agency Terms and Conditions (if any)
i) Offeror's Additional Terms and Conditions (if any)
j) Other Supporting Material

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Unless otherwise specified in this RFP, all discussion of proposed costs, rates or expenses must occur only on the Cost Response Form.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

A proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. SPECIFICATIONS

A. INFORMATION

Lincoln County is seeking an appropriate firm to assist Lincoln County in building a Communications tower site. See scope of work for detail.

B. PREFERENCES

a) Resident Business 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 Offerors that have provided a valid resident business 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, that Bidder must submit a copy of their resident business 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

b) Resident Veteran Business Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business 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

c) Response to Requirements

Each mandatory requirement in sections IV.C.1 through IV.C.12, requires a vendor response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the Offeror's proposal.

C. MANDATORY REQUIREMENTS & PREFERENCES

1. Letter of Transmittal Form (Pass/Fail Only-0 Points)

Offeror must complete and submit the "Letter of Transmittal Form", found at Appendix D, with their proposal. The form must be signed and dated by an individual authorized to contractually bind the firm.

2. Standards Compliance (Pass/Fail Only-0 Points)

Offeror must agree to comply with current and future standards established by Lincoln County. A statement of concurrence is required.

3. Response to Specifications/Scope of Work (10 Points)

Offer must respond to the Specifications/Scope of Work in paragraph form explaining their ability and plan to provide those services for Lincoln County.

4. Experience in the Field (15 Points)

Offeror must explain their experience in the field applicable to the work being performed or that of any sub-contractors or consultants they have or will contract on this project.

5. Proximity to or Familiarity with Lincoln County (5 Points)

Offeror must explain their familiarity with Lincoln County, both geographically and professionally.

6. Litigation History (5 Points)

Offeror must detail their litigation history (including dates) over the past five (5) years. At a minimum this must include (A) the total number of lawsuits they filed, (B) the total number of lawsuits filed against them, (C) how many judgments they have against them and (D) how many lawsuits they have settled. For lawsuits they filed, offeror must explain who they were filed against, why, and the outcome of each.

7. Insurance (Pass/Fail Only-0 Points)

Offeror must agree to provide standard professional liability insurance.

8. Capability and Agreement to Perform (25 Points)

Offeror certifies that they are capable and qualified to provide the products or services required by this RFP and agrees to perform the Scope of Work as specified in the "Sample Contract" Appendix B. A statement of concurrence is required. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. PROVIDE THREE REFERENCES with contact information.

9. Total Cost of the Project/Financial benefit to County (w/o tax) (35 Points)

Offeror must complete and submit the Cost Response Form, at Appendix C, providing proposed cost for accomplishing the services called for herein. State gross receipts and local option taxes

(if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed to the contractor by the County.

10. Campaign Contribution Disclosure Form (Pass/Fail Only-0 Points)

Offeror must complete and sign the Appendix E, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not.

11. Resident Veterans Preference Certification (2.50 Points)

Offeror must complete and sign the Appendix F, Resident Veterans Preference Certification – whether any applicable or not. This form must be submitted with your proposal whether Veterans Preference is applicable or not.

12. New Mexico Resident Business & Contractor Certification (2.50 Points)

To be considered for credit or points as a New Mexico Resident Business & Contractor, Offeror must provide a copy of his/her New Mexico Resident Business & Contractor Certification. This form must be submitted with your proposal for credit to be considered. Obtainable at: https://secure.mvd.newmexico.gov/residentcertificate/

[Resident Preference: "Business with a valid resident business or contractor certificate issued by the NM Taxation & Revenue Department." NMSA 1978, §13-1-22(A)]

D. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with the point value assigned to each or a Pass/Fail evaluation. These, along with the general requirements, will be used in the evaluation of individual offeror proposals.

Ref.	Requirement	Points Available
IV.C.1	Letter of Transmittal Form	0*
IV.C.2	Standards Compliance	0*
IV.C.3	Response to Specifications/Scope of Work	10
IV.C.3	Experience in the Field	15
IV.C.5	Proximity to or Familiarity with Lincoln County	5
IV.C.6	Litigation History	5
IV.C.7	Insurance	0*
IV.C.8	Capability and Agreement to Preform	20
IV.C.9	Total Cost of the Project/Financial benefit to County (w/o tax)	35
IV.C.10	Campaign Contribution Disclosure Form	0*
IV.C.11	New Mexico Veterans Preference Certification	2.50
IV.C.12	New Mexico Resident Business & Contractor Certification	2.50
	Total	100

B. EVALUATION FACTORS

Points will be awarded based on the evaluation factors above.

EVALUATION PROCESS – Please consult Lincoln County's Purchasing Policy for more on the Evaluation Process Summary and for additional descriptions or additions to the following:

1. Initial Review

All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive to any mandatory requirement will be eliminated from further consideration.

2. Clarifications

The Procurement Manager may contact the offeror for clarification of the response.

3. Other Information Sources

The Evaluation Committee may use other sources of information to perform the evaluation.

4. Resident & Veteran Preferences

13-1-21 NMSA 1978 provides for preference for resident businesses and contractors and veteran owned businesses under certain conditions. If applicable, the preference will be provided to those offerors that have provided the proper documentation to qualify for the preference.

5. Scoring and Contract Award Recommendation

Responsive proposals will be evaluated and assigned a point value based on the factors in Section V. Finalist offerors who are asked and choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the Purchasing Agent, and any other required approving authorities, as specified above. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

LINCOLN COUNTY

REQUEST FOR PROPOSAL

Buck Tower Communications Site

RFP #: 20-21-002

In acknowledgment of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with References

The acknowledgment of receipt should be signed and returned (by fax, e-mail and courier or hand delivery) to the Procurement Manager no later than July 29, 2020.

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

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 Request for Proposals.

Please return to: Toni Foligno, Lincoln County Procurement Manager
PO Box 711
Carrizozo, NM 88301
Phone: 575-648-2385 x 105 Fax: 575-648-2381
E-mail: tfoligno@lincolncountynm.gov

APPENDIX B

SAMPLE CONTRACT

County of Lincoln

CONTRACT NUMBER: #_____

THIS AGREEMENT is made and entered into by and between the County of Lincoln, _____, 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 and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work/Deliverables

The shall deliver and perform the work outlined in the Scope of Work/Deliverables as incorporated herein;

1. 120 ft. SS Rev H Freestanding Saber Tower or equivalent, with foundation/pad. The Tower will be designed in accordance with EIA 222G Engineering Standards.

   a) The Tower will be capable of supporting (8) DB224 Model Antennas at various elevations; and (2) 18" dish; with an ice bridge and; 3ft Diameter 5.8ghz Standard Parabolic Antennas to be installed at the 80 ft or below level.
   b) All Tower Steel will be Hot Dip Galvanized. Engineering Drawings to be sealed by a registered NM Professional Engineer.
   c) Tower to Include Climbing Ladder, Safety Climb Device, and Waveguide Ladder with both ¾ inch and 3/8 inch holes to support all lines.
   d) Tower will not be required to have FAA lighting.

2. (1) 10x12 Thermobond or equivalent enclosed shelter made of fire resistant material with;
   a). a concrete foundation/slab.
   b). Shelter to include an integrated HVAC unit and;
   c). a 200 amp Service Panel;

3. (1) 50KW Propane Generator to include;
   a). an Automatic Transfer Switch wall mounted inside the structure 10x12 structure.
   b). a concrete pad (or combined with one for the propane tank)

4. (1) 500 Gallon Propane Tank
   a). with concrete pad (or combined with one for both the generator)

5. Electrical service for all related service, radios etc. to be installed and including pull antennas and hard line from an existing tower and move to the new tower.

The site prep and Construction/Erecting of Tower: projected to commence on September 3, 2020 and completed on or before May 1, 2021.

2. Compensation.

A. The County shall pay to the Contractor in full payment for services satisfactorily performed [at the rate of] _____ dollars ($_____) [per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.)], such compensation not to exceed

(AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. 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. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

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). The County of Lincoln is a Government agency and is to be taxed on labor only. A New Mexico Non Taxable Certificate (NTTC) will be provided to the contractor and any sub-contractors.

3. Term.

This Agreement shall terminate on completion of the project, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. 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 acceptable 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 such work 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.

5. 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.

6. 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.

7. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of the County of Lincoln. 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 Lincoln 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 Lincoln unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. 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.

9. Performance and Payment Bonds

The contractor shall provide Performance and Payment Bonds in an amount equal to 100% of the contract sum. Bonding companies shall be licensed in the State of New Mexico and shall be in good standing with the State Board of Insurance.

10. Insurance Coverage

The offeror will be required to carry, at minimum, the following insurance coverage with Lincoln County" <u>and</u> "if any others parties, they will be identified at the time of contract" listed as co-insureds on all policies:

1. General and professional liability insurance in the amount of $1,000,000.00 per occurrence and $2,000,000.00 aggregate.
2. Automobile insurance in the amount of $1,000,000.00.
3. Workers' Compensation insurance as required by state statute.
4. The insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the contract whether performed

by the contractor, their agents or employees, or by subcontractors. All insurance shall remain in full force and effect for the entire term of the contract. ***Proof of coverage must be provided prior to entering into a contract.***

11. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement. A list of all sub-contractors is to be provided to the County Purchasing Agent and the "Contractor" is to report all subcontractors on the NM Workforce Solutions and notice to the Procurement Manger.

12. 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 Lincoln from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

13. 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.

14. Product of Service - Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Lincoln 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.

15. 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 and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) 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;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) 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 (iv) 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;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) 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 (ii) 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;

4) 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

5) 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 Article 12(B).

16. Amendment.

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

B. If the County proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

17. 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.

18. 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.

19. 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.

20. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement and shall be enforceable in the Twelfth Judicial District Court in Lincoln 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.

21. Worker's Compensation.

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

22. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of 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

23. Disclaimer and Hold Harmless.

Lincoln 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 Lincoln County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Lincoln County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

24. Indemnification.

The Contractor shall defend, indemnify and hold harmless the County of Lincoln 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 Lincoln and the New Mexico Association of Counties by certified mail.

25. 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.

26. 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.

27. Authority.

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.

28. Approval of Contractor Personnel.

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

29. Site Clean up

Due to the site location, we must adhere to the Pack it in- Pack it out Rule. During the course of the work, Contractor and their subs shall keep all debris that can be blown by the wind or appears to be "trash" picked up and removed and disposed of in a proper disposal site on a daily basis. Upon completion of work, Contractor shall leave the sites clean and orderly, removing all waste, scrap, unused material, tools and supplies etc... An inspection of such will be performed and payment will not be made until the site is cleared.

30. Limit of Liability.

The contractor's liability to the County for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of County's claim. The foregoing limitation does not apply to the paragraphs entitled "Indemnification" and "Patent, Copyright, Trademark and Trade Secret Indemnification" of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

In no event will the contractor be liable for any damages resulting from loss of data or use, lost profits or any incidental or consequential damages.

31. Survival.

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification"; "Indemnification"; and "Limit of Liability" 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

32. Succession.

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

33. 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.

34. 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.

35. 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 Lincoln County Manager, if the amount of the contract is $5,000.00 or less. The Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

36. 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.

37. 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.

38. Incorporation and Order of Precedence.

Request for Proposal No. 20-21-002 and the contractor's proposal 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:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then

3. the Request for Proposals; then

4. the Contractors Best and Final Offer(s), in reverse chronological order; then

5. the contractor's proposal; then

6. the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

39. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The contractor shall defend, at its own expense, the County of Lincoln 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 Lincoln 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 Lincoln for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Lincoln 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.

40. Future Reference (Post Review)

Upon completion of all work and the contract is over, there will be a review of all work done by the Contractor and/or any sub-contractors to be kept on file by Lincoln County for future use to help ensure the County picks the best potential Offerors and Awardees.

41. 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 of Lincoln: Nita Taylor, County Manager
PO Box 711, Carrizozo, NM 88301

To the Contractor: [insert name and address].

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date AND signature below.

Accepted by: _____ Date: _____

Contractor signature Printed Name: _____

Address: _____

By: _____ Date: _____

Dallas Draper, Board of County Commissioners Chairman

APPENDIX C

COST RESPONSE FORM

County of Lincoln RFP 20-21-002

Buck Mountain Commutations Tower Site

for the COUNTY Of LINCOLN

State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed by the County.

OFFEROR NAME: _____

TOTAL PROPOSED COST $_____

(Total cost to perform Scope of Work, not including tax.)

Appendix D

LETTER OF TRANSMITTAL FORM

Items #1 to 4 MUST EACH BE RESPONDED TO. Failure to respond to all four items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

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

_____

_____

_____

2. For the person authorized by the organization to contractually obligate the organization

Name:_____

Title:_____

3. For the person authorized to negotiate the contract on behalf of the organization:

Name:_____

Title:_____

E-Mail Address:_____

Telephone Number:_____

4. For the person to be contacted for clarifications:

Name:_____

Title:_____

E-Mail Address:_____

Telephone Number:_____

On behalf of the organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

_____

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

APPENDIX E

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or

received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Contract"** means any Agreement for the procurement of items of tangible personal property services, professional services or construction.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a Corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:_____

(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

_____

Amount(s) of Contribution(s) _____

_____

Nature of Contribution(s) _____

_____

Purpose of Contribution(s) _____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____

Signature Date

_____

Title (Position)

APPENDIX F

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 ONLY ONE BOX FROM THE FOUR (4) CHECK BOXES LISTED BELOW:

__ I declare that my firm is ineligible to receive New Mexico Resident Veterans Preference.

The following three (3) checkboxes are applicable to ONLY those vendors eligible to receive New Mexico Resident Veterans Preference AND who have included a valid New Mexico Resident Veterans Preference certificate with their sealed response. No preference will be extended unless a valid certificate is included in your sealed response. Submitted certificates shall be validated by CNM with New Mexico Tax & Revenue.

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

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

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

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

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State 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 un-award of the procurement involved if the statements are proven to be incorrect.