**CITY OF LOVINGTON**



REQUEST FOR PROPOSAL (RFP)

CITY OF LOVINGTON WELL FIELD LITIGATION

**BID DUE DATE AND TIME:** DECEMBER 1, 2023, 1700 HOURS (5 PM MOUNTAIN TIME)

**SUBMIT PROPOSALS TO:** DAVID MIRANDA, CITY MANAGER OR MELISSA BOYDSTUN, CHIEF PROCUREMENT OFFICER, CITY OF LOVINGTON, 214 S LOVE STREET, LOVINGTON, NM 88260

**LEGAL NOTICE OF REQUEST FOR PROPOSAL**

**LOVINGTON, NEW MEXICO**

**CITY OF LOVINGTON WELL FIELD LITIGATION**

**DUE DATE AND TIME: DECEMBER 1, 2023, 1700 HOURS (5 PM MOUNTAIN TIME)**

The City of Lovington is accepting proposals from qualified legal professionals to perform significant evaluative and investigative preparatory work related to matters of oil and gas activity in the City’s wellfield and potential claims under the New Mexico Surface Owners Protection Act and related common law causes of action of the City against entities or individuals involved in the oil and gas operations in and around the City’s wellfield. The agreement does not constitute an employment agreement. The legal professional is an independent contractor and not an employee of the City of Lovington.

The Request for Proposal, any future addenda, and all related information may be obtained from the City of Lovington’s website at [www.lovington.org](http://www.lovington.org) under “Procurement” or by contacting the City Manager, David Miranda, at 575-396-9303, [dmiranda@lovington.org](mailto:dmiranda@lovington.org).

David Miranda, City Manager

Publish in: Lovington Leader: Thursday, October 26, 2023

**FACSIMILE AND ELECTRONIC PROPOSALS ARE NOT ACCEPTABLE**

Pursuant to the provisions of the New Mexico State Purchasing Act, sealed bids, subject to the conditions herein, will be received at the Lovington City Hall, New Mexico until the date an time shown above, and thereafter immediately opened and read in public for bid price and items listed in attached specifications.

**COMMODITY CODES:**

**Effective, July 1, 2016, each state agency and local public body shall use the standardized classification codes developed by the state purchasing agent. (NMSA 1978 13-1-30.1)**

**Applicable classification codes for this project are:**

**541110 – Offices of Lawyers**

**INSTRUCTION TO BIDDERS**

1. Envelopes containing bids must be sealed and marked on the upper left-hand corner with the name and address of the Respondent, the date and hour of opening, the project number, and mailed or delivered to the address (Item 3) before the time of opening.
2. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will upon request of Respondent, be returned to the Respondent at its expense. Copy of the warranty must be included with proposal and must be for the maximum amount the manufacturer provides if goods are warrantable.
3. Bids which are mailed, or otherwise delivered prior to the point of opening must contain the information detailed in Item 1 above and must be mailed or otherwise delivered to the City Manager, 214 South Love, Lovington, New Mexico, 88260. This information shall be included on ALL EXTERIOR PACKAGING.
4. All prices should be stated in units or quantities specified, with packing and delivery charges included.
5. Time of proposed delivery must be stated in definite terms. If time varies for different items, the Respondent should so state.
6. Bids must be made out and signed in the corporate or other name of Respondent and must be fully and properly executed by an authorized person.
7. Bids must be submitted on the bid price submittal form attached. Any prices pertaining to exceptions must be attached to the bid (stapled, bound or secured otherwise). If the Respondent provides any options other than requested, these will not be acceptable.
8. Bids received later than the time and date specified will not be considered.
9. Amendments to or withdrawals of bids received later than the time and date set for proposal opening will not be considered.
10. Respondents or their representative may be present at the bid opening.
11. The Purchasing Agent reserves the right to amend and/or cancel the bid invitation prior to the time and date of the bid opening.
12. The Purchasing Agent reserves the right to correct any bid awarded erroneously because of a clerical error on the part of the City of Lovington.
13. In the event the Respondent is unable to submit a bid, the Purchasing Department would appreciate advising this office to that effect. Failure to submit proposals on three consecutive Invitations to respond will result in the removal of the Respondents name from the mailing list.

1. Respondents and/or vendors doing business with the City of Lovington must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act. Rev., 1979.
2. It will be the sole responsibility to the Respondents requesting consideration for Resident Preference at bid openings to submit to the State Purchasing Agent, the questionnaire for Resident Business or Contractor's Certification and to receive approval and a certification form prior to the proposal opening. Requests for consideration for Resident Business or Contractor's Preference after bid opening will not be considered.
3. All contracts solicited by competitive sealed proposals for the City of Lovington require that the bid amount exclude the applicable state gross receipts tax. As the City of Lovington is required to pay the applicable state gross receipts tax, all requests for payment shall include a separate amount on each billing reflecting the applicable tax. (13-1-108)
4. All applicable state gross receipts tax charged to the City of Lovington shall be at the current rate at the time of the project. Respondents and/or vendors agree to report the gross receipts tax charged to the City of Lovington on New Mexico Taxation & Revenue Department form CRS-1 and use Lovington as the municipality name in column A and 04-101 as the location code in column C.
5. Any equipment supplied to the City of Lovington must comply with all requirements and standards as specified by the federal government's Occupational Safety and Health Act of 1971. All guards and protectors as well as appropriate markings must be in place before delivery. Items not meeting OSHA specifications will be refused. The supplier may be required, at its expense to provide training to municipal employees in the operation of this item and its maintenance, at the convenience of the City of Lovington.
6. All respondents and/or vendors doing business with the City of Lovington must also provide IRS FORM W-9 (REV. JANUARY 2011 or DECEMBER 2011). Failure to do so may cause the proposal to be rejected by the City of Lovington.
7. The City reserves the right to render payment of any invoices using the City's Procurement Card, without incurring any penalty.

**CONDITIONS AND BID OPENING PROCEDURES**

1. The City of Lovington reserves the right to reject any and all bids, to waive any informality in bids, and unless otherwise specified by the Respondent, to accept any item on the bid.
2. In case of error in the extension of prices in the bid, the unit price will govern.
3. Any discount offered, will be computed from the date of delivery or from the date a correct bill rendered on a proper voucher form and certified by the contractor, is received, whichever date is latest.
4. 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.
5. It is the intent of these specifications to describe the minimum requirements. All portions not specifically mentioned which are required for a completion of the project, shall conform in design, strength, quality of material and workmanship to the highest standards of engineering practice.
6. All bids must be clearly marked on the outside of the envelope with the project number and opening date. Should a bid be opened prior to the official opening date due to the lack of a proper marking, it will be rejected.
7. All interested parties are invited to attend bid openings of the City of Lovington.
8. Bids will be opened and read aloud at precisely the time, the date and the place stipulated in the Request for Bids and in the legal notice published in the newspaper.
9. Bids will be opened and read aloud in front of whomsoever is present at the scheduled time and place.
10. Each bid will be evaluated by the City Manager and/or the Chief Procurement Officer and the appropriate department or committee. The Respondent is to provide complete specifications. Acceptable exceptions to specifications will be determined by the Chief Procurement Officer with the aid of the appropriate department head.
11. The Chief Procurement Officer and the department or committee will rule on any point needing clarification.
12. The apparent low Respondent, meeting specifications, will be determined by the Chief Procurement Officer and the department or committee.

1. Respondents are advised to bear in mind that the low response obtained at the opening of the proposals may not be the proposal ultimately selected for the award. The successful respondent will be the one whose product is judged to best serve the interests of the City when price, product, safety, and delivery are considered.
2. A Respondents request for Resident Preference will be honored only when the provisions of Sections 13-1-21 and 13-1-22 of the State Purchasing Act have been met.
3. Do not submit alternate bids unless instructed to do so, as they will not be considered.
4. Notice is hereby given that the City Commission reserves the right to reject any and all bids received. In the case of ambiguity or lack of clarity, the right to determine the best bid or to reject same or to waive irregularities and technicalities.
5. Any requested literature and one complete copy of the bid, unless stated otherwise in the Request for Proposal, must be submitted with the bid.
6. All bids must be valid for a minimum of ninety (90) days after bid opening, unless otherwise stated in the bid sheet by the individual respondent or the City of Lovington.
7. All Respondents who are engaged in business within the municipal limits of the City, shall be licensed to do business by the City of Lovington.
8. This bid is available for use by all City of Lovington departments and other agencies, as provided for by law, at the discretion of the contracted vendor(s).
9. Pursuant to 13-4-11 (A) NMSA Annotated, state wage rates shall apply to any bid or proposal on construction or public works projects more than $60,000.00. In addition, all bidders and proposers shall comply with Federal wage rates on applicable projects.
10. Pursuant to 13-1-146 NMSA Annotated, a bid security or bond shall be required of bidders or offerors for construction contracts more than twenty-five thousand dollars ($25,000). Bid security or bond in an amount equal to at least five percent (5%) of the amount bid shall be a bond provided by a surety company authorized to do business in the state of New Mexico, or the equivalent in cash.
11. Pursuant to 13-4-13.1 NMSA Annotated, in order to submit a proposal valued at more than sixty thousand dollars ($60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars ($60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the labor and industrial division of the labor department.

1. Pursuant to 13-4-34 NMSA Annotated, (A) Any person submitting a bid shall in his bid set forth: (1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of five thousand dollars ($5,000); and (2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid. (B) A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a non-responsive bid which shall not be accepted by a using agency
2. Pursuant to 13-4-38 NMSA Annotated, Failure to specify subcontractor: If a contractor fails to list a subcontractor more than the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act [13-4- 31NMSA 1978], the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

**HOLD HARMLESS/INDEMNITY AGREEMENT**

To the full extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this agreement. All obligations under this provision are to be paid by Contractor as the City incurs them.

Without affecting the rights of City under any provision of this agreement or this section, Contractor shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Contractor is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Contractor will be all-inclusive, and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this section extends to liability attributable to City if that liability is less than the Sole fault of City. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in

this section from each subcontractor, sub-tier contractor or any other person or entity involved by, for, with or on behalf of contractor in the performance of this agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this agreement or this section.

Any dispute leading to litigation must be settled in the jurisdiction of the Lea County, New Mexico Court system.

**1.0 PURPOSE:**

The City of Lovington is accepting proposals from qualified legal professionals to perform significant evaluative and investigative preparatory work related to matters of oil and gas activity in the City’s wellfield and potential claims under the New Mexico Surface Owners Protection Act and related common law causes of action of the City against entities or individuals involved in the oil and gas operations in and around the City’s wellfield. The agreement does not constitute an employment agreement. The legal professional is an independent contractor and not an employee of the City of Lovington.

Respondents shall submit to the City of Lovington a proposal that will address the various components as set forth in this Request for proposal.

**2.0 SCOPE OF WORK:**

The Scope of Work shall consist of the following:

A. Communication with the Cooperating City Attorneys on a regular basis and may have to meet and/or confer with the City Commission.

B. Perform significant evaluative and investigative preparatory work related to litigation regarding oil and gas operations in and around the City’s wellfield and the City’s potential claims against entities and individuals involved in the oil and gas operations in the City’s wellfield.

C. Continuing to investigate and litigate against potentially responsible parties.

D. Performing all phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to motions, including motions to dismiss; drafting and answering discovery propounded upon the City and any of its agencies; tracking documents obtained in discover; taking depositions; defending depositions noticed by defendants; preparing relevant witnesses for depositions; preparing and responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the City; preparation of expert witnesses for depositions or trial testimony; assessing the strength of legal arguments propounded by litigants; preparation of legal arguments on motions; handling discovery disputes; representing the City in trial or in any settlement negotiations that may occur; representing the City in responding to post- trial motions; representing the City in responding to post-trial motions; representing the City in the appeal(s) of any judgment or verdict rendered in any such action(s) and, if applicable the remand from appeal(s); collection of judgments; and representation and defense of the City related to all counterclaims; crossclaims; or other claims related to or arising out of the City Wellfield Litigation;

E. Experience investigating, developing, prosecuting and settling of claims in New Mexico State and Federal Courts under the New Mexico Surface Owners Protection Act and other common law causes of action.

F. Experience investigating, understanding, an obtaining all pertinent rules, regulations and documentation commonly utilized by oil and gas operators conducting oil and gas operations in the State of New Mexico, including but not limited to those associated with the New Mexico Oil Conservation Division and the New Mexico State Land Office.

G. Being prepared to locate, hire and work with expert environmental consultants trained in New Mexico oil and gas operations, rules and regulations.

H. Preserving and making available to the City of all pertinent records. When the contract is completed or if the contract is completed or partial terminated for whatever reason, all records relating to the work shall be preserved and made available to the City for a period of at least five (5) years from the date of final statement or from the date that the litigation is completed, whichever occurs last.

I. Providing detailed information regarding hours worked, services performed, and costs incurred in said litigation on a quarterly basis and upon request.

**3.0 REQUIREMENTS:**

The requirements of the Offeror shall consist of the following:

A. Offeror must be a licensed attorney authorized to practice law in New Mexico State Court and Federal Court.

B. Offeror must provide proof of professional liability insurance.

C. Offeror must disclose any disciplinary actions or malpractice claims brought against Offeror in the last five (5) years, including the year said claims and/or disciplinary actions were brought and disposition of said actions and/or claims.

**4.0 CONTINGENT FEE ARRANFEMENTS:**

The City will contract with the Offeror on a contingent fee basis. The Offeror must identify in the Proposal the contingent fee rate sought for the services contemplated by this RFP.

**5.0 EXPERIENCE:**

Please provide a detailed description of Offeror’s legal experience in the subject matter areas identified under the scope of work.