



INVITATION TO BID (ITB)

ITB Name: Lazer Roadpak Striping Machine or Equivalent

Return Bid to:

ITB Number: 2022-004B NIGP Commodity Code: 765-72

**Village of Ruidoso
Purchasing Department
313 Cree Meadows Drive
Ruidoso, NM 88345**

Bids Due No Later Than:

Date: February 22, 2022 Time: 3:00 PM Local Time

Formal Sealed Bid Opening:

Place: Village of Ruidoso Council Chambers

Time: 3:00 PM Local Time

Date: 2/22/2022

If you have questions regarding this ITB please contact:

Procurement Manager: Karen Gutierrez

Telephone No.: **575-258-4343 or 575-921-4220**

Email: purchasing@ruidoso-nm.gov

Bidder MUST complete as applicable and sign the following for Bid to be valid (type or print clearly):

Company Name: _____ Address: _____

DBA (if applicable): _____

Co. Email: _____ Co. Phone No. _____

NM Gross Receipts Tax # (CRS): _____ Federal Tax ID #: _____

Payment terms: _____ (Discount will not be considered in computing the low bid, see "Terms and Conditions")

F.O.B. Point must be Destination, unless otherwise indicated by the Village of Ruidoso Purchasing Agent

Contractor's Delivery: _____ (May be considered in the award)

Authorized Signature: _____ Print or Type Name: _____

Signatory Email: _____ Phone No.: _____

IMPORTANT – All bids must be submitted in a sealed envelope or package and must be clearly labeled with the bid number and opening date on the front of the envelope. Sealed bids will be received at the above address until specified due date and local time. Late submission of bids will not be accepted. Sealed bids will be publicly opened in the Village of Ruidoso Council Chambers. Bids are subject to the "Terms and Conditions" shown on the attached pages of this document, and any additional bidding instructions or requirements.

NOTE: if you decide not to bid, do not return this document.

If applicable, Bidder acknowledges receipt of the following amendment(s):

Amendment No. _____ Dated: _____ Amendment No. _____ Dated: _____

It is your responsibility as a Bidder to ensure your bid is correct and accurate.

Table of Contents

Contents

TABLE OF CONTENTS.....	2
BIDDER INSTRUCTION FOR INVITATION TO BID (ITB)	4
A. PURPOSE OF THIS INVITATION TO BID	6
B. TERM OF AGREEMENT.....	6
C. PROCUREMENT MANAGER.....	6
D. DEFINITION OF TERMINOLOGY.....	6
II. CONDITIONS GOVERNING THE PROCUREMENT	10
A. SEQUENCE OF EVENTS	10
B. EXPLANATION OF EVENTS	10
1. Issuance of ITB	10
2. Acknowledgement of Receipt	10
3. Pre-Bid Conference	11
4. Deadline to Submit Written Questions	11
5. Response to Written Questions	11
6. Submission of Bid.....	11
7. Bid Evaluation.....	11
8. Finalize Contractual Agreements.....	12
9. Contract Awards	12
10. Protest Deadline	12
C. GENERAL REQUIREMENTS.....	13
1. Acceptance of Conditions Governing the Procurement	13
2. Incurring Cost.....	13
3. Prime Contractor Responsibility	13
4. Subcontractors/Consent	13
5. Amended Bids	13
6. Offeror's Rights to Withdraw Bid.....	13
7. Bid Offer Firm	14
8. Disclosure of Bid Contents	14
9. No Obligation.....	14
10. Termination	14
11. Sufficient Appropriation.....	15
12. Legal Review	15
13. Governing Law.....	15
14. Basis for Bid	15
15. Contract Terms and Conditions	15
16. Offeror's Terms and Conditions	16
17. Contract Deviations	16
18. Offeror Qualifications	16
19. Right to Waive Minor Irregularities	16
20. Change in Contractor Representatives	16
21. Notice of Penalties.....	16
22. Village Rights	17
23. Right to Publish.....	17
24. Ownership of Bids	17
25. Confidentiality	17
26. Electronic mail address required	17
27. Use of Electronic Versions of this ITB.....	17
28. New Mexico Employees Health Coverage	17

29.	<i>Campaign Contribution Disclosure Form</i>	18
30.	<i>Letter of Transmittal</i>	18
31.	<i>Disclosure Regarding Responsibility</i>	19
32.	<i>New Mexico Preferences</i>	20
III.	RESPONSE FORMAT AND ORGANIZATION	21
A.	NUMBER OF RESPONSES	21
B.	NUMBER OF COPIES	21
C.	BID FORMAT	21
1.	<i>Bid Content and Organization</i>	21
IV.	SPECIFICATIONS	23
A.	SPECIFICATIONS	23
B.	DETAILED SCOPE OF WORK	23
V.	MANDATORY SPECIFICATIONS	23
1.	<i>Letter of Transmittal (Appendix F)</i>	23
2.	<i>Invitation to Bid Cover Page</i>	23
3.	<i>Campaign Contribution Disclosure Form (Appendix B)</i>	23
4.	<i>Related Party Disclosure (Appendix C)</i>	23
5.	<i>Debarment Certification (Appendix D)</i>	23
6.	<i>Non-Collusion Affidavit (Appendix E)</i>	23
7.	<i>Bid Response Form (Appendix G)</i>	23
8.	<i>Bid Bond (Appendix H)</i>	23
9.	<i>Completed W-9 Form (Appendix I)</i>	23
10.	<i>New Mexico Preferences</i>	24
B.	EVALUATION PROCESS	24
APPENDIX A -	ACKNOWLEDGEMENT OF RECEIPT FORM	25
APPENDIX B -	CAMPAIGN CONTRIBUTION DISCLOSURE FORM	27
APPENDIX C -	RELATED PARTY DISCLOSURE FORM	30
APPENDIX D -	DEBARMENT CERTIFICATION FORM	32
APPENDIX E –	NON-COLLUSION AFFIDAVIT	34
APPENDIX F -	LETTER OF TRANSMITTAL FORM	36
APPENDIX G -	BID FORM	38
APPENDIX H –	BID BOND FORM	41
APPENDIX I –	W9 FORM	43
APPENDIX J –	SAMPLE CONTRACT	44

Bidder Instruction for Invitation To Bid (ITB)

Viewing ITB:

1. Bidders may access active procurements at the following:

www.ruidoso-nm.gov/purchasing

Submitting Bids:

Hard copy submission delivered by US mail, courier, or in person to:

Village of Ruidoso, Purchasing Department
313 Cree Meadows Drive
Ruidoso, NM 88345

All bids must be submitted in a sealed envelope or package and must be clearly labeled with the bid number and opening date on the front of the envelope or package. Sealed bids will be received, and time stamped at the above address until specified due date and time.

IMPORTANT:

It is the responsibility of the prospective bidder to review the entire Invitation to Bid (ITB) packet and to notify the procurement manager if the specifications are formulated in a manner which would unnecessarily restrict competition. Any such question regarding the specifications or bidding procedures must be received by the procurement manager not less than seventy-two hours prior to the time set for bid opening.

If there is any problem regarding the bid specifications or conditions that would prevent you from submitting a bid, contact the procurement manager immediately for clarification or consideration of an addendum.

It is the responsibility of the bidder to see that the bid arrives on time.

Note: The Village of Ruidoso is a rural community; therefore, we caution the use of over-night delivery. It is recommended to verify delivery prior to deadline. Some of the delivery services do not guarantee overnight priority delivery to the Village of Ruidoso.

Late submission of Bids WILL NOT BE ACCEPTED.

Bid Opening:

Sealed bids will be publicly opened in the presence of multiple witnesses.

No Pre-Bid meeting will be required.

Bids are subject to "Terms and Conditions" as shown on the attached pages of this document and any additional bidding instructions or requirements. If you decide not to bid, do not return this ITB document.

Additional Bidder Information:

All resident businesses, contractors, and veterans will have to obtain preference certification from the NM Department of Taxation & Revenue. For the appropriate preference to be applied to any

solicitation, there must be no federal funds involved, and bidder must submit a copy of their preference certificate with each solicitation.

Application is available for download at:

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

Technical Questions:

Contact the Village of Ruidoso Procurement Manager listed on the ITB front page.

A. PURPOSE OF THIS INVITATION TO BID

The purpose of the Invitation to Bid (ITB) is to solicit sealed competitive bids **for the procurement of a Lazer Roadpak Striping Machine or Equivalent.**

B. TERM OF AGREEMENT

Reserve

C. PROCUREMENT MANAGER

1. The Village of Ruidoso has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Karen Gutierrez, Asst. Finance Dir./Capital Projects Manger
Address: 313 Cree Meadows Drive, Ruidoso, NM 88345
Telephone: (575) 258-4343 or (575) 921-4220
Email: purchasing@ruidoso-nm.gov

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Village of Ruidoso, Procurement Manager
ITB Name: ITB #2022-004B Lazer Roadpak Striping Machine or Equivalent
Address: Purchasing Department
313 Cree Meadows Dr, Ruidoso, NM 88345

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Bidders may contact **ONLY** the Procurement Manager regarding this procurement. Other village employees or Evaluation Committee members do not have the authority to respond on behalf of the Village. **Protests of the solicitation or award must be delivered by mail to the Procurement Manager.** The Procurement Manager shall act as a Protest Manager as pursuant to NMSA 1978, § 13-1-172. **ONLY** protests delivered directly to the Procurement Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Invitation to Bid. Emailed protests will not be considered as properly submitted.

D. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“Village” means the Village of Ruidoso sponsoring the Procurement action.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this Invitation to Bid can be considered confidential information.

“Contract” means any agreement for the procurement of items of tangible personal property, services or construction.

“Contractor” means any business having a contract with a state Village or local public body.

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

“Desirable” the terms "may", "can", "should", "preferably", or "prefers" to identify a desirable or discretionary item or factor.

“Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy Bids contain. The digital form may be submitted using a USB flash drive. The electronic version/copy can NOT be emailed.

“Evaluation Committee” means a body appointed to perform the evaluation of Bids.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the mandatory specifications of this Invitation to Bid and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s Bid.

“Minor Technical Irregularities” means anything in the Bid that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a Bid.

“Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state Village or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Procurement Manager” means any person or designee authorized by a state Village or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Village” means all Village of Ruidoso agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.

“Redacted” means a version/copy of the Bid with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this ITB blacked out BUT NOT omitted or removed.

“Invitation to Bid (ITB)” means all documents, including those attached or incorporated by reference, used for soliciting Bids.

“Responsible Offeror” means an Offeror who submits a responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the Bid.

“Responsive Offer” or means an offer which conforms in all material respects to the requirements set forth in the Invitation to Bid. Material respects of a Invitation to Bid include, but are not limited to price, quality, quantity or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the Bid is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The Village reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a Bid, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Bidders’ company.

“Statement of Concurrence” means an affirmative statement from the Bidder to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in the Bid. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“Unredacted” means a version/copy of the Bid containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“VOR” means the Village of Ruidoso

“Written” means typewritten on standard 8 ½” x 11” paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the ITB contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates - Time Frames
1. Issue ITB	VOR	2/13/2022
2. Acknowledgement of Receipt	Potential Bidders	2/17/2022
3. Pre-Bid Conference	VOR	N/A
4. Deadline to submit Questions	Potential Bidders	2/17/2022
5. Response to Written Questions	Procurement Manager	2/18/2022
6. Submission of Bid	Potential Bidders	February 22, 2022, 3:00 PM Local Time
7. Bid Evaluation	VOR	2/22 - 2/23/2022
8. Contract Awards	VOR/Bidder	3/08/2022
9. Protest Deadline	VOR	Close of Business, 15-Days after award date

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II. A., above.

1. Issuance of ITB

This ITB is being issued on behalf of the Village of Ruidoso.

2. Acknowledgement of Receipt

Potential Bidders should submit the "Acknowledgement of Receipt of Invitation to Bid Form" that accompanies this document, 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 to the Procurement Manager as referenced in II A. Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the ITB, and the potential Offeror's organization name shall not appear on the distribution list.

3. Pre-Bid Conference

No Pre-Bid Conference will be held.

4. Deadline to Submit Written Questions

Potential Bidders may submit written questions to the Procurement Manager as to the intent or clarity of this ITB until Close of Business referenced in II A. Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the ITB or other document which form the basis of the question.

5. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Bidders whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: www.ruidoso-nm.gov/purchasing

6. Submission of Bid

ALL BIDS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN referenced in II A. Sequence of Events. Bids received after this deadline will not be accepted. The date and time of receipt will be recorded on each Bid.

Bids must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Bids must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the ITB. Bids submitted by facsimile, or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted Bids. Pursuant to NMSA 1978, § 13-1-116, the contents of Bids shall not be disclosed to competing potential Bidders during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Invitation to Bid. Awarded in this context means the final required Village signature on the contract(s) resulting from the procurement has been obtained.

7. Bid Evaluation

If applicable, an Evaluation Committee will perform the evaluation of Bids. This process will take place as indicated in the sequence of events, depending upon the number of Bids received. During this time, the Procurement Manager may initiate discussions with

Bidders who submit responsive or potentially responsive Bids for the purpose of clarifying aspects of the Bids. However, Bids may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Bidders.

8. Finalize Contractual Agreements

If applicable, any Contractual agreement(s) resulting from this ITB will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Village of Ruidoso or the Finance Director. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Village reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

9. Contract Awards

If applicable, and after review of the Evaluation Committee Report and the signed contractual agreement, the Village Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Village of Ruidoso Purchasing Department.

The contract shall be awarded to the Bidder (or Bidders) whose Bids are most advantageous to the Village of Ruidoso and taking into consideration the evaluation factors set forth in this ITB. The most advantageous Bid may or may not have received the most points. The award is subject to appropriate Department and Village of Ruidoso approval.

10. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Invitation to Bid, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Invitation to Bid. The 15-calendar day protest period shall begin on the day following the award of contract(s) and will end at 5:00 PM Local Time on the 15th day. Protests must be written and must include the name and address of the protestor and the Request to Bid number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Karen Gutierrez, Procurement Manager
Village of Ruidoso Purchasing Department
313 Cree Meadows Drive
Ruidoso, NM 88345

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Bidders must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a Bid constitutes acceptance of the Evaluation Factors contained in Section V of this ITB.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any Bid or material submitted in response to this ITB shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this ITB shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state Village which may derive from this ITB. The state Village entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the Village awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Bids

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

6. Offeror's Rights to Withdraw Bid

Bidders will be allowed to withdraw their Bids at any time prior to the deadline for receipt of Bids. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the Bids is governed by the applicable procurement regulations.

7. Bid Offer Firm

Responses to this ITB, including Bid prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of Bids or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Bid Contents

- A. Bids documents will be kept confidential until negotiations and the award are completed by the Village. At that time, all Bids and documents pertaining to the Bids will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a Bid on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the Bid in order to facilitate eventual public inspection of the non-confidential portion of the Bid.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: 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 Village Purchasing Division or the Village shall examine the Offeror's request and make a written determination that specifies which portions of the Bid should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the Bid will be so disclosed. The Bid shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This ITB in no manner obligates the Village of Ruidoso or any of its departments to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This ITB may be canceled at any time and any and all Bids may be rejected in whole or in part when the Village determines such action to be in the best interest of the Village of Ruidoso.

11. Sufficient Appropriation

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

12. Legal Review

The Village requires that all Bidders agree to be bound by the General Requirements contained in this ITB. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This ITB and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Bid

Only information supplied, in writing, by the Village through the Procurement Manager or in this ITB should be used as the basis for the preparation of Offeror Bids.

15. Contract Terms and Conditions

The contract between the Village and a contractor will follow the format specified by the Village and contain the terms and conditions set forth in the Sample Contract Appendix J. However, the contracting Village reserves the right to negotiate provisions in addition to those contained in this ITB (Sample Contract) with any Offeror. The contents of this ITB, as revised and/or supplemented, and the successful Offeror's Bid will be incorporated into and become part of any resultant contract.

The Village discourages exceptions from the contract terms and conditions as set forth in the ITB Sample Contract. Such exceptions may cause a Bid to be rejected as nonresponsive when, in the sole judgment of the Village (and its evaluation team), the Bid appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial Bid rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the ITB Sample Contract (APPENDIX J) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Village may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Village and will result in disqualification of the Offeror's Bid.

Bidders must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the ITB process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the ITB process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Bidders must submit with the Bid a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Village. Please see Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the ITB process prior to selection as successful Offeror), will be discussed only between the Village and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's Bid.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this ITB. The Evaluation Committee will reject the Bid of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

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 Bids failed to meet the same mandatory requirements and the failure to do 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 Village reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Village, adequately meeting the needs of the Village.

21. Notice of Penalties

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

22. Village Rights

The Village in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's Bid.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Bidders and contractors must secure from the Village written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Village contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's Bid or removal from the contract.

24. Ownership of Bids

All documents submitted in response to the ITB shall become property of the Village of Ruidoso.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this ITB 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 Village.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Village's written permission.

26. 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. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this ITB

This ITB is being made available by electronic means. In the event of conflict between a version of the ITB in the Offeror's possession and the version maintained by the Village, the Offeror acknowledges that the version maintained by the Village shall govern. Please refer to: www.ruidoso-nm.gov/purchasing.

28. New Mexico Employees Health Coverage

A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to

maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Village of Ruidoso exceed \$250,000 dollars.

- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their Bid. This requirement applies regardless whether a covered contribution was made or not made for the positions of Mayor and Village Councilors or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

30. Letter of Transmittal

Offeror's Bid must be accompanied by the Letter of Transmittal Form located in APPENDIX F which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

- 1. Identify the submitting business entity.
- 2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- 3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
- 4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding Bid content.
- 5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
- 6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
- 7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly** indicate acceptance of Section V of this ITB; and
 - c. Acknowledge receipt of any and all amendments to this ITB.
- 8. Be signed by the person identified in para 2 above.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the Village for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state New Mexico or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state of New Mexico or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Village Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Village Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Governing Body, the Village Manager may terminate the involved contract for cause. Still further the Village Purchasing Agent or the Village Finance Director may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Village Purchasing Agent or Village Finance Director.

32. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Bidders must include a copy of their preference certificate with their Bid. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue.

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

A copy of the certification must accompany your Bid.

B. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany your Bid.

The Village shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this ITB includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Bidders shall submit only one Bid in response to this ITB.

B. NUMBER OF COPIES

Offeror's Bid must be clearly labeled and numbered and indexed as outlined in **Section III.C. Bid Format**. Bids must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the Bid (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Bidders should deliver:

1. **Cost Bids** – One (1) ORIGINAL, one (1) HARD COPY, and one (1) electronic copy of the Bid. **The electronic copy can NOT be emailed.**

The electronic version/copy of the Bid **must** mirror the physical binders submitted (i.e. One (1) **unredacted USB drive**, one (1) **redacted USB drive**). **The electronic version can NOT be emailed.**

2. The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted Bid, the Original hard copy shall govern.

Any Bid that does not adhere to the requirements of this Section and **Section III.C.1 Response Format and Organization**, may be deemed non-responsive and rejected on that basis.

C. BID FORMAT

All Bids must be submitted as follows:

Hard copies must be typewritten on standard 8 ½" x 11" paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy Bids and electronic copy Bids:

1. Bid Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The Bid must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Cost Bid:

- A. Table of Contents
- B. Signed Letter of Transmittal
- C. Signed Cover Page of this ITB
- D. Signed Campaign Contribution Form
- E. Signed Related Party Disclosure
- F. Signed Debarment Certification
- G. Signed Non-Collusion Affidavit
- H. Complete Bid Response Form
- I. Executed Bid Bond
- J. New Mexico Preferences (If applicable)
- K. Other Supporting Material (If applicable)
- L. Completed W9
- M. Bid Summary (Optional)

Within each section of the Bid, Bidders should address the items in the order indicated above. All forms provided in this ITB must be thoroughly completed and included in the appropriate section of the Bid.

The Bid summary may be included by potential Bidders to provide the Evaluation Committee with an overview of the Bid; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's Bid.

IV. SPECIFICATIONS

A. SPECIFICATIONS

The Village of Ruidoso is requesting to purchase a Lazer Roadpak Striping Machine or Equivalent. Specifications are:

- Option 8 2 Pump System
- 450 Lb. Bead Tank
- 2 Gun arm
- Advanced Controller HD Camera
- Seat & Steerable Carriage.

B. DETAILED SCOPE OF WORK

Reserved

V. Mandatory Specifications

- 1. Letter of Transmittal (Appendix F)**
Pass/Fail only. No points assigned.
- 2. Invitation to Bid Cover Page**
Pass/Fail only. No points assigned.
- 3. Campaign Contribution Disclosure Form (Appendix B)**
Pass/Fail only. No points assigned.
- 4. Related Party Disclosure (Appendix C)**
Pass/Fail only. No points assigned.
- 5. Debarment Certification (Appendix D)**
Pass/Fail only. No points assigned.
- 6. Non-Collusion Affidavit (Appendix E)**
Pass/Fail only. No points assigned
- 7. Bid Response Form (Appendix G)**
Bids will be evaluated based on submitted costs.
- 8. Bid Bond (Appendix H)**
- 9. Completed W-9 Form (Appendix I)**
Pass/Fail only. No points assigned.

10. New Mexico Preferences

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

B. EVALUATION PROCESS

1. All Offeror Bids will be reviewed for compliance with the requirements and specifications stated within the ITB. Bids deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive Bids will be evaluated on the factors in Section IV. The responsible Bidders whose Bids are most advantageous to the Village taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8).

APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM

ACKNOWLEDGEMENT OF RECEIPT FORM

ITB#2022-004B Road Lazer Roadpak Striping Machine or Equivalent

In acknowledgement of receipt of this Request for Bid the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX I.

The acknowledgement of receipt should be signed and returned to the Procurement Manager as referenced in II. A. Sequence of Events. Only potential Bidders who elect to return this form completed with the indicated intention of submitting a Bid will receive copies of all Offeror written questions and the written responses to those questions as well as ITB amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Bid.

Firm does/does not (circle one) intend to respond to this Request for Bid.

Karen Gutierrez, Procurèrent Manager
Village of Ruidoso
313 Cree Meadows Dr
Ruidoso, NM 88345
E-mail: purchasing@ruidoso-nm.gov

APPENDIX B - CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state Village 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 Village 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 Bid 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 Village or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign but does not include the value of services provided without compensation or 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.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the Invitation to Bid and ending with the award of the contract or the cancellation of the Invitation to Bid.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

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

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

Name(s) of Applicable Public Official(s) if any: Mayor Lynn D. Crawford, Mayor Pro Tem Rafael Salas, Councilor Tim Coughlin, Councilor Dr. Gary Jackson, Councilor Susan Lutterman, Councilor Joseph W. Eby, Councilor John Cornelius.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s):

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(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 C - RELATED PARTY DISCLOSURE FORM

Related Party Disclosure

1. Are you indebted to or have a receivable from any member of the Council of the Village of Ruidoso; elected Village Officials, administration officials, department heads and key management supervisors with the Village of Ruidoso?

Yes _____ No _____

2. Are you, or any officer of your company, related to any member of the Council of the Village of Ruidoso, elected Village officials, administrative officials, department heads, key management supervisors of the Village of Ruidoso and have you had any of the following transactions in the last 12 months which Village of Ruidoso was, is to be, a party?

	Yes	No
Sales, Purchase or leasing property	_____	_____
Receiving, furnishing of goods, services or facilities?	_____	_____
Commissions or royalty payments?	_____	_____

3. Does any member of the Council of the Village of Ruidoso, elected Village officials, administrative officials, department heads, key management supervisors with the Village of Ruidoso, have any financial interest in your company, whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the Village of Ruidoso?

Yes _____ No _____

4. At any time during the last 12 months did you, your company, or any officer of your company have an _____ interest in or signature authority over a bank account for the benefit of a member of the Council of the Village of Ruidoso, elected Village officials, administrative officials, department heads, and key management supervisors with the Village of Ruidoso?

Yes _____ No _____

5. Are you negotiating to employ, or do you currently employ any employee, officer or family member of an employee or officer of the Village of Ruidoso?

Yes _____ No _____

The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President: _____ Date: _____

(Print Name and Title): _____

APPENDIX D - DEBARMENT CERTIFICATION FORM

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

ITB #2022-004B

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of all had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of award. Under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

APPENDIX E – NON-COLLUSION AFFIDAVIT

NON-COLLUSION FFIDAVIT

ITB #2022-004B

STATE OF _____)
)
COUNTY OF _____) SS

_____, being first duly sworn, deposes and says:

That he/she is _____ of _____ who submits herewith to the Village of Ruidoso, a proposal/bid:

That all statement of fact in such proposal/bid are true;

That said proposal/bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of Village of Ruidoso, or any bidder of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading or proposal/bid, said bidder:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal/bid;
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals/bids;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal/bid price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal/bid price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposal/bid price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository or to any member or agent thereof, or to any individual or group of individuals, except that Village of Ruidoso, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By: _____

SUBSCRIBED and sworn to before me this _____ day of _____ 20 ____.

Notary Public: _____

My commission expires: _____

APPENDIX F - LETTER OF TRANSMITTAL FORM

Letter of Transmittal

ITB#: 2022-004B

Bidder Name: _____ FED ID#: _____

Items MUST BE COMPLETED IN FULL Failure to respond to all items WILL RESULT IN THE DISQUALIFICATION OF THE BID!

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

2. For the person authorized by the organization to contractually obligate on behalf of this Bid:

Name: _____

Title: _____

E-Mail Address: _____ Telephone Number: _____

3. For the person authorized by the organization to negotiate on behalf of this Bid:

Name: _____

Title: _____

E-Mail Address: _____ Telephone Number: _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Bid:

Name: _____

Title: _____

E-Mail Address: _____ Telephone Number: _____

5. On behalf of the submitting organization named in item #1, above, I accept the Conditions

___ Governing the Procurement as required in Section II. C.1.

___ I concur that submission of our Bid constitutes acceptance of the Evaluation Factors contained in Section V of this ITB.

___ I acknowledge receipt of any and all amendments to this ITB.

_____, 2022
Authorized Signature
(Must be signed by the person identified in item #2, above.)

APPENDIX G - BID FORM

B I D F O R M

ITB #2022-004B Lazer Roadpak Striping Machine or Equivalent

To: Village of Ruidoso

Date: _____

Procurement Manger
311 Center St.
Ruidoso, NM 88345

From: _____
Name of Bidder

The Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of bid security and other bidding documents. This bid will remain subject to acceptance for 60 days after the day of the Bid opening.

In submitting this Bid, the Bidder represents, as more fully set forth in Agreement, that:

1. The Bidder has examined all bidding documents and acknowledges any applicable addenda as follows:

Addendum No. _____ Date _____ Addendum No. _____ Date _____
Addendum No. _____ Date _____ Addendum No. _____ Date _____

2. The Bidder has familiarized himself with the nature and extent of the bidding documents, work, site, locality and all applicable conditions, laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
3. Bidder has given the Village of Ruidoso Procurement Manager written notice of any conflicts, errors, or discrepancies that he has discovered in the bidding documents, and the written resolution thereof by Procurement Manager is acceptable to the Bidder.
4. The bid is genuine and not made in the interest of, or behalf of, any undisclosed person, firm or corporation; the Bidder has not directly or indirectly induced or solicited any Bidder to submit false information; the Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Village of Ruidoso.
5. If the bid/contract is to be awarded, the Village of Ruidoso will give the apparent successful bidder Notice of Award within ten (10) days after the Governing Body awards the contract.
6. Bidder understands that acceptance and formal award of this bid, along with the placement of order(s) related to this bid, constitutes a complete and binding contract for items and services as specified.

The Bidder, in conformance with this invitation to bid, hereby submits the following total prices:(Bids shall be written in both words and numbers. In the Event of a Discrepancy, the amount in words shall govern.)

Specifications: Lazer Roadpak Striping Machine or Equivalent

- Option 8 2 Pump System
- 450 Lb. Bead Tank
- 2 Gun arm
- Advanced Controller HD Camera
- Seat & Steerable Carriage.

BASE COST:

_____ \$ _____
Written **Numeric**

Price shall not include New Mexico Gross Receipts Tax (NMGRT)

ADDITIONAL COST per unit, FOB Ruidoso, NM\$ _____
(Delivery cost may be factored into the total cost of the bid)

ESTIMATED DELIVERY TIMEFRAME FROM TIME OF ORDER:

(Delivery time may be factored into bid)

BID PREPARED BY: _____

COMPANY NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

LICENSE NO.: _____
(If Applicable)

5% Preference: NM Resident Business Preference

Certificate# _____

10% Preference: NM Resident Veterans Business Preference

Certificate# _____

Comments:

APPENDIX H – BID BOND FORM

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____,
hereinafter called the "Principal," as Principal, and _____,
hereinafter called the "Surety," as Surety, are held and firmly bound unto the Village of Ruidoso,
hereinafter called the "Village," in the sum of five percent (5%) of Lump Sum Base Bid amount
for payment of which in lawful money of the United States, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

The CONDITION OF THE ABOVE OBLIGATED IS SUCH THAT, WHEREAS,
Principal has submitted a Bid for:

NOW, THEREFORE, if the Village shall accept the bid of the Principal, and the Principal shall
enter into a Contract with the Village in accordance with the terms of such bid, and give such bond
or bonds as may be specified in the bidding or Contract Documents, with good and sufficient surety
for the faithful performance of such Contract and for the prompt payment of labor and material
furnished in the prosecution thereof, then this obligation shall be null and void, otherwise to remain
in full force and effect.

IN WITNESS OF WHEREOF, we have hereunto set our hands this _____ day of _____,
2022.

PRINCIPAL:

SURETY:

Name of firm

Name of firm

Signature

Signature

Printed Name

Printed Name

Title

Title

Address For Notices:

NOTE: Notary acknowledgement for Surety and Surety's Power of Attorney must be attached.

APPENDIX I – W9 FORM

The link to the W-9 form:

www.irs.gov/uac/About-Form-W9

APPENDIX J – SAMPLE CONTRACT

Reference Terms and Conditions



CONTRACT FOR GOODS AND SERVICES

THIS Agreement ("Agreement") is made by and between the Village of Ruidoso, hereinafter referred to as the "Procuring Agency", and XXXXXXXXXX, hereinafter referred to as the "Contractor" and collectively the "Parties".

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:

Village of Ruidoso
Department: Finance
ATTN: Judi Starkovich, Finance Director
Street: 313 Cree Meadows Drive
City, State, Zip: Ruidoso, NM 88345
Phone: 575/258-4343 Ext. 1015
Fax:
Cell:
Email: JudiStarkovich@ruidoso-nm.gov

Contractor
ATTN:
Title: President
Street: 123 Main Street
City, State, Zip: Any Town, XX 99999
Phone: XXX/XXX-XXXX
Fax: XXX/XXX-XXXX
Cell: XXX/XXX-XXXX
Email: luther.fisher@wellsfargo.com

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the Village of Ruidoso, New Mexico; and

WHEREAS, all terms and conditions of the ITB #2022-004B Lazer Roadpak Striping Machine or Equivalent and the Contractor's response to such document(s) are incorporated herein by reference;

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions.**

- A. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- B. "ITB" means Invitation to Bid as defined in statute and rule.
- C. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.
- D. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the Procuring Agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
- E. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.
- F. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.
- G. "You" and "your" refers to (Contractor Name). "We," "us" or "our" refers to the Village of Ruidoso.

2. **Scope of Work.**

The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference. [Alternatively, the contracting entity can forego placing the scope of work in an exhibit and state it in this section.]

3. **Compensation.**

- A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in paragraph D of this Clause.
- B. Taxes

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local

laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

C. Retainage. Reserved

E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

4. **Term**

This agreement shall be effective XXXXXX, XXX, 20XX through XXX XX, 20XX, unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in any case the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

5. **Termination**

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the Village of Ruidoso; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Village Council of Ruidoso for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Council, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency 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 or general services for the Procuring Agency and are not employees of the Village of Ruidoso. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Village of Ruidoso 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 Village of Ruidoso unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Village; (ii) the Contractor is not a member of the family of a public officer or employee of the Village; (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 Village, a member of the family of a public officer or employee of the Village, or a business in

which a public officer or employee of the Village or the family of a public officer or employee of the Village has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Village 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 Village whose official act, while in Village employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a councilor; (ii) the Contractor is not a member of a councilor's family; (iii) the Contractor is not a business in which a councilor or a councilor's family has a substantial interest; or (iv) if the Contractor is a councilor, a member of a councilor's family, or a business in which a councilor or a councilor's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, 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

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, 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 Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency 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 Clause 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 Clause 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 Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **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 Procuring Agency 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **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.

11. **Penalties for violation of law.**

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

12. **Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, 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.

13. **Workers Compensation.**

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

14. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a Lincoln County court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). 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.

15. 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 Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments

16. 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.

17. 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.

18. Non-Collusion.

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Purchasing Agency.

19. Succession.

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

20. Headings.

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered

or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

21. Default/Breach.

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency may also seek all other remedies under the terms of this Agreement and under law or equity.

22. Equitable Remedies.

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

23. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwnewmexico.state.nm.us/>.

24. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of

the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the Village of Ruidoso Purchasing Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Clause. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

25. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Procuring Agency 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 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 performed 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 Procuring Agency by certified mail.

26. Default and Force Majeure.

The Village reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the Village, if the Contractor fails to meet the provisions of this Agreement and,

except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Village due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Village shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Village provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. 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 Procuring Agency.

28. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. 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 Procuring Agency.

29. Inspection of Plant.

The Procuring Agency that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. Commercial Warranty.

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the Village and are in addition to and do not limit any rights afforded to the Village by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. Condition of Proposed Items.

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

33. **Confidentiality.**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. **Contractor Personnel.**

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

36. **Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the Procuring Agency covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Procuring Agency during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The Procuring Agency has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Procuring Agency shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the Procuring Agency performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements of this Agreement, the Procuring Agency may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Procuring Agency may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Procuring Agency may:

- (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Procuring Agency that is directly related to the performance of such service; or

- (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE VILLAGE PARTIES' OF THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

39. Insurance.

If the services contemplated under this Agreement will be performed on or in Village facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Village of Ruidoso as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the Village of Ruidoso as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

40. Arbitration.

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by the Village of Ruidoso out hereinafter.

SIGNATURES:

Village of Ruidoso:

CONTRACTOR:

Lynn D. Crawford, Mayor

Contractor, Title

Date:_____

Date:_____