



2019-05506

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Requested By: BOARD OF SUPERVISORS

David W. Stevens - Recorder

Cochise County, AZ

03-27-2019 01:54 PM Recording Fee \$0.00

COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603

Phone: (520) 432-8391 | Fax: (520) 432-8397

Services Contract

19-33-HFP-01

COCHISE COUNTY SAN PEDRO WATERSHED MONITORING

This CONTRACT is made and entered into this 12th day of March 2019 by and between Cochise County ("COUNTY") and JE FULLER/HYDROLOGY & GEOMORPHOLOGY, INC. ("CONTRACTOR/CONSULTANT").

1.0 INTENT

The COUNTY issues this CONTRACT with the CONTRACTOR/CONSULTANT in order to provide Cochise County San Pedro Watershed Monitoring services, in accordance with section 2.0 – Scope of Work, to the COUNTY and to its satisfaction. This contract has been issued in accordance with A.R.S. §41-2537, R2-7-E303, "Competition Impracticable Requirements". Any changes made to this CONTRACT through the agreement of a modification shall take precedence over the original agreement between either party, as authorized within Attachment 1 – Terms and Conditions. The following personnel of the COUNTY and CONTRACTOR/CONSULTANT are those personnel which are the Point of Contacts (POCs) of this CONTRACT and will act as liaisons for any administrative matters:

COUNTY CUSTOMER:

Karen Riggs
Social Projects Engineer
Engineering & Natural Resources
(520) 432-9310
kriggs@cochise.az.gov
1415 Melody Lane, Bldg F
Bisbee, AZ 85603

COUNTY PROCUREMENT:

Brandon L. Morrison
Contracts Administrator
Cochise County Procurement Department
(520) 432-8391
bmorrison@cochise.az.gov
1415 W Melody Lane, Building C
Bisbee, AZ 85603

CONTRACTOR POC:

Cyrus Miller
JE Fuller/Hydrology & Geomorphology, Inc.
(520) 623-3112
cyrus@jefuller.com
40 East Helen Street
Tucson, AZ 85705

2.0 SCOPE OF WORK

The Contractor shall provide all labor, materials, transportation, and technical expertise needed to successfully accomplish the required work outlined within Attachment 2 – Scope of Work to the satisfaction of the COUNTY.

3.0 COMPENSATION AND METHOD OF PAYMENT

In consideration for the performance of the services described herein, the County shall pay the Contractor for work as described in section 2.0 - Scope of Work, not to exceed \$120,567.00. The CONTRACTOR shall not commence any billable work, outside the scope of this CONTRACT unless otherwise authorized to do so in writing, by the COUNTY Procurement Department through a written Change Order (CO) to the corresponding Purchase Order (PO) or through a modification.

4.0 DURATION AND RENEWAL

Upon receipt of signed CONTRACT by the authorized COUNTY representative, the CONTRACTOR/CONSULTANT shall start work in accordance with Section 2.0 – Scope of Work to the satisfaction of the COUNTY. This CONTRACT is for the following period of performance:

3/12/2019 through 3/31/2020

This CONTRACT will remain in effect for one (1) calendar year from the date of execution, unless terminated or cancelled earlier pursuant to Attachment 1 – Terms and Conditions.

The COUNTY reserves the right to terminate, with or without cause, in whole or any part of this CONTRACT due to failure of the CONTRACTOR/CONSULTANT to carry out any terms, promise or condition of this CONTRACT. If this CONTRACT is terminated, the COUNTY shall be liable only for payment(s) for services rendered, materials accepted or both, prior to the effective date of any such termination.

5.0 INDEPENDENT CONTRACTOR CONTRACT

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

The CONTRACTOR/CONSULTANT is advised that taxes or social security payments shall not be withheld from a COUNTY payment issued hereunder and that CONTRACTOR/CONSULTANT should make arrangements to directly pay such expenses, if any. The COUNTY will not provide any insurance coverage to the CONTRACTOR/CONSULTANT including Workmen's Compensation coverage as provided within Attachment 1 – Terms and Conditions.

6.0 MODIFICATIONS

This Contract may be modified unilaterally or bilaterally. A unilateral modification shall only require the signature of an authorized representative of the COUNTY Procurement Department and shall only be used to enforce statutes, and/or regulations or to correct administrative errors. A bilateral modification shall require agreement, through a written modification, signed by an authorized representative of the County

Procurement Department and an authorized representative for the CONTRACTOR/CONSULTANT. Contract modifications are also subject to section 2.16 within Attachment 1 – Terms and Conditions.

7.0 WAIVER

The failure of either party of this CONTRACT to take affirmative action with respect to any conduct of the other which is in violation of the terms of this CONTRACT shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

8.0 INDEMNIFICATION

Contractor agrees to indemnify, ^{CDM} defend, and hold harmless Cochise County, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including but not limited to attorney's fees, reasonable court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Contractor, or anyone for whose acts Contractor may be liable. Cochise County reserves the right, but not the obligation, to participate in defense without relieving Contractor of any obligation hereunder. The liability of the Contractor under this clause shall not exceed the total sum paid on behalf of Contractor by its insurers in settlement or satisfaction of claims under Contractors available insurance coverage.

9.0 INSURANCE

Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, and/or employees.

The insurance requirements herein are minimum requirements for this Contract. The County of Cochise in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his/her agents, representatives, employees and Contractor is free to purchase additional insurance as may be determined necessary.

10.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Contractor shall further ensure that each sub-Contractor who performs any work for the Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

The County shall have the right at any time to inspect the books and records of the Contractor and any sub-Contractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Contractor's or any sub-Contractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting the Contractor to penalties up to and including suspension or termination of this

Contract. If the breach is by a sub-Contractor, and the sub-contract is suspended or terminated as a result, the Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the sub-contract or retain a replacement sub-Contractor, (subject to County approval if Minority or Woman-owned Business Enterprise (MWBE) preferences apply) as soon as possible so as not to delay project completion.

The Contractor shall advise each sub-Contractor of the County's rights, and the sub-Contractor's obligations, under this Section by including a provision in each sub-contract substantially in the following form:

"The subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal laws applicable to the sub-Contractor's employees and with the requirements of A.R.S. §23-214(A). The sub-Contractor further agrees that the County may inspect the sub-Contractor's books and records to ensure that the sub-Contractor is in compliance with these requirements. Any breach of this paragraph by the sub-Contractor will be deemed to be a material breach of this Contract subjecting the sub-Contractor to penalties up to and including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Contractor. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Contractor shall be entitled to an extension of time, but not costs.

11.0 LEGAL REMEDIES

If the Contractor and Cochise County are unable to mutually resolve disputes arising under this contract, all disputes arising under or relating to this Contract shall be settled by binding Arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such Arbitration shall be conducted by an experienced and knowledgeable Arbitrator(s) and shall include a written record of the Arbitration hearing. If the Contractor and Cochise County can mutually agree upon an Arbitrator, that Arbitrator shall be selected. If not, the Contractor and Cochise County shall each select an Arbitrator and those two Arbitrators shall select a third Arbitrator (or the Contractor and Cochise County shall request a third Arbitrator from the Arizona Arbitration Association). All Arbitrations will be held in the State of Arizona and under the Arizona Rules of Arbitration. All claims and controversies shall be subject to A.R.S. § 12-1518 et. seq.

12.0 APPLICABLE LAW

This Contract shall be governed by, and the County and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Contract or in statutes pertaining specifically to the State. The Law of the State of Arizona shall govern this Contract, and suits pertaining to this Contract shall be brought only in Federal or State Courts in the State of Arizona. This provision does not supersede or invalidate the arbitration requirement in Paragraph XIV. titled Legal Remedies.

13.0 ATTACHMENTS

The following documents are attached to this solicitation and all information contained within shall be as if it were written directly into this solicitation:

- Attachment 1 – Terms and Conditions
- Attachment 2 – Scope of Work
- Appendix A – Pricing

14.0 AUTHORIZATION

The following parties are authorized to enter into legally binding agreements/contracts, respective to the organization they represent. Therefore, by signing below, all parties agree to the terms and conditions outlined herein, those incorporated by reference, as well as any attachments to this CONTRACT. This CONTRACT represents the entire contract between the COUNTY and the CONTRACTOR/CONSULTANT relating to this requirement and shall prevail over any and all previous verbal and written contracts.

APPROVED BY:

**CONTRACTOR:
JE FULLER/HYDROLOGY &
GEOMORPHOLOGY, INC.**

Cyr D. Miller
Contractor Signature

CYRUS D. MILLER
Contractor Printed Name

3-22-2019
Date

COCHISE COUNTY:

BOARD OF SUPERVISORS

Peggy Judd
Peggy Judd
Chair

ATTEST:

Arlathe G. Rios
Arlathe G. Rios
Clerk of the Board

APPROVED AS TO FORM:

Elda E. Orduño
Elda E. Orduño
Civil Deputy County Attorney