

**SANTA FE COUNTY
PRICE AGREEMENT**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, and Big Jo True Value Hardware, Inc., a corporation authorized to do business in the State of New Mexico, County of Santa Fe (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "County"** shall mean Santa Fe County.
- B. "Using Department or Department"** shall mean a Department or Elected Official's office of Santa Fe County.
- C. "Purchase Order"** shall mean a fully executed Purchase Document issued by the Santa Fe County Purchasing Department that specifies the items to be provided by the Contractor under the terms of the Price Agreement.
- D. Price Agreement** means this indefinite quantity Price Agreement which requires the Contractor to furnish items to the using department which issues a purchase order.
- E. Record Adjustment Date** means a date within thirty days of issuance of the Producers Price Index (Not Seasonably Adjusted)(generally referred to herein as "the PPI") by the U.S. Department of Labor.

2. GOODS TO BE PROVIDED

- A. Good Listed on Attachment A.** The Department, through the County, may issue orders for purchase of the items described herein. The item ordered must be listed on Attachment A to this Agreement. All orders issued hereunder must bear both an order number and the number of this Price Agreement.
- B. Quantities.** It is understood that this is an indefinite quantity price agreement and the County may order any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied, by either the County or the Department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items when ordered.
- C. Specifications.** Items furnished hereunder shall conform to the requirements of the specifications provided in the Information for Bidders, attached hereto as Attachment B. Orders issued pursuant to this Agreement must show the applicable Price Agreement

item(s), numbers(s), and price(s). Any items provided pursuant to this Price Agreement must meet or exceed the specifications.

D. Shipping and Billing Instructions.

1. The Contractor shall ship the items in accordance with the County's instructions. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number, and the commercial part number (if any) for each item. Unless otherwise designated by the County, the Contractor shall ship all products F.O.B. destination. Except for loss or damage directly attributable to the negligence of the Department, the Contractor shall bear all risk of loss or damage until products have been accepted by the Department. Destination charges shall be included in the product price.

2. The Contractor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery-by-messenger service). Such enhanced delivery charges shall be pre-paid by the Contractor and billed as a separate item at actual cost. The Contractor shall advise the Department of any enhanced delivery charges prior to the acceptance of the purchase order.

3. Whenever the Department does not accept any product and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.

4. The Contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the using department.

5. Unless otherwise agreed upon by the Department, the Contractor shall be responsible for the pick-up of returned items.

6. Time is of the essence for purposes of this Agreement. All damages resulting from late delivery shall be the responsibility of the Contractor. In the event of failure of the Contractor to deliver in accordance with this requirement, the Contractor shall be liable to the County for liquidated damages in the amount of \$100.00 per order per each day the items are delivered late.

E. Delivery Tickets. The County's purchasing document number and the Contractor's name, the Department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on each shipment that is not accompanied by a packing ticket.

F. Price. Prices listed in Attachment A for each item shall be the price for that item as adjusted as set forth below.

G. Periodic Price Adjustments.

1. The price of items shall be subject to adjustment (increase or decrease) pursuant to this subparagraph to account for fluctuations in the costs of the items that are the subject of this Price Agreement. Adjustments to the prices set forth on Attachment A shall occur within thirty days following issuance of the Bureau of Labor Statistics index Producers Price Index (Not Seasonably Adjusted)(generally referred to herein as "the PPI") by the U.S. Department of Labor, usually every four months. At that time (the record adjustment date), a price adjustment shall be calculated by adding or subtracting the materials price adjustment to the price of each item set forth on Attachment A. The materials price adjustment shall equal the sum of each adjustment, which shall be calculated in accordance with subsection (3) of this Section. Record price adjustment reflecting a *decrease* in the applicable PPI shall offset previous adjustments resulting from an increase in the applicable PPI. The adjustment shall serve to reduce the price of a particular item in the event that the sum of the adjustments equals a negative number or an increase in the price of an item in the event that the sum of the adjustments equals a positive number.

2. The baseline cost amount for each item set forth on Attachment A shall be as specified on Attachment A (e.g., the price bid for each item). This baseline cost amount shall be used to calculate the adjustments in accordance with subsection (3) of this Section.

3. A record adjustment shall be based on the PPI for that item. At the time of contracting, the specific PPI index for each item shall be identified and set forth herein on Attachment C. On the record adjustment date, record adjustments shall be calculated by multiplying the applicable baseline cost amount associated with the particular item by the record adjustment factor. The record adjustment factor shall be based on the percentage of change in the applicable PPI from the effective date of this Price Agreement (IC) as compared to the applicable PPI on the record adjustment date (IE), and shall be calculated in accordance with the following formula:

$$\text{Record Adjustment Factor} = \text{IE/IC} - 1.00$$

The parties shall execute a Contract Administration Memorandum setting forth each record adjustment within thirty (30) days after the applicable record adjustment date.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

A. Inspection. Final inspection and acceptance of all items ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the using department. Unless otherwise agreed upon between the Department and the Contractor, within thirty (30) days from the receipt of items, the using department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed purchase orders are valid under this Price Agreement.

D. Invoices. The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices, extended totals and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Department and not to the County's Central Purchasing Office.

E. Payment of Invoices. Upon written certification from the Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made and mailed to the Contractor's designated mailing address.

F. Tax Note. Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If the Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE PARTIES. The term of this Agreement shall be four (4) year(s).

5. DEFAULT

A. The failure of the Contractor to perform shall create a default pursuant to this Price Agreement. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the County if the items fail to meet the requirements of this Price Agreement. The Contractor may be excused from performance under this Price Agreement if the Contractor's 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 limited to, acts of God or the public enemy, acts of the County 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 County shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the subcontractor to meet the required delivery schedule.

B. The County may cancel all or any part of any resulting order without cost to the County if the Contractor fails to meet material provisions of the order; the Contractor shall be liable for any excess costs associated with such a default.

6. TERMINATION

A. For Convenience. This Price Agreement may be terminated by the County upon written notice to the Contractor thirty (30) days before the proposed date of termination. Notice of Termination of the Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS.

B. For Cause. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING PURCHASE ORDERS issued by the County prior to the effective date of the amendment mutually agreed upon. Amendments affecting prices are not allowed.

8. STATUS OF CONTRACTOR

The Contractor, and Contractor's agents and employees, are independent Contractors for the Department and are not employees of the County. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

9. ASSIGNMENT

A. Neither this Price Agreement nor any orders placed under this Price Agreement, nor any interest therein, nor claim there under, shall be assigned or transferred by the Contractor, except as set forth in subparagraph 10(B) below or as expressly authorized in writing by the County purchasing manager. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Price Agreement.

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

10. NON-COLLUSION

In signing this Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. INSPECTION OF PLANT

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

12. COMMERCIAL WARRANTY

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

13. CONDITION OF PROPOSED ITEMS

All proposed items to be delivered under this Price Agreement are to be NEW and of most current production, unless otherwise specified.

14. RECORDS OF AUDIT

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the department, the County and State Auditor and other appropriate County and federal authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

15. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

16. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the County, its Elected Officials, officers, employees, agents and attorneys, from and against all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the County of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

17. CONFIDENTIALITY

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

18. PRODUCT OF SERVICE: COPYRIGHT

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this agreement shall be the subject of an

application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, meeting notes, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Department at conclusion of the Agreement.

19. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

20. APPROVAL OF CONTRACTOR REPRESENTATIVES

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

21. SCOPE OF AGREEMENT, 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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. NOTICE

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

23. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and County laws, rules and regulations, and all applicable executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the Contractor agrees to assure that no person shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

24. INDEMNIFICATION

The Contractor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

25. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

26. INCORPORATION BY REFERENCE AND PRECEDENCE

This Agreement incorporates the Information For Bidders, Attachment B, including any written Addenda, and the Contractor's cost schedule, Attachment A. 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 Price Agreement in reverse chronological order; (2) the Price Agreement, including the scope of work; (3) the Contractor's Cost Schedule's; and (4) the Information For Bidders including attachments thereto and addenda.

27. WORKER'S COMPENSATION

The Contractor shall 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.

28. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

29. 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.

30. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION

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

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

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

- i. provide the County the right to continue using the item and fully indemnify the County against all claims that may arise out of the County's use of the item;

- ii. replace or modify the item so that it becomes non-infringing;

or,

- iii. accept the return of the item and refund an amount equal to the value of the returned item, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any item modified by the department to the extent such modification is the cause of the claim.

C. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

D. The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall also survive termination of this Agreement

31. SURVIVAL

Article 12, "COMMERCIAL WARRANTY," shall survive termination of this Agreement.

32. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:
Santa Fe County Attorney's Office
102 Grant Avenue
Santa Fe, NM 87501

To Contractor:
Big Jo True Value Hardware, Inc.
1311 Siler Rd.
Santa Fe, NM 87507

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

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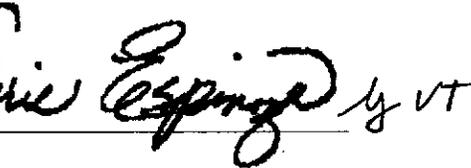
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SANTA FE COUNTY:



Harry B. Montoya, Chairman
Santa Fe Board of County Commissioners

ATTEST:



Valerie Espinoza
Santa Fe County Clerk

6-30-10
Date

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

5-17-10
Date

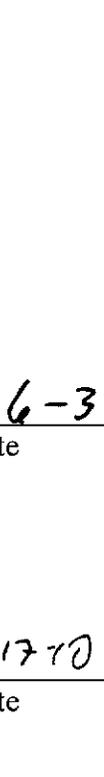
FINANCE DEPARTMENT APPROVAL:



Teresa Martinez
Santa Fe County Finance Director

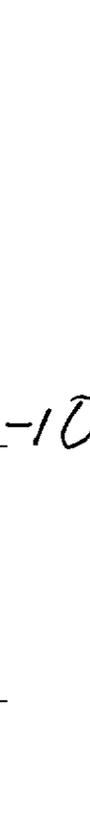
6/18/2010
Date

BIG JO TRUE VALUE HARDWARE, INC.:



(SIGNATURE)

7/2/10
Date



(PRINT NAME AND TITLE)

FEDERAL TAX I.D. NUMBER: 85-0364935

**ATTACHMENT A
PRICE SCHEDULE AND DISCOUNTED RATE**

Santa Fe County
 Administrative Services Department
 142 W. Palace Ave.
 2nd Floor
 Santa Fe, NM 87501

IFB #2010-0060-ASD/TRV

Please offer your best price, for each item as outline below. **The Bidders shall complete the following bid sheet in full, for Bid No. 2010-0060-ASD/TRV, including signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Unit	Article and Description
1	%	Construction, Electrical and Plumbing Hand Tools for maintenance and repairs will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
2	%	Construction, Electrical and Plumbing Power Tools for maintenance and repairs will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
3	%	Construction Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
4	%	Construction Materials will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
5	%	Fencing Materials will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
6	%	Fencing Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
7	%	Plumbing Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).

8	%	Electrical Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
9	%	Hardware Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
10	%	Cleaning Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
11	%	HVAC Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
12	%	HVAC Equipment will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
13	%	Spray Paint will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
14	%	Paint will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
15	%	Paint Supplies will be provided at <u>10</u> % off list price (cost-plus is not acceptable).
16	%	Miscellaneous Items/Supplies that do not fit above mentioned categories will be provided at <u>10</u> % off list price (cost-plus is not acceptable).

Contractor's Name: Big Jo True Value Hardware Inc.

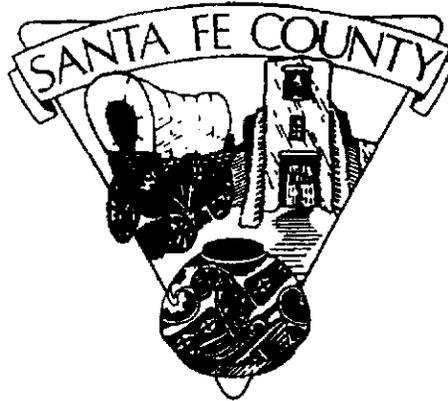
Contractor's Phone: 505.473.2255 Fax #: 505.438.3203

Signature of Authorized Contractor's Agent: Rick C de Baca

Title: Rick C de Baca - Vice President

ATTACHMENT B
IFB#2010-0060-ASD/TRV

**SANTA FE COUNTY
ASD PURCHASING DIVISION**



**MISCELLANEOUS CONSTRUCTION
TOOLS & SUPPLIES**

IFB #2010-0060-ASD/TRV

APRIL 2010

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ADVERTISEMENT FOR BIDS

INVITATION FOR BIDS

**IFB#2010-0060-ASD/TRV
MISCELLANEOUS CONSTRUCTION TOOLS & SUPPLIES**

The Santa Fe County is requesting bids for the purpose of procuring for miscellaneous construction tools and supplies. Bids may be held for ninety (90) days subject to all action by the County. Santa Fe County reserves the right to reject any and all bids in part or in whole. A completed bid package shall be submitted in a sealed container indicating the bid title and number along with the bidding firm's name and address clearly marked on the outside of the container. **All bids must be received by 10:00 A.M., MDT, on May 3, 2010 at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (2nd Floor), Santa Fe, NM 87501.** By submitting a bid for the requested services each firm is certifying that their bid is in compliance with regulations and requirements stated within the IFB package.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified bidders will receive consideration for contract(s) without regard to race, color, religion, sex or national origin. Bidders of this work shall be required to comply with the President's Executive Order #11246, as amended.

Invitation for Bid packages may be obtained by contacting Tila Rendon-Varela, Procurement Specialist, Senior, Santa Fe County Purchasing Division at (505) 992-6753, through e-mail at trendon@co.santa-fe.nm.us; or on our website at http://www.santafecounty.org/about_us/current_bid_solicitations.php

**BIDS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL
NOT BE ACCEPTED.**

Santa Fe County
Purchasing Division
Publish – April 19, 2010

BID INSTRUCTIONS

1. All bids shall be submitted on the Santa Fe County "Invitation for Bids" forms provided herein.
2. All bids must be received by the Santa Fe County Purchasing Division, 142 West Palace Avenue, second floor, as specified in these Bid Instructions:

Mailing Address:

Santa Fe County Purchasing
Attn: Tila Rendon-Varela
PO Box 276
Santa Fe, NM 87504-0276

Hand Delivery and Courier:

Santa Fe County Purchasing Division
142 W. Palace Ave., 2nd Floor
Santa Fe, NM 87501

3. Bids shall be submitted in a sealed envelope and be clearly marked with the words: **Sealed Bid Enclosed, Bid #2010-0060-ASD/TRV, Miscellaneous Construction Tools & Supplies for Santa Fe County.**
4. Filing time marked or stamped on the sealed envelope by the Santa Fe County Purchasing Division shall be the official time of receipt of the bid.
5. All bids shall remain sealed until the date and time specified on page one (1) of this bid package.
6. To preclude possible errors and/or misinterpretations, bid prices shall be affixed in ink, legibly written or typed. In case of discrepancy, amounts stated in words shall govern.

GENERAL TERMS AND CONDITIONS

1. **Bid Modification and Withdrawal:** After bid opening, no modification of bids shall be permitted. A bidder alleging a material mistake of fact after the opening of bids may be permitted to withdraw its request prior to the scheduled bid opening for the purposes of correction and/or change. Such modifications shall be properly identified and signed or initialed by the firm's authorized representative or agent. Resubmission of the modified bid shall be received within the specified time of bid opening to be considered.

2. **Contract Terms and Conditions:** The Contract between the County and the Contractor shall be that attached hereto as the Sample Price Agreement. The County reserves the right to negotiate with a successful Bidder Terms and Conditions in addition to those contained in this IFB. The contents of this IFB, as revised and /or supplemented, the successful contractor's bid, and any additional Terms and Conditions (if applicable) as negotiated shall be accepted by the County and the Contractor as the contractual documents.

Should the bidder object to any of the County's Terms and Conditions, as stipulated throughout this Invitation, that Bidder must propose specific alternative language. The County may or may not accept the alternative language. General references to the Bidder's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the Bidder'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.

3. **Notification of Award:** The successful Bidder(s) shall be notified in writing within five (5) working days of contract award. The successful Bidder(s) will be issued subsequent purchase order(s) for goods and/or services as predicated by the Statement of Work, Specifications or supplemental agreement prepared by Santa Fe County.

4. **Delivery:** Unless otherwise specified, all items bid are delivered to Santa Fe, NM at a site to be determined by the County, at the time the purchase order is released. (See Supplemental Terms and Conditions for Late Delivery Penalties)

5. **Payment Terms:** All successful Bidders for items bid shall be subject to terms of net thirty (30) days after receipt of the firm's proper and acceptable invoice(s) by Santa Fe County.

6. **Applicable Taxes:** Prices offered are not to include applicable taxes. Applicable taxes shall be specified as a separate line item and will not be included in the bid evaluation. The County agrees to pay all applicable taxes where required. Santa Fe County is exempt from paying taxes on supplies and/or goods. The awarded Bidder may request a non-taxable transaction certificate (NTTC) from the Purchasing Division.

7. **Estimated Quantities:** All Bidders understand that any quantities stated in this invitation are estimated quantities and that actual quantities for the term of the contract

may vary. Santa Fe County assumes no liability in the event actual requirements do not equal the stated estimated quantities. Actual purchases by the County for materials and/or services stated in this invitation are contingent upon available appropriated funding.

8. **Inspection and Acceptance:** Final inspection and acceptance of items will be made at the destination. Non-conforming units shall be removed by the contractor at its risk and expense promptly upon notification of the non-conformance.
9. **Warranties:** The Bidder agrees that the goods and/or services furnished under this invitation shall be covered by most favored commercial warranties the Bidder gives to any customer for such goods and/or services and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause in any resulting order. The Bidder agrees not to disclaim warranties of fitness for a particular purpose and warranty of merchantability.
10. **Invoice Requirements:** The awarded Contractor invoice shall be submitted in triplicate duly certified and contain the following information to be acceptable to the County:
 - Purchase order number – IFB number
 - Invoice Number
 - Unit prices with extended totals
 - Complete descriptions of goods and/or services rendered
 - Separate invoices shall be issued for each completed shipment, project or phase as determined in any previous order for such goods and/or services.
11. **Rights to Cancel:** The County reserves the right to cancel all or any part of any resulting order without cost to the County if the awarded Contractor fails to meet material provisions of the order, and except as otherwise provided herein, to hold the awarded Contractor liable for any excess costs associated with the contractor's default. The awarded Contractor shall not be liable for any excess costs if failure to perform is due to causes beyond the control and shall not be the fault of negligence of the contractor. Such causes include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the County can determine that the goods or services to be supplied by the sub-contractor were obtainable from other sources in sufficient time to meet the required delivery schedule. The rights and remedies of the County provided in this paragraph shall not be exclusive and are in addition to other rights provided under applicable laws.
12. **Contractors Certification:** In submitting a bid, the Bidder certifies that it has not directly or indirectly entered into actions that may restrict open and effective competition for items subject to this invitation for bids by the County.
13. **Compliance with FCRA:** Bidders submitting bids shall be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev.1979)

14. **Specifications:** The apparent silence of the specification as to any detail or apparent omission from them of detailed description concerning any point shall be regarded as meaning that only the best commercial practice is to prevail and only materials and workmanship of first quality are to be used.
15. **Rejection of Bids:** The County reserves the right to reject any and all bids in part or whole, to waive technicalities, make single or multiple awards without discussions with Bidders and to accept the offer it deems to be in the best interest of the Santa Fe County, giving due consideration to prices, quality of goods or services, distribution and delivery facilities available and time of delivery.
16. **Interpretation of Bid Specifications:** Technical expertise may be required to provide materials that will conform to all applicable federal, state and local standards and/or to function as indicated in these specifications. The contractor shall be responsible for ensuring that goods and/or services offered meet or exceed the stated criteria.

ANY EXCEPTIONS TO THE SPECIFICATIONS SHALL BE CLEARLY NOTED AND EXPLAINED.

17. **Interpretation of Meaning:** No interpretation of the meaning of the specifications or other documents will be made to any bidding firm orally. Each request for interpretations shall be in writing addressed to Vincent Ojinaga, Procurement Manager, Santa Fe County Purchasing Division at 142 West Palace Ave., Second Floor, Santa Fe, NM 87501 or via fax at (505) 989-3243, and to be given consideration must be received at least ten (10) working days prior to the date fixed for the receipt of bids.
18. **Communication:** Direct communication with the County technical representative or government sponsor of the requirement, other than through the aforementioned individual, may result in the elimination of the bidder's offer from consideration.
19. **IFB Corrections:** Any and all interpretations and supplemental instructions will be in the form of a written addenda to the IFB which, if issued, will be mailed by certified mail with return receipt requested or other means determined by the County as reasonable to expedite this process to all prospective firms prior to the date fixed for the receipt of bids. Failure of any bidding firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their bid as submitted. **All addenda so issued shall become part of the contract documents.**
20. **Brand Names and Model Numbers:** Specifications in this invitation are not meant to be restrictive, but descriptive. Specifications contained herein reflect the minimum acceptable standards and are not intended to restrict competition. No substitute specifications may be included, exceptions may be made only if required to match existing equipment, or conform to pre-existing conditions which preclude mismatch of sizes, styles or color. Substitutions which would require additional delivery time, expense or modifications of the original design may be rejected.

21. **Item Description(s):** All items on all pages of the specification are representative of the desired sized and dimensions and as such are intended as guides to potential Bidders in the preparation of bids. Bids of equivalent items will be considered for award if (1) such items are clearly identified by manufacturer's name, brand, and model number, if any, in the offer; (2) descriptive literature or other such data is provided to show that the equivalent items are equal to the brand name; and (3) the County determines such items to be equal in all material respects to the salient specifications of the products required.
22. **Compatibility or Brand Name(s):** Bidders shall clearly indicate that it is offering an "equal" product unless the offeror is offering the brand name product(s) referenced in the inquiry. Should any specified brands or models be listed incorrectly, discontinued or improved, the Bidder shall note such changes in their responses and include the pertinent details regarding the change. In the event the item has been discontinued, the Bidder will be allowed to propose comparable goods or services along with the necessary supplemental documentation supporting their position.
23. **Evaluation and Determination of Product(s):** The evaluation of bids and the determination as to equality of the product proposed shall be the responsibility of the County and will be based on information provided in the Bid and/or information reasonably available to the County.
24. **Resident Manufacturer Preference:** To expedite the determination of eligibility for the 5% resident manufacturer preference, please complete the following, if applicable:

I(We) certify that the following items numbered _____
_____ as indicated in this invitation were(are) grown, produced,
processed or manufactured wholly in the state of New Mexico.

Resident Business Preference

The 5% resident business preference shall apply to all registered business, unless the expenditure of federal funds designated for a specific purpose is involved.

Preference Registration Information

I(We) certify that this business is registered with the State of New Mexico as a resident manufacturer or resident business, number _____.

Note: No bidder shall receive more than 5% preference on any one bid.

SUPPLEMENTAL TERMS AND CONDITIONS

1. **Intent of Specifications:** The following specifications are intended to describe the requirements by Santa Fe County. The County reserves the right to accept some minor variances in the approved goods and/or services offered by the bidders if such acceptance is determined to be in the best interest of the County.
2. **Qualified Bidders:** Bids may be accepted from vendors and/or factory authorized dealers who are able and willing to provide responsive service to the County. Bidders must be in a position to offer the lowest cost/highest effectiveness, completely meeting all established state and federal regulations or exceeding the minimum specifications contained herein. When additional equipment (components) are required to complete a bid package which is not usually supplied by the Bidder, such equipment shall be supplied by an authorized equipment supplier, but shall be the full responsibility of the Bidder. All Bidders shall include references from three (3) or more places of business that these services were provided to.
3. **Inspection of Work:** Representatives of the Santa Fe County, including the Purchasing Division, shall have access at any reasonable time, to the Bidder's and Manufacturer's facilities for the purposes of inspection during the agreement period, to inspect the recording facility during its normal working hours. The costs associated with such inspection trips shall be borne by the County.
4. **Late Delivery:** It is expressly understood and agreed that, as a result of the public interest, and because of the monetary losses that the County may incur as a result of failure to deliver the goods and/or services described in the contract on time, that time is of the essence in the performance of this contract. It is agreed that damages resulting from late delivery can neither be accurately anticipated or calculated.

The following delivery terms and conditions apply to the item(s) described in the specifications: The goods and/or services shall be delivered within ten (10) business days after receipt of order (ARO).

At the option of the County Procurement Manager, the County may invoke the default provision of this contract contained in the General Terms & Conditions (#11) in addition to any penalties as outlined above.

5. **Payment or Acceptance Not Conclusive:** No payment made under this Agreement shall be conclusive evidence of the performance of the contract, either wholly or in part, and that no payment made for the delivery of the items in whole or in part shall be construed as an acceptance of defective work or improper materials, and shall not relieve the bidder from corrections of the defects. The final acceptance shall not be binding upon the County nor conclusive, should it subsequently develop the Bidder had furnished inferior items or had departed from the specifications and/or the terms of the contract. Should such conditions become evident, the County shall have the right, notwithstanding final acceptance and payment, to cause the services to be properly furnished in

accordance with the specifications (and drawings, if any) at the cost and expense of the bidder.

6. **Order of Preference:** In the event of conflict between the Bid Instructions and General Terms and Conditions and the Supplemental Terms and Conditions, the Supplemental Terms and Conditions shall prevail.

Any references herein to a particular make or model number are intended not to be restrictive, but to set forth an acceptable level of quality and design.

7. **Method of Award:** Santa Fe County reserves the right to award a “Multiple Source Award” pursuant to Section 13-1-153 NMSA 1978, to the bidder(s) submitting the lowest responsive bid(s) meeting or exceeding specifications and terms and conditions for those items.

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ACKNOWLEDGEMENT OF RECEIPT OF INVITATION FOR BIDS FORM

In acknowledgement of receipt of this Invitation for Bids the undersigned agrees that he/she has received a complete copy, beginning with the title page, and ending with _____.

The acknowledgement of receipt should be signed and returned to the Procurement Manager. Bidders that return this form in a timely manner will receive copies of addenda to this IFB.

FIRM: _____
REPRESENTED BY: _____
TITLE: _____
PHONE NO.: _____
FAX NO.: _____
E-MAIL ADDRESS: _____
MAILING ADDRESS: _____

DELIVERY ADDRESS: _____

By: _____ Date: _____
(signature)
Name: _____
(printed)
Title: _____

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

Tila Rendon-Varela
Santa Fe County Administrative Services Department
Purchasing Division
142 W. Palace Avenue
Santa Fe, NM 87501
Phone: (505) 992-6753 Fax: (505) 989-3243
E-mail: trendon@co.santa-fe.nm.us

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

Furthermore, the state agency or local public body 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 proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to 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 request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"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 proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal 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.

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)

SPECIFICATIONS

Objective Description

Santa Fe County is issuing an Invitation For Bids for Miscellaneous Construction Tools and Supplies for Santa Fe County to award a firm, fixed, indefinite quantity price agreement. Santa Fe County reserves the right to award a "multiple source award" pursuant to NMSA 1978 sec. 13-1-153 to the bidder(s) submitting the lowest responsive bid(s) meeting or exceeding specifications and terms and conditions for those items. The successful bidder(s) will be awarded a four (4) year contract with the County.

Scope of Work

Miscellaneous Construction Tools and Supplies agreement to include but not limited to:

Tools and Supplies will be billed at the discount offered in the bid schedule. Cost for tools and supplies will be itemized separately on each invoice and will indicate list price less discount offered. In cases where the manufacturer's current retail price or vendor's cost list is non-existent, the user agency agrees to compensate the awarded vendor actual freight and handling charges incurred in the procurement of "special order parts" which are not normally stocked items, provided that authorization is granted by the county prior to the time of order.

Shipping Note: Vendor must pre-pay freight and add to invoice as separate item.

Successful vendor(s) must carry an adequate inventory supply of parts to service the County's needs without undue delays. All parts and materials shall carry the manufacturer's standard warranty. All other standard business practices shall be extended to the County.

The County reserves the right to request the return of or inspection of any tool(s), or supply(ies). Tools and supplies must be new and conform to the original manufacturer's specifications, unless otherwise approved by the county.

Contractor agrees to:

Assume full responsibility for quality of material and workmanship of product hereunder and in the event of error, bidder shall immediately replace any and all miscellaneous construction tools and supplies at no cost to the county, in which supplier errors and/or defects shall have occurred. Determination of error and/or unacceptability shall be the sole responsibility of the Santa Fe County Department for which the goods and/or services are being issued and such determination and/or judgment shall be final.

All requested construction tools and supplies will be obtained from a national, reputable manufacturer, and no items will be manufactured by the bidder. All items to have a manufacturer's label attached.

Furnish the county with a copy of the price schedule(s) at no additional cost.

Tax shall not be applied to tools or supplies furnished.

Prices quoted herein represent the total compensation to be paid by the County for goods provided. The party providing said goods to the County is responsible for payment of all costs of labor, equipment, tools, materials, federal tax, permits, licenses, fees and any other items necessary to complete the work provided. The prices quoted herein include an amount sufficient to cover such costs.

Notwithstanding the existence of this agreement, the County and/or its political sub-divisions reserve the right to order any items(s) required for emergency purpose from any party who can deliver such item(s) to meet the requirements of the user, without waiving or voiding any of the terms of this agreement.

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BID SHEET

Project: SFC Miscellaneous Construction Tools and Supplies IFB No. #2010-0060-ASD/TRV

Bidder: _____ This Bid is submitted to:

Santa Fe County Purchasing Division
142 W. Palace Ave. (2nd Floor)
Santa Fe, New Mexico 87501
Attn: Tila Rendon-Varela

Having read the Santa Fe County Bid Instructions and General Terms and Conditions and examined the specifications sheet(s) for the Invitation for Bids reference #2010-0060-ASD/TRV we hereby submit the attached firm offer for which will remain open for a period not to exceed ninety (90) days in accordance with all terms and conditions represented in this solicitation for:

**MISCELLANEOUS CONSTRUCTIONS TOOLS & SUPPLIES
ADMINISTRATIVE SERVICES DEPARTMENT**

Signature: _____ Name (typed or printed): _____

Title: _____ Firm Name: _____

Federal ID or Social Security Number: _____ NM License # _____

Resident Contractor's Preference #: _____ Dept. of Labor Registration #: _____

NM Business Preference #: _____
 Liability Insurance is required.
 Copy of Workers' Compensation Insurance is required

Telephone: (____) _____ Fax: (____) _____

() Received addenda #'s _____ & _____ when issued.

Santa Fe County
 Administrative Services Department
 142 W. Palace Ave.
 2nd Floor
 Santa Fe, NM 87501

IFB #2010-0060-ASD/TRV

Please offer your best price, for each item as outline below. **The Bidders shall complete the following bid sheet in full, for Bid No. 2010-0060-ASD/TRV, including signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Unit	Article and Description
1	%	Construction, Electrical and Plumbing Tools for maintenance and repairs will be provided at _____% off list price (cost-plus is not acceptable).
2	%	Construction Supplies will be provided at _____% off list price (cost-plus is not acceptable).
3	%	Construction Materials will be provided at _____% off list price (cost-plus is not acceptable).
4	%	Fencing Materials will be provided at _____% off list price (cost-plus is not acceptable).
5	%	Fencing Supplies will be provided at _____% off list price (cost-plus is not acceptable).
6	%	Plumbing Supplies will be provided at _____% off list price (cost-plus is not acceptable).
7	%	Electrical Supplies will be provided at _____% off list price (cost-plus is not acceptable).

8	%	Hardware Supplies will be provided at _____% off list price (cost-plus is not acceptable).
9	%	Cleaning Supplies will be provided at _____% off list price (cost-plus is not acceptable).
10	%	HVAC Supplies will be provided at _____% off list price (cost-plus is not acceptable).
11	%	HVAC Equipment will be provided at _____% off list price (cost-plus is not acceptable).
12	%	Spray Paint will be provided at _____% off list price (cost-plus is not acceptable).
13	%	Paint will be provided at _____% off list price (cost-plus is not acceptable).
14	%	Paint Supplies will be provided at _____% off list price (cost-plus is not acceptable).
15	%	Miscellaneous Items/Supplies that do not fit above mentioned categories will be provided at _____% off list price (cost-plus is not acceptable).

Contractor's Name: _____

Contractor's Phone: _____ **Fax #:** _____

Signature of Authorized Contractor's Agent: _____

Title: _____

**SANTA FE COUNTY
PRICE AGREEMENT**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, and _____, a corporation, LLC, sole-proprietor, authorized to do business in the State of New Mexico, County of Santa Fe (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. **"County"** shall mean Santa Fe County.
- B. **"Using Department or Department"** shall mean a Department or Elected Official's office of Santa Fe County.
- C. **"Purchase Order"** shall mean a fully executed Purchase Document issued by the Santa Fe County Purchasing Department that specifies the items to be provided by the Contractor under the terms of the Price Agreement.
- D. **Price Agreement** means this indefinite quantity Price Agreement which requires the Contractor to furnish items to the using department which issues a purchase order.
- E. **Record Adjustment Date** means a date within thirty days of issuance of the Producers Price Index (Not Seasonably Adjusted)(generally referred to herein as "the PPI") by the U.S. Department of Labor.

2. GOODS TO BE PROVIDED

- A. **Good Listed on Attachment A.** The Department, through the County, may issue orders for purchase of the items described herein. The item ordered must be listed on Attachment A to this Agreement. All orders issued hereunder must bear both an order number and the number of this Price Agreement.
- B. **Quantities.** It is understood that this is an indefinite quantity price agreement and the County may order any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied, by either the County or the Department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items when ordered.
- C. **Specifications.** Items furnished hereunder shall conform to the requirements of the specifications provided in the Information for Bidders, attached hereto as Attachment B. Orders issued pursuant to this Agreement must show the applicable Price

Agreement item(s), numbers(s), and price(s). Any items provided pursuant to this Price Agreement must meet or exceed the specifications.

D. Shipping and Billing Instructions.

1. The Contractor shall ship the items in accordance with the County's instructions. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number, and the commercial part number (if any) for each item. Unless otherwise designated by the County, the Contractor shall ship all products F.O.B. destination. Except for loss or damage directly attributable to the negligence of the Department, the Contractor shall bear all risk of loss or damage until products have been accepted by the Department. Destination charges shall be included in the product price.

2. The Contractor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery-by-messenger service). Such enhanced delivery charges shall be pre-paid by the Contractor and billed as a separate item at actual cost. The Contractor shall advise the Department of any enhanced delivery charges prior to the acceptance of the purchase order.

3. Whenever the Department does not accept any product and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.

4. The Contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the using department.

5. Unless otherwise agreed upon by the Department, the Contractor shall be responsible for the pick-up of returned items.

6. Time is of the essence for purposes of this Agreement. All damages resulting from late delivery shall be the responsibility of the Contractor. In the event of failure of the Contractor to deliver in accordance with this requirement, the Contractor shall be liable to the County for liquidated damages in the amount of \$100.00 per order per each day the items are delivered late.

E. Delivery Tickets. The County's purchasing document number and the Contractor's name, the Department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on each shipment that is not accompanied by a packing ticket.

F. Price. Prices listed in Attachment A for each item shall be the price for that item as adjusted as set forth below.

G. Periodic Price Adjustments.

1. The price of items shall be subject to adjustment (increase or decrease) pursuant to this subparagraph to account for fluctuations in the costs of the items that are the subject of this Price Agreement. Adjustments to the prices set forth on Attachment A shall occur within thirty days following issuance of the Bureau of Labor Statistics index Producers Price Index (Not Seasonably Adjusted)(generally referred to herein as "the PPI") by the U.S. Department of Labor, usually every four months. At that time (the record adjustment date), a price adjustment shall be calculated by adding or subtracting the materials price adjustment to the price of each item set forth on Attachment A. The materials price adjustment shall equal the sum of each adjustment, which shall be calculated in accordance with subsection (3) of this Section. Record price adjustment reflecting a *decrease* in the applicable PPI shall offset previous adjustments resulting from an increase in the applicable PPI. The adjustment shall serve to reduce the price of a particular item in the event that the sum of the adjustments equals a negative number or an increase in the price of an item in the event that the sum of the adjustments equals a positive number.

2. The baseline cost amount for each item set forth on Attachment A shall be as specified on Attachment A (e.g., the price bid for each item). This baseline cost amount shall be used to calculate the adjustments in accordance with subsection (3) of this Section.

3. A record adjustment shall be based on the PPI for that item. At the time of contracting, the specific PPI index for each item shall be identified and set forth herein on Attachment C. On the record adjustment date, record adjustments shall be calculated by multiplying the applicable baseline cost amount associated with the particular item by the record adjustment factor. The record adjustment factor shall be based on the percentage of change in the applicable PPI from the effective date of this Price Agreement (IC) as compared to the applicable PPI on the record adjustment date (IE), and shall be calculated in accordance with the following formula:

$$\text{Record Adjustment Factor} = \text{IE/IC} - 1.00$$

The parties shall execute a Contract Administration Memorandum setting forth each record adjustment within thirty (30) days after the applicable record adjustment date.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

A. Inspection. Final inspection and acceptance of all items ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the using department. Unless otherwise agreed upon between the Department and the Contractor, within thirty (30) days from the receipt of items, the using department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed purchase orders are valid under this Price Agreement.

D. Invoices. The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices, extended totals and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Department and not to the County's Central Purchasing Office.

E. Payment of Invoices. Upon written certification from the Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made and mailed to the Contractor's designated mailing address.

F. Tax Note. Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If the Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE PARTIES. The term of this Agreement shall be four (4) year(s).

5. DEFAULT

A. The failure of the Contractor to perform shall create a default pursuant to this Price Agreement. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the County if the items fail to meet the requirements of this Price Agreement. The Contractor may be excused from performance under this Price Agreement if the Contractor's 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 limited to, acts of God or the public enemy, acts of the County 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 County shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the subcontractor to meet the required delivery schedule.

B. The County may cancel all or any part of any resulting order without cost to the County if the Contractor fails to meet material provisions of the order; the Contractor shall be liable for any excess costs associated with such a default.

6. TERMINATION

A. **For Convenience.** This Price Agreement may be terminated by the County upon written notice to the Contractor thirty (30) days before the proposed date of termination. Notice of Termination of the Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS.

B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING PURCHASE ORDERS issued by the County prior to the effective date of the amendment mutually agreed upon. Amendments affecting prices are not allowed.

8. STATUS OF CONTRACTOR

The Contractor, and Contractor's agents and employees, are independent Contractors for the Department and are not employees of the County. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

9. ASSIGNMENT

A. Neither this Price Agreement nor any orders placed under this Price Agreement, nor any interest therein, nor claim there under, shall be assigned or transferred by the Contractor, except as set forth in subparagraph 10(B) below or as expressly authorized in writing by the County purchasing manager. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Price Agreement.

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

10. NON-COLLUSION

In signing this Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. INSPECTION OF PLANT

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

12. COMMERCIAL WARRANTY

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

13. CONDITION OF PROPOSED ITEMS

All proposed items to be delivered under this Price Agreement are to be NEW and of most current production, unless otherwise specified.

14. RECORDS OF AUDIT

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the department, the County and State Auditor and other appropriate County and federal authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

15. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

16. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the County, its Elected Officials, officers, employees, agents and attorneys, from and against all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the County of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

17. CONFIDENTIALITY

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

18. PRODUCT OF SERVICE: COPYRIGHT

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this agreement shall be the subject of an

application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, meeting notes, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Department at conclusion of the Agreement.

19. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

20. APPROVAL OF CONTRACTOR REPRESENTATIVES

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

21. SCOPE OF AGREEMENT, 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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. NOTICE

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

23. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and County laws, rules and regulations, and all applicable executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the Contractor agrees to assure that no person shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

24. INDEMNIFICATION

The Contractor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

25. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

26. INCORPORATION BY REFERENCE AND PRECEDENCE

This Agreement incorporates the Information For Bidders, Attachment B, including any written Addenda, and the Contractor's cost schedule, Attachment A. 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 Price Agreement in reverse chronological order; (2) the Price Agreement, including the scope of work; (3) the Information For Bidders including attachments thereto and addenda.

27. WORKER'S COMPENSATION

The Contractor shall 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.

28. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

29. 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.

30. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION

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

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

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

- i. provide the County the right to continue using the item and fully indemnify the County against all claims that may arise out of the County's use of the item;

- ii. replace or modify the item so that it becomes non-infringing;

or,

- iii. accept the return of the item and refund an amount equal to the value of the returned item, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any item modified by the department to the extent such modification is the cause of the claim.

C. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

D. The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall also survive termination of this Agreement

31. SURVIVAL

Each party agrees to protect confidential information and information identified as sensitive, proprietary, patent, copyright and/or trade secret data of the other. This protection will survive completion and/or termination of this Agreement and each party agrees not disclose this data unless under an order by a court of appropriate jurisdiction or the information becomes public knowledge.

32. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:
Santa Fe County Attorney's Office
102 Grant Avenue
Santa Fe, NM 87501

To Contractor:

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SANTA FE COUNTY:

Harry B. Montoya, Chairman
Santa Fe Board of County Commissioners

ATTEST:

Valerie Espinoza
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

Date

FINANCE DEPARTMENT APPROVAL:

Teresa Martinez
Santa Fe County Finance Director

Date

CONTRACTOR:

(SIGNATURE)

Date

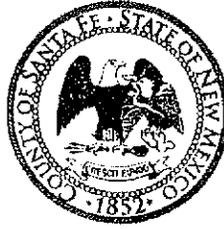
(PRINT NAME AND TITLE)

FEDERAL TAX I.D. NUMBER: _____

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Kathleen Holian
Commissioner, District 4

Elizabeth Stefanics
Commissioner, District 5

Roman Abeyta
County Manager

April 21, 2010

SANTA FE COUNTY
MISCELLANEOUS CONSTRUCTION TOOLS & SUPPLIES
IFB #2010-0060-ASD/TRV

ADDENDUM #1

Dear Proponents,

The items below are the responses to questions that have been received to the above referenced Invitation for Bids. It shall be the responsibility of interested Bidders to adhere to any changes or revisions to the RFP as identified in this Addendum No. 1. This documentation shall become permanent and made part of the departmental file.

-
- Clarification 1: Use updated Bid Form (attached) due to updated information on Hand and Power Tools.
- Question 1: When/Where can vendors look at the prior bid that was won and awarded for these items?
- Answer 1: These items have never before gone out to bid. There is no existing contract.
- Question 2: What is the difference between Construction Supplies and Construction Materials?
- Answer 2: Construction Materials will be considered the items needed to construct such as; lumber, concrete, brick, etc.
- Construction Supplies will be considered the items needed to secure the construction such as; nuts, bolts, anchors, etc.
- Question 3: What is the difference between Fencing Supplies and Fencing Materials?
- Answer 3: Fencing Materials will be considered the items needed to construct such as; lumbar, concrete, brick, etc.

Fencing Supplies will be considered the items needed to secure fencing such as; screws, nails, hinges, etc.

Please add this Addendum #1 to the original bid documents and refer to bid documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect.

Bidders are reminded that any questions or need for clarification must be addressed to Tila Rendon-Varela, Senior Procurement Specialist at trendon@co.santa-fe.nm.us.

BID SHEET

Project: SFC Miscellaneous Construction Tools and Supplies IFB No. #2010-0060-ASD/TRV

Bidder: _____ This Bid is submitted to:

Santa Fe County Purchasing Division
142 W. Palace Ave. (2nd Floor)
Santa Fe, New Mexico 87501
Attn: Tila Rendon-Varela

Having read the Santa Fe County Bid Instructions and General Terms and Conditions and examined the specifications sheet(s) for the Invitation for Bids reference #2010-0060-ASD/TRV we hereby submit the attached firm offer for which will remain open for a period not to exceed ninety (90) days in accordance with all terms and conditions represented in this solicitation for:

MISCELLANEOUS CONSTRUCTIONS TOOLS & SUPPLIES

ADMINISTRATIVE SERVICES DEPARTMENT

Signature: _____ Name (typed or printed): _____

Title: _____ Firm Name: _____

Federal ID or Social Security Number: _____ NM License # _____

Resident Contractor's Preference #: _____ Dept. of Labor Registration #: _____

NM Business Preference #: _____ Liability Insurance is required.
 Copy of Workers' Compensation Insurance is required

Telephone: (____) _____ Fax: (____) _____

() Received addenda #'s _____ & _____ when issued.

Santa Fe County
 Administrative Services Department
 142 W. Palace Ave.
 2nd Floor
 Santa Fe, NM 87501

IFB #2010-0060-ASD/TRV

Please offer your best price, for each item as outline below. **The Bidders shall complete the following bid sheet in full, for Bid No. 2010-0060-ASD/TRV, including signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Unit	Article and Description
1	%	Construction, Electrical and Plumbing Hand Tools for maintenance and repairs will be provided at _____% off list price (cost-plus is not acceptable).
2	%	Construction, Electrical and Plumbing Power Tools for maintenance and repairs will be provided at _____% off list price (cost-plus is not acceptable).
3	%	Construction Supplies will be provided at _____% off list price (cost-plus is not acceptable).
4	%	Construction Materials will be provided at _____% off list price (cost-plus is not acceptable).
5	%	Fencing Materials will be provided at _____% off list price (cost-plus is not acceptable).
6	%	Fencing Supplies will be provided at _____% off list price (cost-plus is not acceptable).
7	%	Plumbing Supplies will be provided at _____% off list price (cost-plus is not acceptable).

8	%	Electrical Supplies will be provided at _____% off list price (cost-plus is not acceptable).
9	%	Hardware Supplies will be provided at _____% off list price (cost-plus is not acceptable).
10	%	Cleaning Supplies will be provided at _____% off list price (cost-plus is not acceptable).
11	%	HVAC Supplies will be provided at _____% off list price (cost-plus is not acceptable).
12	%	HVAC Equipment will be provided at _____% off list price (cost-plus is not acceptable).
13	%	Spray Paint will be provided at _____% off list price (cost-plus is not acceptable).
14	%	Paint will be provided at _____% off list price (cost-plus is not acceptable).
15	%	Paint Supplies will be provided at _____% off list price (cost-plus is not acceptable).
16	%	Miscellaneous Items/Supplies that do not fit above mentioned categories will be provided at _____% off list price (cost-plus is not acceptable).

Contractor's Name: _____

Contractor's Phone: _____ **Fax #:** _____

Signature of Authorized Contractor's Agent: _____

Title: _____

**ATTACHMENT C
PRODUCERS PRICE INDEX**