

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 7 Ordinance/Resolution # 11-12-319

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 21, 2011
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ENTER INTO AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT WITH BLANCHARD ENGINEERING, INC.; BOHANNAN-HUSTON, INC.; SOUDER, MILLER & ASSOCIATES; SUMMIT ENGINEERING, LLC; ZIA ENGINEERING/ENVIRONMENTAL CONSULTANTS, LLC; AND WILSON & COMPANY, INC. TO PROVIDE ON-CALL SURVEYING SERVICES IN AN AMOUNT NOT TO EXCEED APPROVED CITY COUNCIL BUDGETS.

PURPOSE(S) OF ACTION:

To award Surveying Services Contract.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Scott Farnham, PE, PS <i>SF</i>	<u>Department/Section:</u> Public Works – Land Management <i>JAS</i>	<u>Phone:</u> 528-3118
<u>City Manager Signature:</u>	<i>[Signature]</i> for <i>PM</i>	

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) requested proposals for surveying services in August 2011 to contract with surveyors or surveying firms to perform specialized surveying and mapping functions that include, but are not limited to, the following: boundary, construction, design route, right-of-way, as-built, topographical, control surveys, and other survey-related services.

The surveying services pricing agreement is a one (1) year agreement with an option to renew for three (3) additional one (1) year agreements, providing the terms and conditions remain the same. The renewable options will be exercised at the discretion of the City upon mutual written consent.

Purchasing advertised the Request for Proposals locally and on the City of Las Cruces website. Purchasing received six (6) technical proposals.

The Public Works Department-Land Management Section checked references for each of the six (6) proposals. The Selection Advisory Committee (SAC) evaluated the six (6) proposals on September 13, 2011. Scoring is as follows:

Blanchard Engineering, Inc., Las Cruces, NM.....	2535
Bohannon-Huston, Inc., Las Cruces, NM.....	2475
Souder, Miller & Associates, Las Cruces, NM.....	2345
Zia Engineering/Environmental Consultants, LLC, Las Cruces, NM.....	2170
Summit Engineering, LLC, Las Cruces, NM.....	2165
Wilson & Co., Inc., Albuquerque, NM.....	2165

The Selection Advisory Committee recommends award to all six (6) firms.

The City of Las Cruces Public Works Department requests approval from the City Council to enter into an agreement with each of these firms to provide on-call surveying services, as specified in their technical proposal, for the City on an as-needed basis. Surveying services will be limited to approved City Council budgets, and funding will be made available from several different accounts as projects are identified.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract Form.
3. Attachment "A", Professional Services Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the ____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of _____ for FY ____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Accounts will be assigned on an as-needed basis as projects are identified. Surveying services will be limited to approved City Council budgets.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
AV					
Various	Various	Various	Various	Various	Various

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action will authorize the City of Las Cruces to enter into agreements with Blanchard Engineering, Inc.; Bohannan-Huston, Inc.; Souder, Miller & Associates; Summit Engineering, LLC; Zia Engineering/Environmental Consultants, LLC, all of Las Cruces, NM; and Wilson & Company, Inc., of Albuquerque, NM, to provide on-call surveying services for the City on an as-needed basis for a period of one (1) year. Additionally, approval will provide the flexibility to renew the agreements for three (3) additional one (1) year options providing the terms and conditions remain the same.
2. Vote "No"; this action will reject the proposed award and instruct staff to either rebid, rescope, or abandon the surveying services agreements all together. Without the surveying services agreements, potential users will have to explore alternative means of procuring surveying services.
3. Vote to "Amend"; this action could support the proposed surveying services award with additional conditions.
4. Vote to "Table"; this action will delay City Council vote for the proposed surveying services award. Staff will require direction on how to proceed.

REFERENCE INFORMATION:

N/A

RESOLUTION NO: 11-12-319

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ENTER INTO AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT WITH BLANCHARD ENGINEERING, INC.; BOHANNAN-HUSTON, INC.; SOUDER, MILLER & ASSOCIATES; SUMMIT ENGINEERING, LLC; ZIA ENGINEERING/ENVIRONMENTAL CONSULTANTS, LLC; AND WILSON & COMPANY, INC. TO PROVIDE ON-CALL SURVEYING SERVICES IN AN AMOUNT NOT TO EXCEED APPROVED CITY COUNCIL BUDGETS.

The City Council is informed that:

WHEREAS, in August 2011, the City of Las Cruces (City) requested proposals for surveying services; and

WHEREAS, these services are required to perform specialized design and mapping functions that include, but are not limited to, the following: boundary, construction, design route, right-of-way, as-built, topographical, control surveys, and other survey-related services; and

WHEREAS, this pricing agreement is a one (1) year agreement with an option to renew for three (3) additional one (1) year agreements, providing the terms and conditions remain the same; and

WHEREAS, the Selection Advisory Committee (SAC) evaluated six (6) proposals on September 13, 2011; and

WHEREAS, SAC recommends award to all six (6) firms: Blanchard Engineering, Inc.; Bohannon-Huston, Inc.; Souder, Miller & Associates; Summit Engineering, LLC; Zia Engineering/Environmental Consultants, LLC, each of Las Cruces, NM; and Wilson & Company, Inc. of Albuquerque, NM.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT City staff is authorized to enter into agreement with Blanchard Engineering, Inc.; Bohannan-Huston, Inc.; Souder, Miller & Associates; Summit Engineering; Zia Engineering/Environmental Consultants; and Wilson & Company to provide on-call surveying services for the City on an as-needed basis for a period of one (1) year with three (3) annual renewals in the amount not to exceed City Council approved budgets.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2011.

(SEAL)

APPROVED:

ATTEST:

Mayor

City Clerk

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:

City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: November 21, 2011

Resolution No.: 11-12-319

**Contract Purchase For
Surveying Services**

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

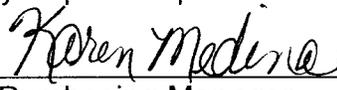
- 1. RFP No./ Due Date: **RFP No. 11-12-319 / September 2, 2011**
- 2. Description: **Surveying Services**
- 3. Using Department: **Public Works**
- 4. Number of Responses Accepted: **Six (6)**
- 5. Award Recommendation To: **Blanchard Engineering, Inc.; Bohannan-Huston; Souder, Miller & Associates; Summit Engineering; and Zia Engineering/Environmental Consultants, all of Las Cruces, NM and Wilson & Company of Albuquerque, NM**
- 6. Total Award Amount: **Indefinite Quantity / Indefinite Cost**
- 7. Contract Duration: **One year with three one-year renewals pending approved budget**

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No		LCMC §24-100 not applicable to this solicitation
	Yes	x	Made A Difference To Awards(s)
			x

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92**.


 Purchasing Manager 11/10/20/11
 Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	Various
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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this _____ *date*, 2011, by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Company Name, of Street Address, City, Town, State, Zip Code, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

On-Call Surveying Services for specialized Surveying and Mapping functions that include, but are not limited to, boundary, construction, right-of-way, design, route, as-built, topographical, control, and other survey related services.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 11-12-319 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to the CONTRACTOR. The CITY's decision as to whether sufficient appropriations and authorizations exist shall be accepted by the CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate the CONTRACTOR for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. The CONTRACTOR shall perform the SERVICES upon receipt of a written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

The CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. The CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

The CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully,

and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on *(date of award)* for a term of 365 days through (month/day/year) and, pending mutual written agreement, may be extended annually thereafter for up to three (3) more years through (month/day/year).

The CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and the CONTRACTOR in Exhibit B and as agreed to for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall the CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request the CONTRACTOR to perform other extra services not incorporated within the SERVICES set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, the CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business days from the date of receipt of the CONTRACTOR's written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business days of such identification. The CITY shall respond in writing to such notification within five (5) business days from the date of receipt of the CONTRACTOR's notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of the CONTRACTOR, and without the fault or negligence of the CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. The CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9

including therein a description of the delay and the steps contemplated or actually taken by the CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to the CONTRACTOR.

In the event of termination, the CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which the CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, the CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

The CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY's right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and the CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY's prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

The CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the

CITY. The CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that the CONTRACTOR employs any employees, the CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall the CONTRACTOR's employees be covered under any policy of the CITY.

The CONTRACTOR's retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) the CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) the CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

The CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, the CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, the CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. The CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which the CONTRACTOR accomplishes and performs its services. Nevertheless, the CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between the CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither the CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT.

The CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

The CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require the subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

The CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing the CONTRACTOR and subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days' written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

The CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of the CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

The CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR's services or any work done pursuant to this Agreement.

20. BREACH

In the event the CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give the CONTRACTOR written notice of such breach. In the event the CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy the CONTRACTOR's breach and recover any and all costs and expenses in so doing from the CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and the CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, the CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which the CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, the CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Scott Farnham, PE, PS

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Company Name
Address and Street
City, State and Zip
ATTENTION:

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

CONTRACTOR

THE CITY OF LAS CRUCES

BY: _____
PRINCIPAL

BY: _____
PURCHASING MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM:

CITY ATTORNEY