

REQUEST FOR PROPOSAL

RFP 2023-F-009



“Embracing our Heritage, Advancing our Future”

Financing Caterpillar Model 930M Wheel Loader

Notice of Request for Proposal

NOTICE IS HEREBY GIVEN that the Mayor and Common Council of the City of Douglas will receive sealed Bid Proposals until Four O'clock p.m. (4:00 p.m.) on the 1st day of December 2022 for the following:

FINANCING 2016 CATERPILLAR 930M WHEEL LOADER

Specifications may be obtained at our website www.douglasaz.gov/bids.aspx Bids will be received until the above hour specified and will be opened and publicly declared on said date and time at a Bid Opening to be conducted by the Procurement Specialist in the Council Chambers. Address all Bids to City of Douglas, City Clerk, Alma Andrade, 425 10th Street, Douglas, Arizona 85607, specifying on the outside wrapper the nature of the Bid and reference Bid number RFP 2023-F-009. The Council reserves the right to reject any Proposal, defer action on Proposals and to waive informality thereof. Any late submissions will be returned to the sender.

Dated at Douglas, Arizona this 9th day of November 2022

Alma Andrade
City Clerk
City of Douglas

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PROPOSAL CHECK LIST

- 1. The proposal has been signed in the Proposer's Offer Section. (Proposals not signed in this section will not be considered.)

- 2. Any required drawings or descriptive literature have been included.

- 3. Any addendum has been included/noted in Offer Section.

- 4. The mailing envelope/package has been addressed to:

**City of Douglas
City Clerk
425 10th Street
Douglas, Arizona 85607**

- 5. Proposal package/envelope has been identified with proposal number and title.

- 6. The proposal is mailed in time to be received and stamped in by Purchasing representative no later than specified time on designated date. (Otherwise the proposal cannot be considered.)

INSTRUCTION TO VENDORS

1. Preparation of Solicitation:

- a. All responsive offers shall be on the forms provided in this solicitation. It is permissible to copy these forms as required. Telegraphic offers or mailgrams will not be considered.
- b. The Offer document of the solicitation must be submitted with an original ink signature by the person authorized to sign the offer. Unsigned offers will be considered non-responsive and rejected.
- c. Erasures, interlineations or other modifications in the offer must be initialed by a person authorized to sign the offer section of the solicitation.
- d. In case of error in the extension of prices in the offer, the unit price will govern. No offer shall be altered, amended or withdrawn after the specified time and date for opening offers.
- e. Periods of time, stated as a number of days, shall be calendar days.
- f. It is the responsibility of all Offers' to examine the entire solicitation and seek clarification of any item or requirement that may not be clear to them and to check all responses for accuracy before submitting an offer.
- g. No responsibility will be attached to a City employee for premature opening of an offer not properly addressed and identified in accordance with the solicitation documents.
- h. A late submittal notification will be sent to the Offeror. Late offer submittals will not be considered under any circumstances.
- i. Envelopes with insufficient postage may not be accepted by the City of Douglas.

2. **Prospective Offers' Conference:** A prospective offerors' conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstandings of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and issue a written addendum to the solicitation. Oral statements or instructions will not constitute an addendum to this solicitation.

3. **Withdrawal of Bid/Proposal:** At any time prior to the specified time and date set for bid/proposal opening, an Offeror (or designated representative) may withdraw the offer. The offer may not be amended or withdrawn after due date and time.

4. **Addendum to Solicitation:** Receipt of a solicitation addendum must be acknowledged by the Offeror in the submittal.

5. **Discounts:** Payment discount periods will be computed from the date of receipt of goods or correct invoice, whichever is later, to the date payment is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. Payment discounts of twenty (20) calendar days or more will be deducted from the offer price in determining the low offer. However, the Buyer shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.

6. **Taxes:** Sales Tax shall be included.

7. **Award of Contract:**
 - a. Unless the Offeror states otherwise, the Buyer reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. If the Offeror's offer is an "All or nothing" offer, it must be so indicated on the Offer Sheet.

 - b. The City of Douglas, notwithstanding any other provisions of this solicitation (including attached documents), expressly reserves the right to:
 1. Waive any insignificant defect or informality in any offer or solicitation procedure;
 2. Reject any or all offers; or
 3. Cancel the solicitation.

- c. An offer in response to a solicitation is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's solicitation. Offers do not become contracts unless, and until, they are accepted by the City of Douglas. A contract is formed when the City Procurement Office gives written notice of award(s) to successful offeror(s). In the absence of a provision to the contrary in the solicitation, the contract has its inception in the award as distinguished from a formal signing of a separate contract. For that reason, all of the terms and conditions of the procurement contract are contained in the solicitation.

STANDARD TERMS AND CONDITIONS

FINANCING 2016 CATERPILLAR 930M WHEEL LOADER

RFP -2023-F-009

The following terms and conditions, as applicable, are an explicit part of the solicitation and any resultant contract. Any exceptions thereto must be specific and in writing.

1. **CERTIFICATION.** By signature in the Offer section of the solicitation, the Vendor certifies that:
 - A. The Vendor has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of any contract resultant from this solicitation.
 - B. The prices in this solicitation have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices, with any other Vendor, or potential Vendor.
 - C. The Vendor shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246 and State Executive Order No. 75.5 and A.R.S. Section 31-1461 et. seq.

2. **CONTRACT MODIFICATION.** No modification of this contract shall bind Buyer unless a formal Contract Amendment is executed between Buyer and Vendor.

3. **SHIPMENT UNDER RESERVATION PROHIBITED.** Vendor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.

4. **PACKING AND SHIPPING.** Vendor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and ICC regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

5. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender of goods must fully comply with all provisions of this contract as to time of delivery, quantity, assortment, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Vendor shall not have the right to substitute a conforming tender.

6. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH.** Each installment or lot of this contract is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole contract and constitutes a breach of the contract as a whole.

7. **GRATUITIES.** The Buyer may, by written notice to the Vendor, cancel this Contract if it is found by Buyer that gratuities, in form of entertainment, gifts or otherwise were offered or given by the Vendor or any agent or representative of the Vendor, to any officer or employee of the City of Douglas with a view toward securing an order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such order. In the event this Contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Vendor the amount of the gratuity.

8. **WARRANTIES.** Vendor warrants that all goods delivered under this contract will conform to the requirements of this contract (including all applicable descriptions, specifications, drawings, and samples), and will be free from defects in material and workmanship and will be free from defects in design and fit for the intended purposes. Any inspection or acceptance of the goods by Buyer shall not alter or affect the obligations of vendor or the right of Buyer under the foregoing warranties.

9. **ASSIGNMENT - DELEGATION.** No right or interest in this contract shall be assigned by Vendor without the written permission of Buyer, and no delegation of any duty of Vendor shall be made without permission of Buyer. Any attempted assignment of delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

10. **ASSIGNMENT - CLAIMS.** Vendor and the City of Douglas recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the City of Douglas. Therefore, Vendor hereby assigns to the City of Douglas any and all claims for such overcharges.

11. **ADVERTISING.** Vendor shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information as provided by appropriate statutes.
12. **DELIVERY ORDERS.** The City of Douglas shall issue a Purchase Order for the goods or services covered by this contract. All such Purchase Orders will reference the contract number as indicated on the solicitation.
13. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives the goods at the point of delivery.
14. **INSPECTION.** All goods are subject to final inspection and acceptance by Buyer. Material failing to meet the requirements of this Contract will be held at Vendor's risk and may be returned to the Vendor. If so returned, the costs of transportation, unpacking, inspection, repacking, reshipping or other like expenses is the responsibility of the Vendor.
15. **LIENS.** All goods delivered and labor performed under this Contract shall be free of all liens, and if Buyer requests, a formal release of all liens will be delivered to Buyer.
16. **REMEDIES AND APPLICABLE LAW.** This Contract shall be governed by the law of the State of Arizona, and Buyer and Vendor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the State. This contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract may be brought only in the courts of the State of Arizona.
17. **CONFLICT OF INTEREST.** Pursuant to A.R.S. Section 38-511, a municipality may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the municipality is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

18. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as results or effects of the force majeure prevent the party from resuming performance in accordance with this Agreement.

Force majeure shall not include the following occurrences:

- A. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

- B. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
 - (1) If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed Certified-Return Receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

19. **RIGHT TO ASSURANCE.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

20. **INTERPRETATION - PAROLE EVIDENCE.** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

21. **COMPLIANCE OF LAWS.** The final contract must be in compliance with all Federal, Arizona and City of Douglas laws and regulations and is subject to termination by the City, termination for non-availability of funding and for prepayment, without penalty. In addition, all agreements are subject to review by the City Attorney.

CHOICE OF LAW. The parties hereby agree that Agreement was negotiated, made and entered into in Arizona and under the laws of Arizona.

23. **DISPUTE RESOLUTION.** All claims, disputes and other matters in question between Owner and Contractor arising out of, or relating to the Contract Documents, or the breach thereof will be decided by binding, unappealable arbitration, if the claim for compensation, costs and expenses or damages is equal or less than \$50,000.

Nothing herein contained shall be so construed as to preclude the Contractor from commencing a legal action in relation to claims in excess of \$50,000, but the Contractor's sole legal remedy in relation to claims of \$50,000 or less shall be binding, unappealable arbitration as prescribed.

All arbitration of claims shall be conducted in Douglas, Arizona, in accordance with the Uniform Rules of Procedure for Arbitration adopted by the Arizona Supreme Court (Uniform Rules), except for any rules therein allowing or concerning appeal. Where necessary to allow arbitration to proceed, the Owner and Contractor shall execute an Agreement of Reference consistent with the provisions of this paragraph and the Uniform Rules as modified by this paragraph.

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Should either party to the Agreement bring an action to enforce any provision of the Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in connection therewith.

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder.

24. **QUANTITIES.** As shown in the bid form are estimates only based upon available information. The City reserves the right to adjust the quantities as necessary to meet its need.

25. **FUNDS APPROPRIATION.** If funds are not appropriated to continue this agreement and for the payment of charges hereunder, the City may terminate this agreement at the end of the fiscal period. The City agrees to give written notice of termination to the contractor at least thirty (30) days prior to the end of its current fiscal period and will pay to the contractor all charges incurred through the end of such period.

26. **BID/PROPOSAL AND/OR PERFORMANCE BONDS SHALL BE REQUIRED AS SPECIFIED.** Vendors failing to supply a bond as specified in the solicitation will be considered non-responsive and their offer will not be considered. Unless otherwise specified in the solicitation, performance

bonds can be requested from successful bidders at the sole discretion of City of Douglas. Vendor failing to supply performance bond as required will forfeit his offer, bond, if any, and the award. Performance bonds shall be furnished within fifteen (15) calendar days of the notification of award; date of U.S. Postmark will be accepted as date of delivery of performance bond.

27. **PATENTS.** Seller agrees to defend Buyer at seller's own expense, in all suits, actions or proceedings in which buyer is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from buyer's use of the goods purchased as a result of this solicitation. Seller further agrees to pay and discharge any and all judgments or decrees, which may be rendered in any such suit, action or proceedings against Buyer.

Seller agrees to indemnify and hold harmless the Buyer from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of Buyer's purchase and use of goods supplied by the seller. Vendor will indemnify Buyer against all claims for damages to persons or property resulting from defects in materials or workmanship. It is expressly agreed by seller that these covenants are irrevocable and perpetual.

28. **BID PRICE.** Price offered shall be made F.O.B. Douglas, delivered to the designated delivery points within the metropolitan area. Items will be delivered at the location designated by the City.
29. **NO-COLLUSION.** The Vendor will be required to complete, notarize and submit as part of this solicitation package the attached "No-Collusion Affidavit". Failure of the Vendor to submit a properly executed affidavit may be grounds for rejection of the offer.
30. **CONTRACT AWARD.** If contract award is over \$50,000.00, it will be at the discretion of the City Council as to whether or not to make award, to whom, or to reject offers.
31. **STANDARDS.** The specifications attached herein this solicitation shall be considered minimum acceptable to City standards. Offers for lower standard materials, products or services will be justification for rejection of offer(s) by the City.

32. **INFORMATION ON ITEMS.** Supplies and materials offered shall be of current design and meet specifications. Offeror must identify the manufacturer of each product being offered. Offeror should supply all information necessary for the City to determine (a) whether the product offered meets the requirements of the specifications, and (b) exactly what the offeror proposes to furnish. The offeror must certify that the material offered meets all technical specifications of the solicitation documents. Offeror may be requested to furnish samples of items proposed at no cost to the City. The City reserves the right to call for samples from any Offeror to assist in the evaluation. The City shall be the sole judge of whether the samples submitted meet the specifications.
33. **CLARIFICATION OF REQUIREMENTS.** It is the intent and purpose of the City of Douglas that this request permits competitive bidding. It shall be the Offeror's responsibility to advise the City Purchasing Office if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits competition, and/or are not clearly stated and easily understood. Such notification must be submitted in writing and must be received by the City Purchasing Office not later than ten (10) days prior to the solicitation opening date. A review of such notifications will be made.
34. **OBLIGATION OF OFFEROR.** At the time of the opening of submittals, each Offeror will be presumed to have studied in detail the work scope and work sites and to have read and to be thoroughly familiar with the specifications and contract documents, including all amendments(s). The failure or omission of any Offeror to examine form, instrument, document or site shall in no way relieve any Offeror of any obligations in respect to their offer.
35. **QUALIFICATIONS OF OFFERORS.** The City may make such investigations as it deems necessary to determine the ability of any Offerors to perform the work, and the Offeror shall furnish to the City all such information and data for this solicitation as the City may request. The City reserves the right to reject any offers if the evidence submitted by, or investigation of, such Offeror fails to satisfy the City that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional offers will not be accepted.
36. **BID MODIFICATION.** The City shall not permit any bid to be modified once the sealed bid has been publicly opened by the City at the bid opening. Modifications proposed after the bid opening to make a product conform to the specifications will not be considered.

37. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL.** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's need. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
38. **COST OF OFFER PREPARATION.** The City will not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
39. **SILENCE OF SPECIFICATIONS.** The apparent silence of these specifications and any supplemental specifications as to any details or the omission from it of any detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All workmanship shall be made on the basis of this statement.
40. **LICENSES.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
41. **INDEMNIFICATION.** The Contractor agrees to indemnify, defend, and save harmless the City of Douglas, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the Contractor or of any sub-contractor employed by the Contractor (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Contractor for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents, or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Douglas, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

42. **VENDOR RESPONSIBILITY.** If, in the judgment of the City, the offer or the offeror is not responsible, it shall be considered sufficient grounds for rejection of the entire offer.

Any offeror shall furnish upon request, two (2) copies of the Offeror's most recent financial statement and/or other evidence of his qualifications as may be requested by the City. If an offeror fails to furnish in a timely manner the information requested, it shall be considered sufficient grounds for rejection of such offeror's entire offer.

43. **CLARIFICATIONS.** The City reserves the right to obtain offeror clarifications where necessary to arrive at full and complete understanding of offeror's product, service, and/or solicitation response.

44. **PROTESTS.** A protest must be in writing and filed with the Purchasing Office. A protest of a solicitation must be received before the solicitation opening date. A protest of a proposed award must be filed before the City Council Meeting that the recommendation will be voted upon. If the award is less than \$50,000, City Council approval is not needed and protests must be submitted with ten (10) days after the protestor knows or should have known the basis of the protest. The City shall determine whether to issue a written response or hold an administrative hearing. The City shall also determine whether to continue the council agenda item to a future City Council Meeting, as applicable.

A protest must include:

The name, address and telephone number of the protestor;

The signature of the protestor or its representative;

Identifications of the project and the solicitation or contract number;

A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

45. **APPROVALS.** All work shall be done to the satisfaction of and be approved by the Purchasing and Material Manager, or his representative. All work, except final acceptance, shall be considered accepted by the City if the Contractor is not otherwise advised in writing within sixty (60) days after the last item is submitted.

46. **LAWS AND REGULATIONS.** The vendor's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all having jurisdiction over services performed for the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

47. **NON-EXCLUSIVENESS OF CONTRACT.** It is not agreed that the Contractor shall have the exclusive right, during the term of this contract and all renewals thereof, to provide the product(s) and/or services as described herein.

48. **SIGNATURE.** Bidders/Proposers are required to sign offer in the Offer Section of the solicitations. Bidders/Proposers failing to sign offer will be considered non-responsive and their offer will not be considered.

49. **PUBLIC RECORD.** All offers submitted in response to this solicitation and all offer evaluation related records shall become property of the City and shall become a matter of public record for review, subsequent to publication of the proposed award by the City Clerk's Office of the agenda for the City Council Meeting or award by the appropriate approving authority.

Request for nondisclosure of data such as trade secrets and other proprietary data, must be made known to the City in proposals submitted.

The City will NOT insure confidentiality of any portion of the solicitation documents that are submitted in the event that a public record request is made.

The City will provide 48 hours' notice before releasing materials identified by the offeror/bidder as confidential or proprietary in order that the offeror/bidder can obtain a court order blocking the release of the information.

The City will protect the confidential and proprietary documents it has in its possession and will not release this information to unauthorized personnel unless ordered to do so by the appropriate authority.

50. **CHANGE ORDERS.** Change orders may be written to the contract for addition or deletion of services or equipment. Change orders will be processed in accordance with City change order procedures.
51. **CONDUCT.** Contractor's employees, officers and subcontractors shall not identify themselves as being employees of the City of Douglas. Employees shall conduct themselves in such a manner as to avoid embarrassment to the City of Douglas, and shall be courteous to the public.
52. **DRIVER'S LICENSE.** Employees driving the Contractor's vehicles shall at all times possess and carry a license issued by the State of Arizona to operate the appropriate vehicle(s) and/or equipment.
53. **ORDERING INSTRUCTIONS.** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a purchase document signed by an authorized agent. The purchase order will specify the items ordered, delivery instructions and any other pertinent information required. All City and vendor documents must reference the resultant contract number.
54. **CONTRACT TERMINATION.** This contract may be discontinued without default by either party by providing a written sixty (60) day notice of termination to the other party.
55. **COOPERATIVE USE OF CONTRACT.** In addition to the City of Douglas and with approval of the contracted vendor, this contract may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in

accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

56. **AWARD OF CONTRACT CONTINGENT ON SALE AND DELIVERY OF BONDS.** As the sole source for payment of the amounts due under the contract, the City will sell bonds and deposit the bond funds in a special fund to be used thereafter to pay progress payments and incidental expenses. To guard against the possibility that the City will be unable to sell or deliver the bonds for any reason, the award of the contract and the performance by the City of its obligations under the contract is conditioned upon the actual sale and delivery of the City's bonds in an amount which is sufficient to produce the amount required to meet the payments due under the contract. The City reserves the right to rescind the award of the contract and terminate the contract, if executed, without incurring expenses or liability for such termination or rescission if it is unable to provide funding through the sale of its bonds for any reason. Notwithstanding an award of the contract, the contractor or vendor should not perform any work or incur any expense pursuant to the contract until such time as the contractor or vendor has received notice from the City that bond funds are held by the City in an amount sufficient to pay the amounts due under the contract.
57. **IMMIGRATION REFORM AND CONTROL ACT.** The contractor shall comply with the Immigration Reform and Control Act of 1986 (IRCA). Contractor understands and acknowledges the applicability of the IRCA to contractor. Contractor agrees to comply with the IRCA in performance of any resultant contract and to permit City inspection of their personnel records to verify such compliance.

To the extent applicable under ARIZONA REVISED STATUTE SECTION §41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZONA REVISED STATUTE SECTION §23-214 (A). The Contractor or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City of Douglas. The City of Douglas retains the legal right to randomly inspect the papers and records of the Contractor and its subcontractors who work on the contracts ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty.

The Contractor and its subcontractors warrant keeping the papers and records open for random inspection during normal business hours by the City of Douglas. The Contractor and its subcontractors shall cooperate with the City of Douglas random inspections including granting the City of Douglas entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

GENERAL TERMS AND CONDITIONS

FINANCING 2016 CATERPILLAR 930M WHEEL LOADER

RFP-2023-F-009

1. **Instructions for Proposals**

The City of Douglas is requesting bid proposals for FINANCING 2016 CATERPILLAR 930M WHEEL LOADER. The City desires to finance through a capital lease agreement in the amount of **\$200,334.42**. This financing should be bid as a non-bank qualified borrowing. The equipment along with extended warranty has already been purchased and paid for by the City during the fiscal year. The lease financing will be funded directly back to the City. Authority for the capital lease purchase is contained in the City's FY 22/23 approved sewer budget, and the lease agreement will also be approved by the City's Mayor and Council.

The City seeks a Lease that will be structured as a tax-exempt capital lease. The City seeks bids with terms of the financing that include a 5-year principal and interest payments, or a term not to exceed the useful life of the asset, level annual debt service, with funds anticipated to be transferred from the lessor to the City on or before January 31, 2023.

All lease quotations should be calculated with semi-annual and must include "non-appropriation" clauses. The annual interest rate, the semiannual payment amount, and the total payment amount should be included in the bid.

The City's annual financial report for the most recent three fiscal years ending June 30 are found on the City's website: <http://www.douglasaz.gov/211/Budgets-Financials>

There is no expressed or implied obligation for the City of Douglas to reimburse firms for any expenses incurred in preparing quote proposals in response to this request. The City of Douglas reserves the right without prejudice to reject any and all bid proposals. There is no expressed or implied obligation for the number of samples to be analyzed and/or any expenses incurred in preparing this particular bid proposal.

The proposals must be signed by an authorized officer of the firm who is empowered by corporate resolution to enter into an agreement with the City of Douglas.

Interested offerors are requested to submit their proposal to the City Clerk's Office, City of Douglas, 425 10th Street, Douglas, Arizona 8607.

2. **Receipt and Registration of Proposals**

Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date and time. Proposals shall be opened publicly but only the proposer's company name will be read aloud. No prices or other parts of the offer shall be revealed at the time of the Proposal Opening. After the time and date established for receipt of proposals, a Register of Proposals shall be prepared which shall include the name of each offeror. The Register of Proposals shall be open to public inspection but Vendor proposals shall not be open to public inspection until award of the contract. Proposals and modifications shall be shown only to City of Douglas personnel having a legitimate interest in them.

3. **Proposals and Contracts**

Offerors are cautioned to verify their proposals before submission, as withdrawal of proposals submitted after time specified for opening of proposals may not be considered.

4. **Addendum(s)**

In the event changes must be made to the Request for Proposal, an addendum(s) will be prepared and issued to all offerors who have received the original Request for Proposal (RFP).

5. **Definition**

The term "Contractor" shall hereinafter be defined and used interchangeable with the term "Offeror", "Contractor", "Vendor" or "Proposer". The term "Owner" shall hereinafter be defined and used interchangeably with the term "City of Douglas", "Buyer", "Owner" or "City".

6. **Confidential Data**

Request for nondisclosure of data such as trade secrets and other proprietary data, must be made known to the City in proposals submitted. The City will follow the procedures listed below in the event a proposal is noted as "Confidential" and/or "Proprietary".

- a. The City will NOT insure confidentiality of any portion of the proposal documents submitted in the event a public request is made.
- b. The City will provide 48 hours' notice before releasing materials identified by the proposer as confidential or proprietary in order that the proposer can obtain a court order blocking the release of the information.
- c. The City will protect the confidential and proprietary documents it has in its possession and will not release this information to unauthorized personnel unless ordered to do so by the appropriate authority.

This procedure is being taken as it would be difficult for the City to judge what is and what is not confidential or proprietary for all submittals.

This is the only notification given to potential bidders and that fact should be taken into consideration prior to submitting a proposal.

7. **Clarification**

Additional information or clarification of any of the instructions or information contained herein may be obtained from Purchasing Office. It is the intent of the City of Douglas that this request permits competitive proposals. Any proposer or proposer's finding any discrepancy in or omission from the specifications, in doubt as to their meaning, or feeling that the specifications, any language, etc., are discriminatory, shall notify the City's Purchasing Office in writing not less than ten (10) days prior to the scheduled opening of proposals. Exceptions as taken in no way obligate the City to change the Specifications. The City's Purchasing Office will notify all proposers in writing, by amendment duly issued, of any interpretations made of specifications on instructions.

The City will assume no responsibility for oral instruction or suggestion. All official correspondence in regard to the specifications should be directed to and will be issued by the City's Purchasing Office.

8. **Contract Applicability**

Offeror must conform to the terms, conditions, specifications and other requirements found within the text of this specific proposal. All previous agreements, contracts, or other documents, which have been executed between the offeror and the City of Douglas, are not applicable to this proposal or any resultant contract.

9. **Rejection of Proposal**

The City reserves the right to make award on the basis of accepting the proposal that is most advantageous to the City based on service, price, materials or other evaluation factors as set forth herein; to waive any informalities in the proposal; or may reject all proposals.

10. **Discussion with Responsible Offerors and Revisions to Proposal**

Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The purposes of such discussions shall be to:

- A. Determine in greater detail such offeror's qualifications.
- B. Explore with the offeror the scope and nature of the project, the offers proposed method of performance, and the relative utility of alternate methods of approach.
- C. Determining that the offeror will make available the necessary personnel and facilities to perform within the required time.
- D. Agreeing upon compensation, which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

11. **Award of Contract**

If compensation, contract requirements and contract documents can be agreed upon with the best-qualified offeror, the contract shall be awarded to that offeror. If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file and offeror shall be advised of the termination of negotiations which shall be confirmed by written notice within seven (7) working days.

Upon failure to negotiate a contract with the best-qualified offeror, the City may enter into negotiations with the next most qualified offeror. If compensation, contract requirements and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations fail, negotiations shall be terminated as described above and commenced with the next most qualified offeror.

The discretion as to whether or not a proposal (over \$50,000) is awarded, or to reject all proposals, rests with the City Council. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals.

The City may award a contract based on initial proposals received, without discussion of such proposals. Accordingly, each proposal should be submitted on the proposer's most favorable terms.

12. **Disadvantaged Business Enterprises (DBE'S)**

It is the policy of the Department that socially and Economically Disadvantaged Business Enterprises (DBE'S) shall have an equal opportunity to participate as consultants, sub consultant, suppliers or vendors in the performance of contracts

13. **Contract Administration**

This contract shall be administered by an authorized representative of the Purchasing Division and the primary user department. All disputes and/or questions regarding this contract shall be referred

to an administrator for resolution.

14. **Change Orders**

The City, without invalidating the Contract, may order extra work or make changes by alternating, adding to, or deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract, except that any claims for extension of time caused thereby shall be adjusted by at the time of ordering such change. No changes in the work covered in the approved contract documents shall be made without having prior written consent of the City, and written acceptance by the Vendor of the terms and conditions of the change.

Change orders shall be executed in accordance with procedure required by the City and no work involving the change shall be done by the Contractor until a copy of the approved change order has been received by him. Verbal change orders may be authorized by the City only where loss of life or property appears imminent. Such changes shall further be reduced to writing within ten (10) days of the verbal order being given.

15. **Non-Compliance**

Acceptance of the work of this Vendor upon completion of the project shall not preclude the City from requiring strict compliance with the contract Documents that this Vendor complete or correct upon discovery any faulty, incomplete or incorrect work not discovered at the time of acceptance. The one-year limit specified in the Warranty shall not void or limit this requirement.

16. **Claims**

Payment of any claim shall not preclude the Owner from making claim for adjustment on any item found not to have been in accordance with general condition and specifications.

17. **Assignment**

This contract shall not be assignable except at the written consent of the parties hereto; and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assignees of the parties hereto.

18. **Defective Products**

City's remedy for any defect in the equipment for which Vendor is responsible shall be for Vendor to repair, replace, or find other equipment that is compatible to the equipment at no cost to the City. This includes labor, parts, installation, testing, freight, and other related costs.

19. **Cancellation/Termination**

A. The City reserves the right to cancel the whole or any part of this contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act including, but not limited to, in any of the following situations:

- (1) In the opinion of the City, the Contractor provides material that does not meet the requirements of the contract;
- (2) In the opinion of the City, the Contractor fails to perform adequately the services required in the contract;
- (3) In the opinion of the City, the Contractor attempts to impose on the City material, products, service, or workmanship which is of an unacceptable quality.
- (4) The Contractor fails to complete the required work or furnish the required materials within the time stipulated in the contract;
- (5) In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the contract;
- (6) If the Contractor fails to provide adequate insurance coverage.
- (7) Have a conflict of interest.
- (8) Violates federal, state or local laws and regulations.

B. Upon receipt of a termination notice, the Contractor shall:

- (1) Promptly discontinue all services affected (unless the notice directs otherwise);
and
 - (2) Deliver or otherwise make available to the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing the contract, whether completed or in progress.
- C. If termination for convenience is effected by the City, an equitable adjustment shall include a reasonable profit for services or other work performed. An equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Contractor relating to commitments which had become firm prior to the termination.
- D. Upon termination pursuant to the above Paragraph, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- E. If, after termination for failure of the Contractor to fulfill contractual obligation, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment of the price provided for in the contract shall be made as provided above.
- F. The rights and remedies of the City and the Contractor provided in this clause are in addition to any other rights and remedies provided by law or under the contract.

20. **Remedies**

The City may resort to any single or combination of the following remedies in addition to any other remedies provided by law:

- A. Cancel any contract for any of the above stated reasons.

- B. Reserve all rights or claims to damage for breach of any covenants of the contract.

- C. Perform any test or analysis on materials as to whether they conform in all respects to the specifications of the contract. If the results indicate non-compliance with the specifications, any actual expense of testing will be borne by the Contractor.

- D. In case of default, the City reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor. The City may recover any actual excess costs by:
 - (1) Deduction from an unpaid balance.
 - (2) Collection against the surety and/or performance bond, or:
 - (3) Any combination of the aforementioned remedies or any other remedies as provided by law.

21. **Contract Documents**

The order of precedence in contract documents is as follows:

- Memorandum of Agreement
- Addenda to Request for Proposal
- City's Request for Proposal
- Contractor's Proposal

SPECIAL TERMS AND CONDITIONS

FINANCING 2016 CATERPILLAR 930M WHEEL LOADER

RFP 2023-F-009

1. **Intent**

The City of Douglas is requesting competitive proposals from eligible Financial Institutions to provide financing for 2016 Caterpillar 930M Wheel Loader (ID NO. E182819, SERIAL NO. KTG02026, PIN:CAT093MCKTG2026)

All participating institutions must be capable of providing services as outlined in the specifications.

2. **Submission:**

RFP's shall be signed by the offeror where applicable and delivered as designated no later than the date and time indicated on the second page of the document.

3. **Inquires:**

All inquiries must be submitted in writing to the Solicitation contact person, and within seven (7) days before the Offer due date and time to allow sufficient time for question review and response.

4. **Identification:**

Offeror agrees to provide a federal identifier (EIN or SSN) for the purposes of reporting to the appropriate taxing authorities, monies paid by the City under this contract.

5. **Opening:**

Proposals will be opened and publicly declared on said date and time in the Council Chambers.

6. **Bid Rejection:**

The City reserves the right to reject any, or all, bids, combination of items, or lot, and to waive defects or informalities.

7. **Erasures:**

Erasures, inter-lineation or other modifications must be initialed by the individual signing the Request for Quotation.

8. **Brand Name:**

Any manufacturer's names, trade names, brand names, trade names or catalog numbers used in the specifications are for the purpose of describing and establishing the general quality level,

design and performance desired. Such references are not intended to limit or restrict bidding by other vendors but are intended to approximate the quality design or performance, which is desired. Any bid that proposes like quality, design or performance will be considered. If the description of your offer differs in any way, you must give a complete detailed description of your quotation including pictures and literature where applicable. Unless a specific exception is made, the assumption will be that you are bidding exactly as specified on Request for Quotation.

8. **Unit Price:**

In case of error in the extension prices in the Quotation the unit price will govern. No Quotation shall be altered amended or withdrawn after the specific date and time for receiving Quotations. Negligence by the vendor in preparing the Quotation confers no right for the withdrawal of the quotation after it has been opened.

9. **Evaluation:**

Award shall be made to the lowest responsible and responsive bidder whose bid conforms in all material and services respect to the requirements set forth in the request, in determining whether a bid is lowest and responsive, and the bidder responsible, the following may be considered by the City:

- A. Ability to perform the service required within the specific time
- B. Reputation, judgment and experience
- C. The quality of performance in previous contracts
- D. Previous compliance with laws, as well as employment practices
- E. Financial ability to perform the contract

10. **Additional Terms and Conditions:**

- I. Submission of additional terms, conditions or agreements with the bid document may result in bid rejection.

II. INSURANCE

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amounts required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Employer's Liability and Commercial General Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation	Statute
Employer's Liability	\$100,000

Commercial General Liability \$2,000,000 Bodily Injury

Insurance, including: Combined Single Limit

- (1) Products & Completed Operations \$100,000 Property Damage
- (2) Blanket Contractual
- (3) Personal Injury

Contractor will present to the City written evidence (Certifications of Insurance) of compliance with Items A, B, and C above. Said evidence shall be to the City's Finance Director satisfaction.

11. **Offer Acceptance (90 days):**

In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the opening date.

12. **General:** The following information is to be considered by each financial institution in preparing its proposal:

The City is seeking financing in the amount of \$ 200,334.42 for a 2016 Caterpillar 930M Wheel Loader.

Specifications of the vehicle may be obtained from the Procurement Specialist by requesting them via e-mail at rene.rios@douglasaz.gov or at our website www.douglasaz.org/bids.aspx

13. **Other Information:** The financial institution must designate a representative as a contact to the City's Finance Director. Financial information regarding the City of Douglas (copy of audits, budgets etc.) may be obtained at <http://www.douglasaz.gov/211/Budgets-Financials>. You may also contact:

Alejandro Martinez, Finance Director
City of Douglas
(520) 417-7320
e-mail: alejandro.martinez@douglasaz.gov

City of Douglas municipal lease/purchase agreements include a "non appropriation clause". By submitting a proposal, each bidder certifies that they understand and accept this requirement.

The City of Douglas will require that the funds be received by the city within 15 days of award notification and complete document signing. The offeror shall state on the condition of financing proposal form, the date funds will be available to the city.

PROPOSER'S OFFER

CONDITIONS OF FINANCING PROPOSAL FORM

1. **Time** – The City requests a five (5) year lease with equal semi-annual principal and interest payments. Interested parties are also encouraged to propose different financing options that may reduce the total interest amount paid throughout the life of the loan. Please include the payment period on the line provided below. Additionally, please include a proposal debt service schedule.
2. **Prepayment** - The City shall have the right to prepay the outstanding loan amount at any time during the term of the agreement without premium or penalty.
3. **Interest Rate** - Vendor will be required to propose a single fixed rate of interest. The rate shall be fixed for the entire period of the agreement. A payment schedule must be submitted with the bid.
5. **Bank Qualified** – The City will designate the Lease/Purchase as a qualified tax-exempt obligation. The Lessee does not reasonably expect to issue more than \$10,000,000 of obligations in the calendar year as Lease/Purchase.
6. **Additional information** - The City reserves the right to reject proposals, which include provisions inconsistent with City of Douglas and/or State of Arizona practices and/or laws.

PROPOSAL FORM

Payment Period: _____

Fixed annual rate: _____

Payment amount: _____

Date funds will be available: _____

Proposals submitted by:

Name (Print or Type)

Authorized Signature

Name of Firm

Title (Print or Type)

Address (mailing & physical, if different)

City, State & Zip

Telephone Number

E-mail Address

References (minimum three):

1. Name: _____

Address: _____

Phone #: _____

Contact person: _____

2. Name: _____

Address: _____

Phone #: _____

Contact person: _____

3. Name: _____

Address: _____

Phone #: _____

Contact person: _____

4. Name: _____

Address: _____

Phone #: _____

Contact person: _____

**AFFIDAVIT BY VENDORS
CERTIFYING THAT THERE WAS
NO COLLUSION IN RESPONSE
TO SOLICITATION**

STATE OF ARIZONA)
)
CITY OF)

(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is _____
(Title)

of _____
(Name of Business)

That Pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with said

(Name of Business)

has directly, or indirectly, entered into any agreement, participated in any collusion or otherwise
taken any action in restraint of free competitive bidding in connection with this project.

(Name)

(Title)

(Name of Business)

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

My commission Expires:

(Notary Public)