

**NEW MEXICO DEPARTMENT  
OF TRANSPORTATION**

**REQUEST FOR PROPOSALS  
ENGINEERING CONSULTANT SERVICES**



**NM DOT**

**RFP No. 19-33  
PN # U900047  
CN # U900047  
FEDERAL FUNDS**

**Statewide On-Call Subsurface Utility Engineering (SUE)  
and Utility Coordination**

**DECEMBER 2018**

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## I. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Department of Transportation (NMDOT or Department) is requesting proposals from qualified firms or Offerors to provide Statewide On-Call Subsurface Utility Engineering (SUE) and Utility Coordination for the proposed project limits in various NMDOT construction projects.

### B. SCOPE OF WORK

The selected Offeror shall perform the services as specified in “Appendix A, Project Introduction and Scope of Work.” Project numbers shown throughout this Request for Proposals are subject to change throughout the life of the project.

### C. SCOPE OF PROCUREMENT

The Department intends on establishing a contract with a four (4) year term. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial Agreement.

### D. PROCUREMENT MANAGER

The Agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Margo Gomez  
Procurement and Facilities Management Division  
New Mexico Department of Transportation  
1120 Cerrillos Rd., Rm #113  
Santa Fe, NM 87504  
Ph. (505) 470-2784  
Fx. (505) 827-5555  
Email: [Margo.Gomez@state.nm.us](mailto:Margo.Gomez@state.nm.us)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the NMDOT.

### E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

“Agency”, “Department” or “NMDOT” means the New Mexico Department of Transportation.

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

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

“Business Hours” means 7:45 AM thru 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

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

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

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

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

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” means a body appointed by the Agency to perform the evaluation of Offeror proposals.

“Finalist” is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

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

“IT” means Information Technology.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

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

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

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

“Procurement Manager” means any person or designee authorized by the Agency to enter into or administer contracts and make written determinations with respect thereto.

“Procurement and Facilities Management Division or PFMD” means the Procurement and Facilities Management Division within the NMDOT Office of Business Support.

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

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

“Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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

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

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

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

“State (the State)” means the State of New Mexico.

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the New Mexico Department of Transportation.

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

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

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

### A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	NMDOT	11/30/2018
2.	Pre-proposal Conference (1:30 p.m. MST)	NMDOT & Offerors	12/10/2018
3.	Acknowledgement of Receipt Form ("Appendix C")	Offerors	12/11/2018
4.	Deadline to Submit Additional Written Questions	Offerors	12/17/2018
5.	Response to Written Questions/RFP Amendments	NMDOT	12/21/2018
6.	Submission of Proposal <b>(Due 2:00 p.m. MST)</b>	Offerors	01/02/2019
7.	Proposal Evaluation	Evaluation Committee	January 2019
8.	Selection of Finalists	Evaluation Committee	Jan 2019/Feb 2019
9.	Oral Presentation by Finalists (If applicable)	Offeror	Feb/Mar 2019
10.	Best and Final Offers	Offeror	March 2019
11.	Finalize Contract	Offeror/NMDOT	Mar/Apr 2019
12.	Contract Award	NMDOT	Mar/Apr 2019



B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by the New Mexico Department of Transportation.

2. Pre-proposal Conference

A pre-proposal conference will be held on Monday, **December 10, 2018**, beginning at 1:30 p.m. Mountain Standard Time at the NMDOT D-3 Auditorium, 7500 Pan American Boulevard, Albuquerque, New Mexico 87119. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential Offerors that attended the pre-proposal conference. Attendance at the pre-proposal conference is highly recommended but not a prerequisite for submission of a proposal.

3. Acknowledgement of Receipt Form

Potential Offerors should hand deliver, or return by facsimile, email or by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document (See "Appendix C") to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by the close of business on **December 11, 2018**.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until the close of business on **December 17, 2018**. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph D).

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on **December 21, 2018** to all potential Offerors whose organization name appears on the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than one (1) day after the answers and/or amendments were issued.

6. Submission of Proposal

Proposals shall be submitted to the NMDOT either in a hard copy format or electronically, **not both.**

Hard copy proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to **RFP #19-33, Project No. U900047, Control No. U900047, Statewide On-Call Subsurface Utility Engineering (SUE) and Utility Coordination.** Proposals submitted by facsimile will not be accepted.

Electronic proposals must be submitted through Bid Express, which may be accessed at the following website: [www.bidexpress.com](http://www.bidexpress.com). Offerors must register and create an account with Bid Express in order to submit proposals electronically. Electronic proposals must be in a PDF format in order to submit through Bid Express.

**ALL OFFEROR PROPOSALS (HARD COPY OR ELECTRONIC) MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. MST ON January 2, 2018.** Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal.

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

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by the Agency. This process will take place during the month of **January 2019**. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist Offerors in the month(s) of **Jan/Feb 2019**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the Oral Presentations will be determined at that time.

9. Oral Presentation by Finalists (if applicable)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time and location for each Offeror presentation. Presentations, if required, will be held in **Feb/March 2019** and will be limited to one (1) hour in duration.

10. Best and Final Offers From Finalists (if applicable)

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers in **March 2019**. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror in the month(s) of **Mar/Apr 2019**. This date is subject to change at the discretion of the Agency. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the NMDOT reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Award

NMDOT anticipates awarding the contract in the month(s) of **Mar/Apr 2019**. These dates are subject to change at the discretion of the Agency.

The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Right to Protest

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 4:30 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. Emailed protests will not be considered as properly submitted. The protest must be mailed or hand delivered to:

New Mexico Department of Transportation  
Procurement and Facilities Management Division  
Attn: Mallery Manzanares, Acting ASD Director  
1120 Cerrillos Rd., Room #113  
Santa Fe, New México 87504

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978 and NMAC 1.4.1.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Overhead Rate Compliance and Contractual Eligibility for Engineering & Design Consultants

State Departments of Transportation are required to provide reasonable assurance that Architectural and Engineering Consulting Firms are in compliance with the Federal Cost Principles on Federal-Aid Highway Program (FAHP) funds. A procedure has been developed (see links below) by the NMDOT Office of the Inspector General, which will determine, with reasonable assurance, Engineering and Design Consultant compliance with applicable cost principles contained in the Federal Acquisition Regulations (48 CFR part 31), specified under the United States Code (23 USC § 112(b)(2) and defined in 23 CFR Section 172.3. The procedure explains what is to be submitted, how it will be submitted, when it's required and additional resources for questions. Eligibility for NMDOT Engineering & Design contracts is dependent upon the Contractors' compliance with this procedure. A list of eligible Contractors will be updated by the fifth day of each month and posted on the NMDOT public website ([http://dot.state.nm.us/content/dam/nmdot/OIG/Engineering\\_Design\\_Eligible\\_Consultants.pdf](http://dot.state.nm.us/content/dam/nmdot/OIG/Engineering_Design_Eligible_Consultants.pdf)).

Links to Engineering & Design Consultants Procedure for Determining Overhead Rate:

[http://dot.state.nm.us/content/nmdot/en/Program\\_Management.html#d](http://dot.state.nm.us/content/nmdot/en/Program_Management.html#d)

[http://dot.state.nm.us/content/dam/nmdot/OIG/Procedure\\_Determining\\_Overhead\\_Rate10-1-17.pdf](http://dot.state.nm.us/content/dam/nmdot/OIG/Procedure_Determining_Overhead_Rate10-1-17.pdf)

***In all cases, including exceptions, extensions, provisional rates and less-than provisional rates, all Consultants must follow this procedure and receive eligibility acknowledgement from the NMDOT Office of the Inspector General (OIG) prior to the proposal deadline for this RFP. Eligibility shall be evidenced by the inclusion of the Consultant on the eligibility list posted on the NMDOT public website and/or an email acknowledgement of***

***eligibility from the NMDOT OIG. Engineering and Design Consultant firms who do not adhere to the requirements of this section shall be determined non-responsive and your proposal will be rejected from consideration for award.***

***The Indirect cost rate approved by the OIG at the time of the contract execution will be the rate recognized for the duration of the contract, which includes all term extensions.***

3. Incurring Cost

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

4. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of the contract with NMDOT. NMDOT will make contract payments only to the prime Contractor.

5. Subcontractors/Consent

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

6. Certifications and Licenses

Potential Offerors must have the proper certifications and licenses to do business in New Mexico as follows:

Corporations:

- File Articles of Incorporation with the Secretary of State's Office and record with the County pursuant to NMSA 1978, Section 53-4-6.
- Name of registered agent pursuant to NMSA 1978, Section 53-5-2.
- Certificate of Authority from the Secretary of State's Office indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, Sections 53-17-6 and 53-17-8.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Limited Liability Companies:

- Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
- File an Application for Registration with the Secretary of State's Office to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Secretary of State's Office to conduct business in New Mexico.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Limited Partnerships:

- Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-2-1 through 54-2-48.
- File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### General Partnerships:

- File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Sole Proprietorships and Joint Ventures:

- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

### 7. Amended Proposals

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

### 8. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

9. Proposal Offer Firm

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

10. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
  - 1. Confidential financial information concerning the Offeror's organization;
  - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
  - 3. PLEASE NOTE: The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Agency shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

11. No Obligation

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

12. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Procurement Manager determines such action to be in the best interest of the Agency.

13. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

14. Legal Review

NMDOT requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

15. Governing Law

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

16. Prohibited Bidding

Pursuant to Section 10-16-13 NMSA 1978 no state agency or political subdivision of the State shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.

17. Consent to Jurisdiction and Venue

If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the Agency, they thereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from the contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP, which cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Santa Fe County District Court shall have venue and jurisdiction over all matters arising or derived from this RFP.

18. Basis for Proposal

Only information supplied by NMDOT in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

19. Contract Terms and Conditions

The Contract between NMDOT and the Contractor will follow the format specified by the Agency and contain the terms and conditions as set forth in "Appendix B" (Contract for



Federal Funding). NMDOT reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

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

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in "Appendix B", that Offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to NMDOT and will result in disqualification of the Offeror's proposal.

The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Contract. In the event the Offeror's proposal conflicts with the RFP, the RFP governs, and, in the event the Agreement conflicts with the proposal, the Agreement governs.

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

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

20. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with NMDOT.

21. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between NMDOT and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

22. Contract Negotiations

Contract negotiations may be held in accordance with applicable provisions of 1.4.1.39 NMAC Procurement Code Regulations.

23. Offeror Qualifications

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

24. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

25. Change in Contractor Representatives

The NMDOT reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the NMDOT, adequately meeting the needs of the Agency.

26. Notice of Penalties

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

27. Agency Rights

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

28. Right to Publish

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

29. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the NMDOT.

30. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

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

31. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

32. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the NMDOT, the version maintained by the NMDOT shall govern.

33. New Mexico Employees Health Coverage (See "Appendix F")

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

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

C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month

after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

34. Disclosure of Campaign Contributions (See “Appendix E”)

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed unaltered form will result in disqualification.

35. Pay Equity Reporting Requirements

If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) with their bid or proposal for evaluation purposes.

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

36. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:

- a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
  - b. violation of Federal or state antitrust statutes related to the submission of offers; or
  - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement.

If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

37. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

An agency shall not award a business both a resident business preference and a resident veteran business preference.

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

38. Conflict of Interest; Governmental Conduct Act

The Offeror 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 the performance or services required under the Agreement.

The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

39. Equal Employment Opportunity

A. **The following requirements shall apply to state-funded contracts:** In connection with this RFP and the Contract, Offerors and the Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of

sexual preference.

Offerors and the Offeror shall take affirmative action to insure that all applicants are treated fairly during employment, without regard to their race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.

Such action shall include but not be limited to the following: layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. **The following requirements shall apply to federal-funded contracts:** In accordance with Title 49 Code of Federal Regulations Part 23, as amended, (49 CFR Part 26), the Offeror shall agree to abide by and take all necessary and reasonable steps to comply with the following statements on its scope of work:

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND POLICY  
In accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26) or as may be amended, the Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following:

1. DBE Policy: It is the policy of the Department to implement the provisions of 49 CFR Part 26 (49 CFR 26), other pertinent regulations, and source legislation. The objectives are:
  - a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the USDOT's highway, transit, and airport financial assistance programs;
  - b. To create a level playing field on which DBEs can fairly compete for DOT-assisted contracts;
  - c. To ensure that USDOT's DBE Program is narrowly tailored in accordance with applicable law;
  - d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
  - e. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
  - f. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
2. DBE Obligations: The Department will establish the DBE goal on a tri annual basis. The approved FFY 2015-2017 DBE goal is established at 16.21% for federal-aid highway construction and design of which 12.61% will be attained through race neutral measures, and race conscious portion is 3.60%.

Record Keeping Responsibilities: The Contractor is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's project manager or to the NMDOT CONSTRUCTION AND CIVIL RIGHTS BUREAU/ DBE PROGRAM at the following address:

NMDOT  
Construction and Civil Rights Bureau  
1570 Pacheco Street, Suite A10  
Santa Fe, NM 87505

3. Department's DBE Program: The Department's DBE Program as required by 49 CFR Part 26 and as approved by DOT, is incorporated herein by reference and made part of this agreement. If any provision of the DBE Program conflicts with 49 CFR Part 26, the provisions of 49 CFR Part 26 shall prevail. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out the terms and conditions of the DBE Program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

From time to time NMDOT shall receive interpretations from USDOT, which shall be binding on NMDOT, sub-recipients, and contractors.

DBE Obligations – The NMDOT and the Offeror agree to ensure that DBEs as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of services and work financed in whole or in part with federal funds under the Agreement.

In this regard, The Offeror shall not discriminate on the basis of race, color, national origin or sex in the performance of DOT-assisted contracts. The Offeror shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the Offeror to carry out these requirements is a material breach of contract, which may result in the termination of the contract or such other remedy as NMDOT deems appropriate, which way include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Offeror from future bidding as non-responsive.

4. Certification for Federal-Aid Contracts: The selected Offeror who becomes the Offeror shall certify, by signing the Contract, that to the best of its knowledge and belief:
  - No federal appropriated funds have been paid or will be paid, by or on behalf of the Offeror, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of and federal grant, the making of any federal loan, extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



- If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Offeror shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- This certification is a material representation of fact upon which reliance will be placed when the Contract is executed. Submission of this certification is a prerequisite for making or entering into the Contract imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- The Offeror shall also agree by signing the Contract that the Offeror shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.
- The Offeror shall furnish all necessary information and reports and shall permit access to its books, records, and accounts by the NMDOT for purposes of investigation to ascertain compliance with the non-discrimination provisions of the Contract.
- A copy of the NMDOT DESIGN CONSULTANT OFFEROR’S LIST (Form No. A-1013) is attached and must be completed at time of proposal submittal.
- For projects with federally participating funds, failure to complete the forms listed above will render the Offeror’s proposal non-responsive.
- The Disadvantaged Business Enterprise (DBE) Program rules and regulations, and the listing of Certified DBE Firms can be located on the NMDOT Website at <http://dot.state.nm.us> by going to “Doing Business with Us”, Quick link “Civil Rights.” You may also contact The Construction and Civil Rights Bureau (CCRB) at (505) 629-9890 for more information. The complete rule for Title 18, Chapter 28, Part 2, and all revisions, is available at the Construction and Civil Rights Bureau, 1570 Pacheco Street, Suite A-10, Santa Fe, New Mexico 87505.

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

#### B. NUMBER OF COPIES

Offerors delivering a hard copy proposal shall deliver six (6) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals.

Offerors submitting an electronic proposal will only have to submit their PDF document once through the Bid Express website.

#### C. PROPOSAL FORMAT (Hard Copy or Electronic)

Hard copy proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. For electronic proposals Offerors must clearly indicate in your PDF document tabs or pages that clearly separate the different sections of your proposal. Offerors are strongly encouraged to limit their proposals to a maximum of thirty (30) pages. Exclusions to this limitation will be the letter of introduction, table of contents, covers, proposal summary, dividers, other information, i.e., letters of appreciation, etc., and acknowledgement of amendments (if applicable).

##### 1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary
- d) Response to Contract Terms and Conditions
- e) Response to Mandatory Specifications and Forms
- f) Offeror's Additional Terms and Conditions
- g) Other Supporting Material

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name, title, email address and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f) be signed by the person authorized to contractually obligate the organization;
- g) acknowledge receipt of any and all amendments to this RFP.

## IV. SPECIFICATIONS

### A. Information

The contract is scheduled to begin in or around **Mar/Apr 2019**. NMDOT intends on awarding a contract with a four (4) year term.

### B. Mandatory Specifications and Forms

Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

#### 1. General Information

Offerors must identify the Principal member or officer of the firm who will be responsible for the administration of the contract; provide the name(s) and registration number(s) of the New Mexico Registered Professional Engineer who will be in direct responsible charge of the work; and identify the name, address, and phone number of the office(s) where the work will be performed for the prime Offeror and all sub-consultants.

#### 2. Specialized Design and Technical Competence

Offerors must describe or provide a work plan to perform the services required by the project scope. Describe your firm's specialized problem solving techniques or approaches, innovative practices/ideas, and advantages your team brings or offers to the project. Provide a bar chart schedule and describe all work proposed to fulfill the project scope.

#### 3. Capacity and Capability of the Offeror to Perform the Work

Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Provide information that demonstrates your firm's ability to perform the services required for this project. Include an organizational chart indicating key project team members, including any sub-consultants, and their specific roles on the project and/or area(s) of expertise. Clearly identify the lead engineer who will be directly responsible for the project. Include in the organizational chart the percentage of time each team member will spend or commit to providing services toward the project. Provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this project, highlighting relevant project experience and knowledge of NMDOT procedures. Indicate if a subcontractor is affiliated with the prime contractor as an affiliated company, firm, or business. Also identify the firms or teams list of current projects.

4. Past Record of Performance

Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. Describe 3-5 past projects, specifying relevance to the current project. Include client references (names, addresses, email address and telephone numbers) for each project.

5. Proximity to or Familiarity with Site Location

Offerors must identify your familiarity with the project area and your understanding of the project scope. Offeror's must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for engineering services and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs.

6. New Mexico Produced Work (Does not apply to federally funded projects)

It is in the Agency's best interest to support in-state businesses. Indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms. Identify any out-of-state consultant(s) or business relationships that will be involved on the project and the extent of services to be provided by that firm or firms.

7. Volume of Work Currently Being Performed

Firms shall be scored on any project that has been previously awarded and is, on the date of the submittal, less than 75% complete. Information on the status of past project awards shall be included in the "Project Listing Form" ("Appendix D") as a requirement of this RFP. The following formula on fees for projects awarded that are less than 75% complete shall be utilized in assessing scores:

\*Contract Balance Amount

\$ Less than - \$800,000	minus 0 point
\$ \$800,001 - \$1,334,000	minus 1 point
\$1,334,001 - \$2,668,000	minus 2 points
\$2,668,001- \$4,000,000	minus 3 points
\$4,000,001- over	minus 4 points Maximum**

\*Contract Balance Amount is defined as:

- a. Single Phase Contracts – Amount of contract including supplemental agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project).
- b. Multi-Phase Contracts – Amount of contract including all subsequent phases and Supplemental Agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project). On multi-phase

contracts over \$1,334,000.00, a minimum 1 point deduction will be carried on initial and subsequent phases (except final phase) regardless of percent complete.

\*\* The maximum total point deduction by Phase (sum of all ongoing contracts) will be 4 points. Deduction points will be calculated on the date the proposals are due. The Offeror must invoice against ongoing contracts not less than five (5) business days prior to proposal due date to allow sufficient time for posting to Deduction Point listing.

***The Procurement and Facilities Management Division will calculate deduction points.***

8. Completed Campaign Contribution Disclosure Form (“Appendix E”)

Offerors shall submit with their proposals a completed Campaign Contribution Disclosure Form with their proposal.

9. New Mexico Employees Health Coverage Form (“Appendix F”)

Offerors must agree with the terms and submit a signed New Mexico Employees Health Coverage Form with the submittal of their proposal.

10. Pay Equity Reporting Requirements(Section II.C.34)

Offerors submitting a proposal shall comply with the requirements of Executive Order 2009-049, New Mexico Pay Equity Initiative. **The Executive Order and required forms can be obtained from the following link:**

[http://www.generalservices.state.nm.us/statepurchasing/Pay\\_Equity.aspx](http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx)

Contractors with less than 10 employees are exempt from the reporting requirements unless 8 or more individuals are in the same job classification.

Contractors with 8 or more employees in the same job classification are required to comply with the Executive Order.

***If your firm meets any of the criteria below, for exemption from the Employee Pay Equity Requirements, a statement must be submitted in this section of your proposals indicating that your firm is EXEMPT from the reporting requirements.***

- a. Contractors with fewer than ten (10) employees are exempt, unless they have at least eight (8) employees in the same job classification as per the reporting forms.

- b. Contractors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.
- c. Out-of-state contractors that have no facilities and no employees working in New Mexico are exempt, if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor. PLEASE NOTE: If an out-of-state contractor has employees working in the State of New Mexico, whether or not those employees reside in the state, the contractor is subject to the reporting requirements.

11. Resident Business and Resident Veteran's Preference (Does not apply to federally funded projects)

Pursuant to NMSA 1978, 13-1-21, when a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:

- (1) five percent of the total possible points to a resident business; or
- (2) ten percent of the total possible points to a resident veteran business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

To be awarded points for **Resident Business Preference**, or **Resident Veterans Preference**, Offerors must include a copy of their preference certificate in this section of your proposal.

***A resident veteran business shall not benefit from the preference for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference for more than ten consecutive years. A person shall not benefit from the provisions as specified in NMSA 1978, 13-1-21, on more than one business concurrently.***

***Pursuant to NMSA 1978, 13-1-21, Paragraph H, a State Agency shall not award an Offeror points for both a Resident Business Preference and a Resident Veteran's Preference. If the Offeror qualifies for both he/she will only be awarded points for the Resident Veteran's Preference. Veteran Businesses will receive the Resident Business Preference once the cap for Resident Veteran Preference has been exceeded.***

Applications for Resident Business Preference and Resident Veteran's Preference are now being processed through the New Mexico Department of Taxation & Revenue. If you have a preference certification number that was issued by the New Mexico State Purchasing Division please follow the link below to apply for a new Resident Business or Veteran Business Preference number.

<http://www.tax.newmexico.gov/businesses/pages/in-statepreferencecertification.aspx>

**IF YOU DO NOT QUALIFY FOR A RESIDENT BUSINESS OR RESIDENT VETERAN PREFERENCE PLEASE PROVIDE A STATEMENT STATING YOU DO NOT QUALIFY IN THIS SECTION OF YOUR PROPOSAL. IF YOU DO NOT QUALIFY FOR EITHER PREFERENCE YOUR PROPOSAL WILL BE ACCEPTED, HOWEVER YOU WILL NOT RECEIVE POINTS FOR PREFERENCE.**

12. Form - Proposed Work Participation Chart (“Appendix G”)

**NOTE:** A firm will not offer services as “the prime” on any NMDOT Quality Based Selection (QBS) RFP where the prime Offeror performs less than 35% of all contractual services. The percentage 35 means in price and in actual contract work.

13. Form A-1013, Design or Other Consultant Offeror’s List (“Appendix H”)

14. Form A-1036, Confidentiality and Non-Disclosure Agreement (“Appendix I”)



## V. EVALUATION

### A. Evaluation Factors/Points

The NMDOT will evaluate responsive proposals and assign a score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror's attention to the criteria detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror, however, discussion should be detailed enough to inform and educate evaluators.

Proposals will be scored based upon a comparison of the information submitted by each Offeror against the evaluation criteria outlined below.

EVALUATION FACTORS	POINTS AVAILABLE
1. General Information	5
2. Specialized Design and Technical Competence	25
3. Capacity and Capability of the Offeror to Perform the Work	30
4. Past Record of Performance	25
5. Proximity to or Familiarity with Site Location	15
6. New Mexico Produced Work (state funded projects)	
7. Volume of Work Currently Being Performed	(Up to 4 pt Deduction)
8. New Mexico Preference Advantage (state funded proj.)	(5-10 Points Preference)
<b>Total Maximum Allowable Points</b>	<b>100-110 Points</b>

### B. Evaluation Process

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.22.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible Offeror(s) whose proposal is most advantageous to the NMDOT, taking into consideration the evaluation factors in Section V and successful negotiations, will be recommended for contract award as specified in Section II, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score. In the event of oral presentations responsible Offerors with the highest scores resulting from the written evaluations will be selected as finalist Offerors. Points awarded from the oral presentations will be added to the previously assigned points from the written evaluations to attain final scores.

## **APPENDIX A – PROJECT INTRODUCTION AND SCOPE OF WORK**

### **Statewide On-Call Subsurface Utility Engineering (SUE) and Utility Coordination Project No. U900047, CN U900047**

The scope of work for this contract consists of establishing location of existing underground and overhead utilities to determine utility impacts within the proposed project limits in various New Mexico Department of Transportation (Department) construction projects. This includes all necessary research, field investigations, surveying, mapping, pot-holing, and SUE services relative to existing or proposed utility systems within highway and bridge construction projects. This task may also include utility coordinating services.

The SUE consultant shall perform all the necessary tasks required to identify the type, size and the ownership of all existing, proposed, abandoned, and/or out of service underground and overhead utilities and overhead utilities, and to establish their precise location within the proposed limits of Department construction projects.

This process shall be conducted in accordance with industry methods and practices and shall be approved by the Department prior to performance. It shall also include all necessary records research, field investigations (designations), pot-holing (locating), surveying, and mapping for merging (utilizing Department survey control) into the highway project plans.

The Consultant shall be capable of providing staff and equipment for simultaneous project assignments in different geographical areas within the state when requested to do so. Such project assignments may include some or all of the services described herein, and shall be provided subject to the same terms described herein.

The services provided, and the information generated and furnished under this Contract may be required in Metric Units and is subject to applicable state laws, Department regulations, guidelines and policies.

#### **METHOD OF ASSIGNMENT**

For each assigned task, the Consultant will respond verbally within three (3) days and in writing within five (5) days after receipt of a written request from the Department.

This response shall include a proposed work plan subject to Department approval, including work scope, manpower, staffing, schedule, and estimated cost. Verbal authorization of "Notice to Proceed" by Department will be followed with written documentation within five (5) working days.

Occasionally, the Department will be requesting priority tasks that involve rapid response. The Consultant shall be able to meet these emergency needs. No overtime work shall be allowed to meet these peak demands unless requested by the Consultant in writing and written approval from the Department is obtained.

## SUE SERVICES

The Consultant shall provide the following upon assignment:

### I. RESEARCH OF RECORDS

The Consultant shall coordinate with utility owners and others, as required, in researching and investigating records, including but not limited to utility “as-built”, government permits, proposed installation plans, one-call centers, private utility owner files, performing field reviews, etc., to establish location and ownership of existing and planned utilities.

During this phase, the Consultant shall be required to ascertain the age and general condition of each utility facility. After completion of the records research, the Consultant shall consult with the Department Project Development Engineer (PDE) and Utility Section to establish if additional SUE work activities are required.

### II. UTILITY DESIGNATING

For the purpose of this Contract, “Designating” means to provide accurate horizontal location of underground and overhead utilities by using geophysical equipment such as electromagnetic induction, sonic, magnetic, radar devices, etc. “Accurate” means; plus or minus 1.0 foot (0.305 meters), unless more precise tolerance is specified. Consultant shall also designate wells and septic systems. While performing the designating phase the Consultant may excavate test-holes, at no cost to the Department, for the purpose of determining the approximate depth of the utility. Any markings on sidewalks or roadway for survey identification shall be of a temporary nature. Abandoned and/or out of service underground utilities shall be identified as whether the facility is no longer in use and may be removed from the right-of-way by the highway contractor or that it is active and may be back in service in the future. In case of carrier pipe the type of commodity transported/distributed shall also be provided. Identification of all utility shut-off valves located within the highway project limits, and/or in the vicinity of the highway project, along with an emergency shut-off plan by using those valves may be required if the potential for damage to utility systems or impacts to highway construction activities exists. The SUE Consultant shall provide the design consultant and the Department with complete X,Y,Z electronic data when required in Auto CADD 3-D format, 2018 version and 11” X 17” hard copy. The sheets shall be numbered with the cover sheet as 11-0, the vicinity map as 11-00, with the remainder of the 11 sheets in ascending order starting from 11-1.

### III. UTILITY LOCATING

For the purpose of this proposal, "locating" means to obtain precise horizontal and vertical positions of the utility facility by excavating test holes. The test holes (pot-holes) shall be done by a vacuum excavating system so as not to cause any damage to the utility facilities or other underground structures.

This activity shall require the Consultant to provide precise three-dimensional plan and profile mapping of utilities and related structures when exact information is needed for final design decisions. Such information shall be obtained through the exposure of the underground facilities and through authenticated as-built plans that are referenced to survey control. The Consultant

shall use Department approved survey books to record all surveys, and shall also use Department monuments and bench marks referenced in the books and control lines provided by the Department.

All surveying and designation of monumentation within the limits of the project shall be coordinated through Department's Surveying and Lands Engineering Section, Monumentation Unit Supervisor. All horizontal controls shall be oriented to the New Mexico Grid System, and all elevations shall be based on the National Geodetic Survey (NGS) mean sea level datum of 1988. References to project datum shall maintain vertical and horizontal tolerance to 1 inch or 2.54 centimeters, unless a more precise tolerance is specified for the specific location(s) being investigated.

If a price proposal is requested for this activity by the Department, the Consultant shall propose a unit cost per test hole for locating services, each unit cost shall include all equipment, the operator and other support personnel for the field operation, including traffic control. The proposal shall be provided to the Department by the Engineer within three (3) days verbally, and in writing within five (5) days of receipt of a verbal or written request from the Department.

The Consultant shall complete the locating activity and deliver the required electronic files, plans, reports, and other required documents to the Department within thirty (30) calendar days of the Consultants receipt of verbal or written authorization to proceed from the Department.

#### IV. TRAFFIC CONTROL

The Department will strictly enforce its maintenance of traffic policies and procedures. All work on New Mexico highways shall be performed in accordance with the following:

1. Current edition of NMDOT Standard Specifications for Highway and Bridge Construction.
2. Current edition of the Manual on Uniform Traffic Control Devices (MUTCD).

For the purpose of traffic control and possible lane closures, and before initiating any field surveys or test pits, the Consultant shall be required to obtain a permit from the District Traffic Engineer (DTE).

The Consultant shall be required to submit a Traffic Control Plan which must be approved by the NMDOT-DTE. The Consultant shall be responsible for providing all materials and equipment necessary for The Traffic Control Plan. This includes, but is not limited to: temporary traffic control signs, channelization devices, arrow panels, traffic barriers (i.e. attenuator barrels), impact attenuators, flaggers, temporary pavement markings, etc., and all other equipment and labor necessary to effectively implement the approved Traffic Control Plan.

In the development of the Consultant's price proposal items such as traffic barriers, arrow panels, and impact attenuators are considered major traffic control devices. Should circumstances warrant the use of these major items, the cost shall be paid for as a direct cost.

All other items for traffic control (flaggers, traffic control signs, channelizing devices, etc.) shall

be included in the unit costs proposed by the Engineer for designating and/or locating services.

Due to the amount of traffic on certain highways, the Consultant may not be able to work between the hours of 7:00 a.m. to 9:00 a.m., and from 3:00 p.m. to 6:00 p.m. daily. No work shall be performed within Department right-of-way on weekends, National and State holidays, or the day preceding and following said holidays without approval from Department.

## V. MAPPING AND DATA MANAGEMENT

After identifying existing and future utility locations as requested by the Department, the Consultant shall map utility locations onto plans and/or aerial photographs as directed by the Department and make the information available to the Department in hard copy and electronic file format. The hard copy and electronic files shall identify utility types by using standard industry symbols and a legend for all utilities within the SUE limits so that all facilities are easily and accurately identified. All electronic files provided by the Consultant to the Department shall ultimately be capable of successfully being merged into the highway project plan & profile and cross-section sheets. This information should include vault and manhole reports with size, depth and location of structures. The sheets shall be numbered with the cover sheet as 11-0, the vicinity map as 11-00, with the remainder of the 11 sheets in ascending order starting from 11-1. Consultant may be required to record the locations of the utilities on a Department approved form that will be used for prior rights determination. All mapping shall be in accordance with ASCE Standard 38-02.

## VI. ANALYSES AND RECOMMENDATIONS

When Consultant has performed all necessary research, designating, and locating services, Consultant may be required to attend Department's field and office meetings to advise and consult on the project's utility issues. Experience in utility SUE highway engineering and storm drainage design are important factors in assisting the Department with the design of its projects.

At the completion of each project assignment, the SUE Consultant shall prepare a report indicating the findings resulting from the work they performed. It shall also include a summary in table format, listing each utility owner, type and size of facility along with the total quantity designated in terms of lineal feet and the total cost for designating each utility facility.

The Consultant shall submit monthly status of expenditures and a final financial tabulation for each project assignment.

Services rendered under this Contract shall be under the direct supervision of the Programs and Infrastructure Division Director/Chief Engineer and/or his/her representatives.

## VII. CERTIFICATION OF WORK FOR SUE

In all cases, the Consultant shall require to certify the SUE work, which shall include the signature and seal of a Professional Engineer who is registered in the State of New Mexico.

- A. The Consultant shall also list four (4) key staff personnel with a one (1) page Resume for each person. The key staff shall include:
1. A Professional Engineer registered in the State of New Mexico with expertise in subsurface utility engineering (SUE).
  2. Project Manager/Liaison.
  3. Project Utility Coordinator/Liaison.
  4. Professional Geologist.
- B. The Consultant shall furnish in the Time Estimate which services can be provided simultaneously. The Consultant shall provide a listing of personnel (and equipment, as applicable) broken down by teams which support the number of simultaneous projects and/or operations which can be accomplished at one time. The listing shall include the primary and alternate liaison individuals who are designated as their daily contact people with the Department followed by a list of engineers and technical staff under their supervision.
- C. The Consultant shall provide all equipment, personnel, and supplies required to perform its research, designating, and locating services. Consultant shall obtain all necessary permits from city, county or other municipal jurisdictions, to allow the company to work in existing streets, roads and rights-of-way for the purpose of marking, measuring and recording of existing utilities. Consultant shall notify Blue Stake or One Call, prior to any field work and will be responsible for any fees incurred. Any fees incurred will be allowable as direct costs.

## VIII. UTILITY COORDINATION SERVICES

Consultant shall provide the following upon assignment:

- A. Project Meetings, Site Reviews, Utility Coordination Meetings.
1. Attend project meetings and/or site reviews with Department staff and/or other involved parties.
  2. Facilitate Utility Coordination meetings and record to report on proceedings with NMDOT as follows;
    - 30% design phase
      - distribute 30% alert letter with 30% plans
      - field review/on site utility coordination meeting if necessary
      - facilitate 30% utility coordination meeting
      - 30% meeting sign in sheet
      - comprehensive meeting notes
      - submitted within 30 days of coordination meeting

3. Determine financial responsibility for utility relocation costs.
4. Prepare project contract documents describing utility activities and utility/contractor coordination requirements per 17 NMAC 4.2 as follows;
  - 60% design phase
    - submit 30% impact letters
    - distribute 60% authorization to engineer letter with 60% plans
    - facilitate 60% utility coordination meeting
    - 60% meeting sign in sheet
    - comprehensive meeting notes
    - submitted within 30 days of coordination meeting
5. Prepare project utility clearance documents (Utility Certification and Notice to Contractors) certifying that all utility work has been completed 10 (Ten) business days prior to PSE review and that all necessary arrangements have been made for the work to be properly coordinated and is true and correct with the highway construction project including applicable MAP-21 adherence from utility owners. The Consultant shall provide all utility coordination back up documentation supporting the certification to NMDOT as follows;
  - 90% design phase
    - submit 60% relocation packages which will include relocation plans, scope of work, estimate if reimbursable, utility adjustment agreement if reimbursable, permit applications if not reimbursable, certificate of insurance, and environmental clearance.
    - facilitate additional utility coordination meeting if necessary
    - sign in sheets
    - comprehensive meeting notes

B. Preconstruction Utility Coordination.

1. Implement and verify compliance with all established Department project utility coordination procedures, Buy America Provisions (when applicable) and 17 NMAC 4.2.
2. Notify and furnish preliminary project data to involved utility owners.
3. Provide a liaison to the Department, utility owners, and other involved parties.

4. Secure required documentation and provide inspection for compliance with 17 NMAC 4.2 and MAP-21 for Utility relocation agreements, owner commitments, or sign-offs.
5. Comply with applicable Department and/or utility design standards and Department utility accommodation policies and 17 NMAC 4.2.

C. Construction Coordination and Monitoring.

1. Provide a liaison to the Department, construction contractors, and utility owners in the coordination, scheduling, and performance of utility work.
2. Monitor and report on utility relocation or installation work.
3. Ensure compliance with utility construction and relocation plans, specifications, schedules, MAP-21, and 17 NMAC 4.2. This includes obtaining and verifying Buy America certificates from utility owners and/or contractors.
4. Negotiate field changes as conditions warrant.

IX. CERTIFICATION OF WORK FOR UTILITY COORDINATION SERVICES

In all cases, Consultant shall be required to certify the Utility Coordination Documentation which does not require the signature and seal of a Professional Engineer.

- A. The Consultant shall also list key staff personnel, to include a one (1) page Resume for each person. The key staff shall include:

1. Project Manager/Project Utility Coordinator.

- B. The Consultant shall furnish in the Time Estimate which services can be provided simultaneously. Consultant shall also provide a listing of personnel broken down by teams which support the number of simultaneous Department projects and/or operations which can be accomplished at one time. The listing shall include the primary and alternate liaison individuals who are designated as their daily contact people with the Department followed by a list of the technical staff under their supervision to perform its research and coordinating services.

The Utility Section shall provide:

- A. Utility Engineering Coordinator to serve as project coordinator and liaison for each project assignment.



- B. Utility Engineering Coordinator shall provide oversight and inspection of all work and documentation for each project assignment. The Consultant agrees that the cost of these conferences is a part of the above fee.
- C. Information available on each project assignment so as to assist the Consultant in undertaking the work necessary to fulfill all field and CAD Efforts;
- D. Copies of all appropriate documents required in order to effect a utility relocation.

**APPENDIX B - CONTRACT FOR FEDERAL FUNDING**

Project No.: \_\_\_\_\_  
Control No.: \_\_\_\_\_  
Termini \_\_\_\_\_  
County \_\_\_\_\_  
NMDOT No.: \_\_\_\_\_  
Vendor No.: \_\_\_\_\_

**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES AGREEMENT (FEDERAL)  
FOR ON-CALL SUBSURFACE UTILITY ENGINEERING AND UTILITY  
COORDINATION STATEWIDE SERVICES**

**INTRODUCTION**

This Agreement is between **New Mexico Department of Transportation** (“Department”), and \_\_\_\_\_ (“Contractor”). This Agreement is effective as of the date of the last party to sign on the signature page.

**RECITALS**

1. Whereas, the Department desires to contract with the Contractor for On-Call Engineering Services required for the design and preparation of plans for the areas specified.
2. Whereas, the Contractor has expressed a willingness to perform the work as outlined in Appendix A, and in each project specific work assignment.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS CONTAINED HEREIN, it is mutually agreed between the Department and Contractor that:

**ARTICLE I**

**AGREEMENT ON THE PART OF THE CONSULTANT**

1. The Contractor shall maintain a New Mexico office and a Professional Engineer registration for the duration of the work called for by this Contract.

2. The Contractor agrees to perform and/or furnish the services including all labor, materials, equipment and transportation necessary for the design and preparation of plans in accordance with the terms and time frame(s) set out in Appendix A and each project specific work assignment.
3. After receipt of the letter of Notice to Proceed from the Department, the Contractor shall commence work on the specified tasks identified by the Department in Appendix A and in each project specific work assignment. The completion date(s) set forth in the "Notice to Proceed" for each project specific work assignment shall be used for the purpose of assessing liquidated damages. The terms "satisfactory completion" or "satisfactorily completed" for the purpose of assessing liquidated damages under Paragraph 4 of this article, shall mean:
  - a. Return in satisfactory condition all of the Department's loaned documents and materials specifically including Department's survey books and field notes which were provided by the Department; and
  - b. Delivery to Department of Contractor's work product under this Contract including, but not limited to, the design plans, standard drawings, field notes and other pertinent documents. Such delivery means actual transfer of possession in the form approved by the Department incorporating all required plan corrections and clarifications.
  - c. Acceptance, in writing, by the Department of the Contractor's work.
4. Should the Contractor fail to satisfactorily complete the work and services on or before the Contract completion date(s) as provided for in this Contract, liquidated damages shall be assessed and withheld from final payment, in the amount of Two Hundred Fifty Dollars (\$250) per day or one-quarter of one percent per day of the Contractor's sum fee, whichever is less. If liquidated damages assessed herein exceed the amount of money due the Contractor as retainage under Article II, Paragraph 7, the Contractor shall be liable to pay the Department the amount of such excess. Provided that if the Contractor finds it impossible for reasons beyond their control to complete the work within the specified contract time, the Contractor may, 30-days prior to the applicable completion date, make a written request to the Department for an extension setting forth therein the reasons justifying the request. If the work has been delayed because of conditions beyond the control and without fault of the Contractor, the Department shall extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and affect the same as though it were the original time for completion.

5. The Contractor has total responsibility for the accuracy, completeness, and correctness of the plans and related data prepared under the terms of this Contract and shall check all material accordingly. The plans will be reviewed by the Department for conformity with Department procedures and contract terms. Review by the Department does not include a detailed review or checking of design components and related details or the accuracy with which such designs are depicted on the plans. Review by the Department does not include a detailed review or checking of design components and related details or the accuracy with which such designs are depicted in the Contractor's reports. In the event that negligent errors or omissions are discovered in the Contractor's work, the Contractor's responsibility shall include (but not be limited to) the following:
  - a. Upon notification by the Department of an error or omission, immediately provide at no cost to the Department, all engineering, and related information (and surveying if applicable) required to correct the error and/or omission.
  - b. Assume the cost of any reconstruction required to correct an error and/or omission.
  - c. Assume the cost as a result of delay caused by the time required to correct an error and/or omission.
6. The Department shall be named as additional insured in respect to General Liability on the Contractor's Insurance Certificate which shall also have Professional Liability coverage with limits as stated on the Contractor's insurance certificate with a three year extended reporting period with respect to events which occurred but were not reported during the term of the Policy. The policy shall protect against any negligent act, error, or omission arising out of the Professional Services that includes coverage for acts by others for whom the Contractor is legally responsible. The policy shall apply to the activities of all Engineering and Cultural Resource professionals who are employed by the Contractor and assigned to the Project.
7. To the fullest extent permitted by law and subject to the provisions of NMSA, 1978, Section 56-7-1, 1971 (as amended), the Contractor shall defend, indemnify, and hold harmless the Department, acting through its agents, representatives, and employees from and against claims, damages, losses, and expenses (including but not limited to attorney's fees, courts costs, and the cost of appellate proceedings), arising out of or resulting from the Contractor's duty to defend, hold harmless, and indemnify the Department from the Contractor's professional

negligent acts, errors, mistakes, or omissions. Contractor's duty to defend, hold harmless and indemnify the Department shall arise in any connection with any claim, damage, loss or expense that is attributable to or caused any negligent act, error, or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts they are liable. This agreement to indemnify shall not extend to liability, claims, damages, losses, or expenses, including attorney's fee, arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design or specifications by the Department, or the agents or employees of the Department: or (2) the giving of or failure to give directions or instructions by the Department, where such giving of or failure to give directions or instructions by the Department is the primary cause of bodily injury to persons or damages to property. For purposes herein the Contractor is not considered an agent of the Department.

8. The Contractor shall provide full insurance coverage payable to the Department to cover loss due to fire, water loss or other hazard to any drawings, documents, survey books and any or all other materials belonging to the Department while under the care of the Contractor. The amount of this insurance will be based upon the reasonable replacement cost of the documents and shall be in effect prior to the Department's authorization to proceed.
9. As the work progresses, the Contractor may submit certified billings to the Department not more than once a month based on rates specified in Appendix C and the agreed to scope of services for each work assignment. These billings will be based on the work or percentage completed. All such billings will be submitted on the Department's standard billing form.
10. The Contractor agrees that for the work and services herein described, the fee is and shall be just and fair compensation for the entire Contract.
11. The Contractor agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the Contract period and for five (5) years from the date of final payment under the Contract for inspection by the Department.
12. The Contractor shall attend such field inspections and such conferences with the Department and other parties as may be necessary in connection with the work.
13. The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The Contractor further agrees to operate under and be controlled by the Civil Rights Act of 1964, Title VI, and Executive

Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor regulations (41 CFR Part 60). Accordingly, 49 CFR Part 26 is applicable to this Contract.

14. The design and details furnished by the Contractor shall conform to the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction (latest edition), AASHTO, ASTM, MUTCD, 23 Code of Federal Regulations when applicable and other laws, rules and regulations as applicable and in effect as of the date of execution of this Contract.

**ARTICLE II**  
**AGREEMENTS ON THE PART OF THE DEPARTMENT**

1. The Department shall make available to the Contractor such Department records as may be available and pertinent for the purpose of the work herein described.
2. The Department agrees to assign a Project Manager to function as a coordinator and liaison agent to expedite the Department's reviews and approvals of all stages of the Contractor's work.
3. The Department shall furnish the Project Manager, at no cost to the Contractor, the documents and information as listed in Appendix A, with the exception of Standard Serials, and Standard Specifications for Highway and Bridge Construction, or other Department Manuals, which may be purchased from the applicable NMDOT division.
4. This is an on-call Contract for Professional Services to be provided by the Contractor to the Department for project specific work assignments/tasks as described in Appendix A. Prior to the Contractor commencing work on the project specific work assignments/tasks, representatives for the Department and the Contractor shall agree to one of the following basis for payment for such work assignments/tasks and shall include a statement of the basis for payment in the written scope of performance for each designated work assignment/task assigned to the Contractor:
  - a. Payment shall be a specific negotiated sum of money for each specific work assignment/task assigned to the Contractor, which is not subject to further price negotiation by the parties. Each agreed upon payment amount shall be based on the personnel rates set forth in Appendix C with the number of personnel-hours and other costs, subject to negotiation. This sum shall be

made in one payment after completion and approval of each designated work assignment/task, or upon receipt and approval of adequate documentation by the Contractor of completion of a stated percentage of the designated work assignment/task. If payment will be made in installments, the parties shall so specify in the written scope of performance for each designated work assignment/task. If installments are not expressly stated, the Department shall pay the Contractor after completion and acceptance of the work assignment/task; or

- b. Payment shall be based on adequate documentation of the Contractor's man hours actually worked and actually incurred as separately billable costs, as set forth in the Contractor's attached rate schedule.
5. The Department agrees to pay the Contractor as complete compensation for all services and deliverables assigned to the Contractor pursuant to this Contract amount negotiated for all tasks assigned plus gross receipts effective at the time of billing. Total compensation which may be paid pursuant to this Contract is \$ plus gross receipts effective at the time of billing. This total amount may be reduced by assessment of liquidated damages pursuant to Article 1, Paragraph 4, if applicable. The Department will not compensate the Contractor for services or other deliverables provided prior to the full execution of the Contract, after the expiration of the Contract, or in excess of the Contract value, unless the Contract dollar amount is duly amended prior to providing the services or deliverables.
6. Partial payments may be made monthly as the work progresses upon application therefore accompanied by a certified statement of work accomplished in accordance with Article I, Paragraph 9.
7. Final payment including any retainage will be made within thirty (30) days after the work has been approved and accepted by the Department. Five percent (5%) of the total contract amount will be set aside as security for full performance under the terms of this agreement. The Department will pay for the work performed until payments made equal 95% of the total contract amount. The remaining 5% Retainage will be paid upon project completion and acceptance less any assessment for liquidated damages and work correction costs as provided in Article I, Paragraphs 4 and 5 respectively.
8. Subject to the provisions of Article II, Paragraphs 5 and 6, within fifteen (15) days after the date the Department receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Department shall issue a written certification of complete

or partial acceptance or rejection of the services or items of tangible personal property. If the Department finds that the services or items of tangible personal property are not acceptable, it shall, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Department that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth (30<sup>th</sup>) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Contract to the Contractor at the rate of one and one-half (1½) percent per month.

**ARTICLE III**  
**PROVISIONS RELATING TO PERSONNEL**

1. Employment of Employees of Public Agencies. Unless otherwise approved by the Department in writing, during the life of the project, the Contractor shall not (1) employ any professional or technical employee(s) who are part-time, full-time, or who have been in the employment of the New Mexico Department of Transportation during the life of this project, or (2) directly or indirectly solicit, offer, promise, coerce, promote or give anything of value to any such professional or technical employee as inducement to leave the employment of the New Mexico Department of Transportation for any reason whatsoever. The Contractor shall comply with all applicable federal and state statutes, rules, and regulations.
2. No Solicitation of Contract. Signed and dated "Certification of Contractor" and "Certification of Department of Transportation" are attached hereto and made a part hereof. The Department may terminate this Contract based on any misrepresentation of the Contractor on the Certification of Contractor.

**ARTICLE IV**  
**MISCELLANEOUS PROVISIONS**



1. The term "Supplemental Contract" and "Amended Contract" are used interchangeably in this Contract.
2. The words Department, NMDOT, and New Mexico Department of Transportation are used interchangeably in this Contract.
3. The term "Scope of Services" includes Appendix A and each project specific work assignment unless the Contract clearly states otherwise.
4. Conference and Inspection. Duly authorized representatives of the Department shall have the right to inspect the work under this Contract. If federal funds are to be used for professional services, the duly authorized representatives of the Department, the Federal Highway Administration, and the Comptroller General of the United States, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to the Contract, for the purpose of making an audit, examination, excerpts, and transcriptions. Conferences shall be held when necessary at the request of either party to this Contract. The Contractor agrees that the cost of these conferences is a part of the above fee. If federal funds are to be used for professional services, reimbursement will be limited to costs which are allowable under Federal Cost Principles contained in 48 CFR, Chapter 1, Part 31, of Federal Acquisition Regulation (FAR 31).
5. Ownership of Work Products. All documents and materials including, but not limited to, tracings, drawings, estimates, field notes, investigations, design analysis, structural calculations and studies, which are prepared in the performance of this Contract are to be and remain the property of the Department and are to be delivered to the Department not later than the termination date of this Contract, before the final payment is made to the Contractor. The Contractor is liable for replacement, if these materials are destroyed or lost prior to transferring possession to the Department. Nothing produced in whole or in part by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. This Paragraph shall be included in all sub-contracts.
6. Delays. The parties both agree to perform their obligations hereunder with due diligence and to cooperate with one another in a timely and good-faith manner in order that the work covered hereby may be completed within the time frame(s) provided by Appendix A and as agreed to in each project specific work assignment, and in each "Notice to Proceed" or as otherwise provided for in this agreement.
  - a. In the event of delays under this Contract caused by the Department, the Contractor is entitled to receive a reasonable extension of time as provided

in Article I, Paragraph 4, but in no event will the Contractor terminate work under this Contract for delays caused by the Department.

- b. If a delay is attributable to the Contractor's fault or to matters within their control, extensions will not be granted. The Contractor may be subject to possible assessment of liquidated damages.
7. Notice to Proceed. The Department is not liable and will not pay the Contractor for any work performed before Notice to Proceed is received by the Contractor from the Department. After execution of this Contract, and after a letter of authorization from the Department to proceed, the Contractor shall then proceed immediately with the scope of services delineated in Appendix A and each project specific work assignment.
8. Assignment. The Contractor shall not assign, sublet, subcontract, or transfer any interest, right or obligation in this Contract without the written consent of the Department.
9. Changes in Scope of Work. Additions to or deletions from Appendix A provided herein may be made, and the compensation to be paid to the Contractor and the time for completion may be adjusted accordingly by mutual agreement of the contracting parties. Whenever an alteration in character of work results in a change in the nature of the design, thereby increasing or decreasing the cost of the performance, an amended Contract shall be executed authorizing the Contractor to perform work in accordance with the changed requirements and setting forth the amended fee and time for completion. The Contractor is not authorized to do any work beyond that work called for in Appendix A and in each project specific work assignment, without an executed agreement.
10. Termination for Default. The Department and the Contractor hereby agree to the full performance of the covenants herein. If the Contractor, for any cause, fails to carry on the work in an acceptable manner including failure to perform in accordance with the time schedule in each project specific work assignment, the Department will give notice in writing of such neglect or default, the corrective measures to be taken and delineate a reasonable period of time within which to take such measures. Contractor's failure to comply with such notice and to rectify the delay or default as therein provided shall subject this Contract to immediate termination by the Department. The Department may terminate the Contract for cause by delivery to the Contractor of a Notice of Termination. In the event of termination for default the Department shall compensate the Contractor for work on the project which has been previously delivered and received before the date

of termination and which work has been approved and accepted by the Department, less liquidated damages. The Department shall be entitled to recover all direct, indirect, and consequential costs for completion of all unfinished scope of work as delineated in Appendix A whether through its own employees or by contract.

11. Termination for the Convenience of the Department. The Department may also terminate performance of work under this Contract in whole or in part for its own convenience in the absence of any default by the Contractor. A termination for the convenience of the Department shall be effected by delivery to the Contractor of Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which termination becomes effective. Within ten (10) days of the effective date of termination, the Contractor shall deliver to the Department all design plans, construction estimates, drawings, documents, survey books and any or all other materials developed under this Contract. Should this Contract be terminated for the convenience of the Department, the Contractor shall receive the following as full compensation hereunder:
  - a. Actual direct and indirect costs, expenses, and salary expenses which are incurred prior to the effective date of termination;
  - b. Gross receipts tax owed or incurred at the time of Contract termination; and
  - c. All expenses incurred by Contractor in computing the costs, sums, and expenses set forth in Paragraphs "a" and "b" above.
12. Suspension of Work. The Department may order the Contractor in writing to suspend all or part of the work for such period of time as it determines to be appropriate for its convenience. Such suspension order will be treated as a delay caused by the Department under Paragraph 6 above and entitles Contractor to receive a reasonable time extension.
13. Improper Exercise of Authority. It is further understood and agreed that the Contractor shall not in any way exercise any portion of the authority or sovereign powers of the State of New Mexico or the authority or powers of the New Mexico Department of Transportation Commission or the Department's Chief Executive Officer, and shall not make any agreements or commitments or in any way represent itself as an agent of the State of New Mexico.
14. Binding on Successors. Insofar as authorized by law, this Contract shall be binding upon the parties hereto, their successors, executors, administrators, and assigns.
15. This Writing is the Contract in its Entirety. This instrument embodies the whole Contract of the parties. There are no promises, terms, conditions, or obligations

other than those contained herein. This Contract shall supersede all previous communications, representations, or agreements either verbal or written between the parties hereto.

16. Term. This Contract terminates **four years from the date of execution.**
17. Subcontracting. Upon written approval of the Department, the Contractor may subcontract all or part of the services for this project as described in Appendix A. Any subcontract entered into by the Contractor for an amount in excess of \$10,000 shall contain all the provisions of this Contract.
18. Appendices. Appendix A, Appendix B, and Appendix C and Appendix D are attached hereto and incorporated herein by reference. Such appendices contain the following materials:
  - a. Appendix A: Scope of Services
  - b. Appendix B: Certificate of Insurance
  - c. Appendix C: Unit Rate Schedule
  - d. Campaign Contribution Form
19. Status of Contractor. The Contractor, and its agents and employees, are independent Contractors performing professional services for the Department and are not employees of the State of New Mexico. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Contract.
20. Appropriations. The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico or the Congress of the United States if federal funds are involved, for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature or the Congress of the United States, if federal funds are involved, this Contract shall terminate upon written notice being given by the Department to the Contractor. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
21. Release. The Contractor upon final payment of the amount due under this Contract releases the Department, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or

under this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

22. Confidentiality. Any confidential information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.
23. Conflict of Interest. The Contractor warrants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. If the Contractor serves as a representative for other entities or agencies, public or private, within the project area during the term of this Contract, Contractor shall immediately notify the Department for evaluation of potential conflict(s). The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act, the New Mexico Financial Disclosures Act and the campaign disclosure provisions of the Procurement Code. The Contractor has completed a Campaign Contributions Disclosure Form which is attached to this Agreement.
24. Notice. The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this Contract. In addition, the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation.
25. Legal Compliance. The Contractor shall comply with all applicable federal, state and local laws, and Department regulations and policies in the performance of this Contract, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental and cultural resources requirements, right-of-way acquisition, workplace safety, employer-employee relations, and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The Contractor shall ensure that the requirements of this compliance are made a part of each subcontract on this project at all tiers.
26. Applicable Law. This Contract shall be governed by the laws of the State of New Mexico.
27. Disadvantaged Business Enterprise (DBE) Program And Policy. In accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26) or as may be

amended, the Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following:

1. DBE Policy: It is the policy of the Department to implement the provisions of 49 CFR Part 26 (49 CFR 26), other pertinent regulations, and source Legislation, the objectives are:
  - a. To ensure nondiscrimination in the award and administration of DOT- assisted contracts in the USDOT's highway, transit, and airport financial assistance programs;
  - b. To create a level playing field on which DBEs can fairly compete for DOT-assisted contracts;
  - c. To ensure that USDOT's DBE Program is narrowly tailored in accordance with applicable law;
  - d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
  - e. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
  - f. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
2. DBE Obligations: The Department will establish the DBE goal on a tri annual basis. The approved FFY 2018-2020 DBE goal is established at 15.01% for federal-aid highway construction and design, which will be attained through race neutral measures.
3. Record Keeping Responsibilities: The Contractor is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's project manager or to the NMDOT CONSTRUCTION AND CIVIL RIGHTS BUREAU/ DBE PROGRAM at the following address:

NMDOT  
Construction and Civil Rights Bureau  
1570 Pacheco Street, Suite A10  
Santa Fe, NM 87505

4. Department's DBE Program: The Department's DBE Program as required by 49 CFR Part 26 and as approved by DOT, is incorporated herein by reference and made part of this agreement. If any provision of the DBE Program conflicts with 49 CFR Part 26, the provisions of 49 CFR

Part 26 shall prevail. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out the terms and conditions of the DBE Program, the Department may impose sanctions as provided for under part 26 and, may in appropriate cases refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

From time to time NMDOT shall receive interpretations from USDOT, which shall be binding on NMDOT, sub-recipients, and contractors.

5. DBE Obligations – The NMDOT and the Offeror agree to ensure that DBEs as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of services and work financed in whole or in part with federal funds under the Agreement.

(1) In this regard, The Offeror shall not discriminate on the basis of race, color, national origin or sex in the performance of DOT-assisted contracts. The Offeror shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the Offeror to carry out these requirements is a material breach of contract, which may result in the termination of the contract or such other remedy as NMDOT deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Offeror from future bidding as non-responsive.

28. Certification for Federal-Aid Contracts: The selected Contractor who becomes the Contractor shall certify, by signing the Contract, that to the best of its knowledge and belief:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Offeror, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of and federal grant, the making of any federal loan, extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Offeror shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. This certification is a material representation of fact upon which reliance will be placed when the Contract is executed. Submission of this certification is a prerequisite for making or entering into the Contract imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
    - d. The Contractor also agrees by signing their Contract/Amended Contract that they shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.
- 29. Consent to Jurisdiction and Venue. The Contractor hereby consents to and agrees to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from this Contract which cannot be resolved informally and hereby waive any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Contractor. It is expressly understood and recognized by the parties hereto that the venue for litigation of issues, claims, or all other judicial matters arising or resulting from this Contract shall be in the Santa Fe County District Court.
- 30. Third Party Beneficiary Clause. No provision of this Contract creates in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Contract to maintain a suit for wrongful death, bodily and/or personal injury to a person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Contract.
- 31. New Mexico Tort Claims Act. No provision of this Contract establishes any waiver of immunity from liability for alleged tortuous conduct of any employee of the Department or the Contractor arising from the performance of this Contract apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.
- d. 32. Requirements for New Mexico Employees Health Coverage.
  - a. For all Contracts solicited and awarded on or after January 1, 2008: If the Contractor has, or grows to, six (6) or more employees who work, or who



are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Contractor must agree to:

- (1) have in place and agree to maintain for the term of the Contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008, if the expected annual value in the aggregate of any and all Contracts between Contractor and the State exceed one million dollars; or
- (2) have in place and agree to maintain for the term of the Contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009, if the expected annual value in the aggregate of any and all Contracts between Contractor and the State exceed \$500,000 dollars; or
- (3) have in place and agree to maintain for the term of the Contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010, if the expected annual value in the aggregate of any and all Contracts between Contractor and the State exceed \$250,000 dollars.

- b. Contractor must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Contractor must agree to advise all employees of the availability of State publicly financed health care coverage programs.
- d. For Indefinite Quantity, Indefinite Delivery Contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

### 33. Employee Pay Equity Reporting

This provision shall apply to contracts awarded through and Invitation to Bid or a Request for Proposals. The Executive Order and required forms can be obtained from the following link:

[http://www.generalservices.state.nm.us/statepurchasing/Pay\\_Equity.aspx](http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx)

October 1, 2010 and beyond contract requirements:

Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the required form annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy these reporting requirements on any sub-Contractor(s) performing more than 10% of the dollar value of this contract if said sub-Contractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more sub-contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such sub-contractor, within ninety (90) calendar days of that sub-contractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such sub-contractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable sub-contractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this sub-contractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.

**In witness whereof**, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Secretary/Designee

Date: \_\_\_\_\_

**INSERT CONTRACTOR NAME**

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

By: \_\_\_\_\_  
Assistant General Counsel

Date: \_\_\_\_\_

I certify that \_\_\_\_\_, I.D. No. \_\_\_\_\_ is registered with the Taxation and Revenue Department for payment of gross receipts tax.

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

**APPENDIX C: ACKNOWLEDGEMENT OF RECEIPT FORM**

Request for Proposals No. 19-33

PN: U900047

CN: U900047

Statewide On-Call Subsurface Utility Engineering (SUE) AND Utility Coordination

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with “Appendix I”.

The acknowledgement of receipt should be signed and returned to the Procurement and Facilities Management Division, NMDOT, by the close of business on **December 11, 2018**. Only potential Offerors who elect to return this completed form will receive copies of RFP amendments, if any are issued. The following information will be used for all correspondence related to this Request for Proposals.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**Please return completed form to the name and address listed below.**

Margo Gomez  
Procurement and Facilities Management Division  
New Mexico Department of Transportation  
1120 Cerrillos Rd., Rm #113  
Santa Fe, NM 87504  
Ph. (505) 470-2784  
Fx. (505) 827-5555  
Email: [Margo.Gomez@state.nm.us](mailto:Margo.Gomez@state.nm.us)

## APPENDIX D – PROJECT/CONTRACT LISTING FORM

Offerors shall list all current contracts with the NMDOT, containing similar work(s) to the scope of work as contained in the RFP. This form shall only include the contract(s) that the proposing Offeror has with the NMDOT; subcontractor information is not required.

FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

**Table A – Project Specific Contracts**

PROJECT DIRECTLY AWARDED TO FIRM	CONTRACT DATE	CONTRACT AMOUNT (in dollars \$)	% COMPLETE TO DATE	CONTRACT AMOUNT EXPENDED TO DATE (in dollars \$)	CONTRACT REMAINING BALANCE (in dollars \$)
1.					
2.					
3.					
4.					
5.					
			<b>TOTALS</b>		

**Table B – On-call Contracts**

<b>PROJECT DIRECTLY AWARDED TO FIRM</b>	<b>CONTRACT DATE</b>	<b>CONTRACT AMOUNT</b>	<b>TOTAL AMOUNT TASKED OUT TO DATE (in dollars \$)</b>	<b>% OF TASKED OUT WORK COMPLETE TO DATE</b>	<b>TOTAL TASKED OUT WORK EXPENDED TO DATE (in dollars \$)</b>	<b>TOTAL REMAINING BALANCE OF TASKED OUT WORK (in dollars \$)</b>
1.						
2.						
3.						
4.						
5.						
			<b>TOTALS</b>			

Notes:

1. If any award is not proceeding in contract negotiations, please indicate the status in the "Remarks" below.
2. Fees do not include reimbursable expenses, which include: travel, per diem, printing, telephone or reproduction cost.
3. Federal funds shall be included in project calculations pursuant to 13-1-120B (6).
4. Any Award of Contract that has not resulted in a written contract offer to the Offeror, within 6 months of written notice, shall not be considered an award for the purposes of the Project Listing Form.
5. Contact the person designated in Section I, Paragraph D if there are ANY questions regarding the correct completion of this form. (Use additional sheets if necessary).

**REMARKS:**

## **APPENDIX E: 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)

**APPENDIX F: NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM**

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:
  - (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
  - (b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or
  - (c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs.
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

Signature of Offeror: \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX G**

**Proposed Work Participation Chart**

<b>Role</b>	<b>Firm Name</b>	<b>% of Project</b>
Prime		
Sub		
Sub		
Sub		
Sub		
Sum		

**APPENDIX H**

Form No. A-1013 (Rev. 8/05)

**New Mexico Department of Transportation  
DESIGN OR OTHER CONSULTANT  
OFFEROR'S LIST**

**Consulting Firm:** \_\_\_\_\_ **Project No.** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Control No.** \_\_\_\_\_

**RFP Number** \_\_\_\_\_

**Consulting Firm Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

The Offeror's List will include all sub-consultants contacted by the prime design consultants for consideration for the design team. Failure to submit this form at the time of submittal of the consultant proposal will render the proposal non-responsive.

**ALL SUB-CONSULTANTS:**

<b>NAME</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>	<b>STATUS: DBE / NON-DBE</b>

## APPENDIX I

Form No. A-1036  
New 12/02

### New Mexico Department of Transportation CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

OFFEROR NAME	
CONTROL NUMBER	
PROJECT NUMBER	
TERMINI	

I, \_\_\_\_\_ (NAME), \_\_\_\_\_ (TITLE) for the firm of \_\_\_\_\_, an Offeror for the New Mexico Department of Transportation (Department) on the above-mentioned project, agree that \_\_\_\_\_ (FIRM NAME) will maintain the confidentiality of all information designated by the Department as “draft” or “confidential” that is gained as a result of our involvement in the above-mentioned project. This includes proprietary information and information designated confidential in accordance with 1.4.1.45 NMAC, and NMSA 1978, Section 13-1-39 (1984).

\_\_\_\_\_ (FIRM NAME) will maintain security and control over all documents containing such confidential information in our custody. \_\_\_\_\_ (FIRM NAME) will not make copies of any documents, nor remove documents from the assigned locations, and will return documents to the Department when work with the documents is complete.

\_\_\_\_\_ (FIRM NAME) will not divulge any confidential information to the media, any member of the public, or any employee of the consultant not involved in this project without the consent of the Department.

Furthermore, \_\_\_\_\_ (FIRM NAME) agrees not to accept gratuities or favors in exchange for such confidential information. The New Mexico State Procurement Code, NMSA 1978 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation.

This agreement is subject to the laws of the State of New Mexico, and all applicable rules and regulations.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_