

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

REQUEST FOR PROPOSALS



Asset Management and Planning Division

RFP No. 19-35

Performance Management Program

January 2019

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I. ADVERTISEMENT

New Mexico Department of Transportation
Asset Management and Planning Division

RFP No. 19-35
Performance Management Program

The New Mexico Department of Transportation (NMDOT) is requesting proposals from qualified firms or Offerors for the purpose of hiring a contractor to develop and implement a Strategic Data Business Plan (SDBP) which will guide improvement in the way data programs serve the NMDOT.

Proposals shall be valid for one hundred twenty (120) days subject to all action by the New Mexico Department of Transportation. NMDOT reserves the right to reject any or all proposals in part or in whole. Proposals shall be submitted in a sealed container or envelope indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container or envelope. **All proposals must be received and recorded by the Procurement and Facilities Management Division, NMDOT, 1120 Cerrillos Rd., Rm. #113, Santa Fe, NM 87505, no later than 2:00 P.M. (Mountain Standard Time) on Wednesday, February 6, 2019.**

EQUAL OPPORTUNITY EMPLOYMENT: All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex or national origin. Proponents of this work shall be required to comply with the President's Executive Order No. 11246 as amended.

Request for Proposals will be available by contacting Nancy Madrid by telephone at (505) 690-7356, or by email at Nancy.Madrid2@state.nm.us or by accessing NMDOT's website at: http://dot.state.nm.us/content/nmdot/en/RFP_Listings.html

ANY PROPOSAL SUBMITTED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE ACCEPTED.

Publish on January 6, 2019

II. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

Data and Information are assets that help New Mexico Department of Transportation (NMDOT) make decisions and inform policy, planning, program investment, design and maintenance operations choices. NMDOT staff rely on a variety of data and information to carry out their responsibilities. Having a roadmap or Strategic Data Business Plan to inform NMDOT Executives on current and future data needs and priorities is essential to align program investments with overall strategic business needs. Moving Ahead for Progress in the 21st Century (MAP-21) created a streamlined and performance-based surface transportation program which transforms the policy and programmatic framework for investing in transportation. In order to transition to a performance and outcome based program, the NMDOT must collect, process and analyze data. This Strategic Data Business Plan will assist the agency in identifying a unified effort to gather and manage data more efficiently and cost effectively.

B. SCOPE OF WORK

The Contractor Shall:

Develop and implement a Strategic Data Business Plan (SDBP) for NMDOT. The SDBP shall identify common data needs across divisions, develop consistent guidance and common solutions for pervasive agency-wide data concerns (such as security, quality and access), and identify opportunities to add value and reduce redundancy through collaboration and coordination. The SDBP should also identify opportunities to achieve economies of scale through agency-wide deployment of data storage, retrieval and analysis tools and technologies, reducing the information technology capital investment and maintenance burden for hardware, software and staff support. In order to develop the SDBP, the consultant shall provide a project management plan and identify key tasks to include:

- **Data Management policies and procedures** – The plan must identify an approach for prioritizing needed data program improvements and provide guidance for development of new or revised processes and polices that constitute an effective long-term Data Management plan. The plan must also identify the time, resources and necessary leadership, and provide clear and prioritized steps (implementation framework) necessary to move NMDOT in the accepted SDBP Vision, Goals, and Objective memo.
- **Organizational roles, including communication and decision making paths** – Leading and facilitating meetings with agency work/focus groups to review decision making processes and develop communication materials will be required. Defining organizational roles including preparing data governance models and implementation programs used by other agencies will be presented to agency focus/work groups for consideration and in the development of the SDBP. The SDBP should provide business intelligence assessments, analytic capabilities and related performance measure development.

- **Establish data definitions and standard naming conventions** – Provide well-defined definitions for all maturity category levels that cover SDBP program areas. Prepare metadata, business processes, and common definitions for tracking data quality and semantic differences.
- **Monitoring and refinement processes to ensure the plan is followed and updated** – Present options on how to monitor and refine the processes proposed for the SDBP and present to agency work/focus group to determine processes for the agency.
- **Recommend strategies for sharing and integrating data within NMDOT through defined relationships, processes and the use of technology** – Establish policies standards and guidelines to support, data integration, including common referencing methods to identify master data entities in multiple business applications.
- **Establish a process for identifying priorities and trade-offs among the various identified needs (such as investing in new data collections, technology improvement, or system integration)** – Develop a process for the agency to periodically reassess what data the agency should track, capture and manage to ensure the quality, availability, security, and usability of data.

The Contractor shall submit a first draft SDBP for NMDOT’s review within nine (9) months after the Notice to Proceed (NTP) is issued. Second draft shall be submitted within three (3) months after NMDOT’s review of the first draft with recommended changes, and final SDBP shall be submitted by December 31, 2020, that will guide improvement in the way data programs serve NMDOT. The Contractor shall propose the schedule based upon these parameters .The Contractor shall provide subject matter expertise and advice on Data Management practices and projects. The SDBP must identify an approach for prioritizing needed data program improvements and provide guidance for the development of new or revised processes and policies that constitute an effective long-term Data Management Plan. The SDBP must also identify the time, resources and necessary leadership and provide clear and prioritized steps in the form of an implementation framework necessary to move NMDOT from its current state to a future defined state identified during the project.

Identify a project management and coordination structure for the project and desired NMDOT Project Team structure. The project will include a kickoff meeting which shall be scheduled within ten (10) working days of the NTP at the NMDOT General Office in Santa Fe in order to provide the Contractor with an opportunity to discuss their project approach and proposed Project Management Plan. Typical items for the Strategic Data Business Plan may include:

- Strengths, Weaknesses, Opportunities, and Threat (SWOT) Assessment
- Data Management Assessment
- Vision, Goals and Objectives
- Data Governance
- Implementation Plan or Roadmap
- Data Mapping and Assessment Tools

Any project related meetings, identified by the Contractor, shall use NMDOT facilities. If the Contractor proposes webinars or other types of outreach, the Contractor will be responsible for

all associated arrangements. The Contractor shall, at a minimum, conduct a monthly project management team meeting to provide updates on progress and the Contractor will be required to submit monthly progress reports to the NMDOT in electronic format that contain a concise statement covering the activities relevant to the development of the SDBP.

C. SCOPE OF PROCUREMENT

The initial term of the contract executed under this RFP shall be for two (2) years. In no case will any contract exceed a total of four (4) years in duration from the date of execution.

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:

Nancy Madrid
Procurement and Facilities Management Division
New Mexico Department of Transportation
1120 Cerrillos Rd., Rm #113
Santa Fe, NM 87504
Ph. (505) 690-7356
Email: Nancy.Madrid2@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 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.

III. 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	01/06/2019
2.	Distribution List Response Due	Offerors	01/17/2019
3.	Deadline to Submit Additional Written Questions	Offerors	01/23/2019
4.	Response to Written Questions/RFP Amendments	NMDOT	01/29/2019
5.	Submission of Proposal (Due 2:00 p.m. MST)	Offerors	02/06/2019
6.	Proposal Evaluation	Evaluation Committee	February 2019
7.	Selection of Finalists	Evaluation Committee	February 2019
8.	Oral Presentation by Finalists (If applicable)	Offeror	February 2019
9.	Best and Final Offers	Offeror	February 2019
10.	Finalize Contract	Offeror/NMDOT	Feb/March 2019
11.	Contract Award	NMDOT	Feb/March 2019

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

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

2. Distribution List Response Due

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 B") 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 **January 17, 2019**. 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.

3. 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 **January 23, 2019**. All written questions must be addressed to the Procurement Manager (See Section II, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on **January 29, 2019** 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.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. MST ON FEBRUARY 06, 2019. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to **RFP No. 19-35, Performance Management Program**. Proposals submitted by facsimile will not be accepted.

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.

6. 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 **February 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.

7. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist Offerors in the month of **February 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.

8. 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 **February 2019** and will be limited to one (1) hour in duration.

9. 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 **February 2019**. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

10. Finalize Contract

The contract will be finalized with the most advantageous Offeror in the months of **February/March 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.

11. Contract Award

NMDOT anticipates awarding the contract in the months of **February/March 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.

12. 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: Christina Baca
1120 Cerrillos Rd., Room #113
Santa Fe, New Mexico 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 VI of this RFP.

2. 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.

3. 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.

4. 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.

5. 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 New Mexico Secretary of State 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 New Mexico Secretary of State 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 New Mexico Secretary of State to conduct business in New Mexico and must obtain a Certificate of Good Standing from the New Mexico Secretary of State 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 A” (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 A”, 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.

19. 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.

20. 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.

21. Contract Negotiations

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

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Ownership of Proposals

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

29. 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.

30. 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.

31. 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.

32. New Mexico Employees Health Coverage (See "Appendix D")

- A. If 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 certifies, by signing this agreement, to 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 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees 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 agrees to advise all employees of the availability of State publicly financed health care coverage programs.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitation on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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.

33. Disclosure of Campaign Contributions (See "Appendix C")

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.

34. 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.

35. 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.

36. 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.

37. 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.

IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

Offerors shall deliver four (4) identical copies of their proposal to the location specified in Section II, Paragraph D on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All 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. Offerors are strongly encouraged to limit their proposals to a maximum of fifty (50) pages. Exclusions to this limitation will be the letter of introduction, table of contents, covers, 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. All discussion of proposed costs, rates or expenses must occur only in the cost response section.

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

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.

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 III, 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.

V. SPECIFICATIONS

A. Information

The contract is scheduled to begin in or around February/March 2019. NMDOT intends on awarding a contract with an immediate two (2) year term. In no case will the contract awarded through this RFP exceed a total of four (4) years in duration.

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. Personnel Experience and Qualifications

Each Offeror shall submit a list, with resumes, of all proposed professional team members, including any subcontractors, who will be performing services under this Agreement. The list shall include an attached narrative that describes the specific relevant experience of each team member, including subcontractors, if any, in relation to the role that the member will perform for this Agreement. The narrative shall include the name of each person and a thorough description of her or his education, knowledge, areas of expertise, relevant experience, representative clients, and any certifications or other professional credentials.

2. Approach to the Scope of Services

Offerors must provide a thorough narrative describing the approach the firm will use to accomplish the Scope of Work. Milestone charts may be used to describe the tasks to be performed, the time frame for each task, and the proposed staff member, including subcontractors, designated for the completion of each task. Whether a milestone chart is used or not, the Offeror should clearly explain his/her firm's approach to fulfilling the Scope of Work.

3. Firm Capacity and Capability

Offerors must provide information about their firm that demonstrates its ability to provide sufficient professional competence to achieve tasks outlined in the Scope of Work, meet time schedules, accommodate cost considerations and project administration requirements. This information must indicate the relationship of the work in this RFP to the firm's other current projects and demonstrate or indicate project team organization and working relationships.

4. Customer Service and References

Offerors shall provide detailed information concerning their customer service policies and practices. Offerors must include at least three (3) external client references from clients who received similar services. The minimum information that must be provided about each reference is:

- a. Name of company or individual services that were provided
- b. Address of company or individual
- c. Name, telephone number and email address of contact person
- d. Type of services provided and dates services were provided

5. Description of Work Products

Offerors shall thoroughly describe the types of relevant work products provided to previous clients relevant to the scope of work and how those work products may apply to this contract.

6. Completed Campaign Contribution Disclosure Form (“Appendix C”)

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

7. New Mexico Employees Health Coverage Form (“Appendix D”)

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

8. Pay Equity Reporting Requirements (Paragraph III.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

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.
9. 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.

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VI. 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. Personnel Experience and Qualifications	25
2. Approach to Scope of Services	25
3. Firm's Capacity and Capability	20
4. Customer Service and References	15
5. Description of Work Products	15
Total Maximum Allowable Points	100 Points

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 III, Paragraph B.6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.22.
4. Responsive proposals will be evaluated on the factors in Section VI 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 VI and successful negotiations, will be recommended for contract award

as specified in Section III, Paragraph B.11. 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.

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APPENDIX A - CONTRACT FOR FEDERAL FUNDING

**Contract No.
Vendor No.
Project No.
Control No.**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the STATE OF NEW MEXICO, NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as “Department,” acting through its Secretary, and _____, hereinafter referred to as “Contractor.”

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor agrees to perform the following professional services:

COPY THE SECTION FROM SCOPE OF WORK HERE

Services shall be performed and be completed satisfactory to the Department with the instructions provided by the Department. The Contractor shall provide and charge only for those services requested by the Department. No services may be contracted except as agreed upon in advance by the parties to this Agreement.

Upon execution of this Agreement, the Contractor shall commence work at the Department’s request and services shall conform to the description of services as set forth herein or as hereafter mutually agreed to in writing.

2. Payment Provisions.

The Department shall compensate the Contractor based on the rates and costs set forth as follows:

a. **Rates.** The Contractor agrees to perform billable work at the following rates per hour:

b. **Compensation.** Total compensation during the term of this Agreement shall not exceed \$ _____, unless otherwise agreed to in writing by the parties hereto, which amount includes does not include applicable gross receipts taxes during the term of this Agreement. 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 maximum dollar amount of the contract, unless the maximum dollar amount is duly amended prior to providing the services or deliverables.

The NMDOT shall reimburse the Contractor up to 100% for reasonable travel expenses upon the Department's receipt and approval of certified invoices (with any corresponding receipts) from the appropriate vendors for airfare, lodging, car rental and meals.

c. **Payment of Invoice.** Payment shall be made to the Contractor upon receipt of a detailed invoice applicable for satisfactory work completed and accepted by the Department, unless the Contractor receives verbal or written notice that the invoice is inadequate.

d. **Acceptance.** The Contractor's satisfactory completion of this Agreement shall be a prerequisite for final payment. Final payment, including any retainage, shall be made within thirty (30) days after the work has been approved and accepted by the

Department's Secretary or his duly authorized representative.

Within fifteen 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 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 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 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 a half (1½) percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the Contractor within five working days of receipt of funds from that funding agency.

e. **Payment of Taxes.** The Contractor is responsible for making payment of gross receipts taxes to the New Mexico Department of Taxation and Revenue unless Contractor is exempt from payment of taxes.

3. Approval of Contractor Personnel.

Once work has started, changes of personnel will not be made by the Contractor without the prior written consent of the Department. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

The Department shall retain the right to request the removal of any of the Contractor's personnel at any time.

4. Effective Date and Term.

This Agreement shall not be effective until executed by the Secretary of the New Mexico Department of Transportation. The term of this Agreement is from the execution date of the Agreement and shall terminate on XXXXXXXX, 2018, unless terminated pursuant to Section Five of this Agreement. The Department shall have the option of extending the Agreement. In no event shall the total term of the Agreement, including extensions, exceed four (4) years.

5. Termination.

The Department has the option of canceling this Agreement by giving thirty (30) days written notice to the Contractor. Upon receipt of the "Notice of Cancellation," the

Contractor shall immediately suspend any further work unless otherwise directed by the Department in writing. By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination of this Agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

Either party may terminate the Agreement for cause based upon any material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach.

If within thirty (30) days after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, the breaching party has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effectively immediately. The non-breaching party shall retain any and all other remedies available to it under law.

6. 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 Department. The Contractor and its agents and employees shall not have use of Department State vehicles or any other benefits afforded the Department employees as a result of this Agreement.

7. Permits, Licenses, and Insurance.

Contractor warrants, covenants and represents that (entity name) is properly organized under the laws of the State of New Mexico, and is in good standing to do business in the State of New Mexico. The Contractor shall procure all permits and licenses, and insurance as required by law and pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work. The Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the Agreement may be canceled effective immediately.

8. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the Department.

9. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Department.

10. Records and Audit.

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 Agreement period and for five (5) years from the date of final payment under the Agreement for inspection by the State.

11. Appropriations and Authorizations.

The terms of this Agreement 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 performance of this Agreement. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United States if federal funds are involved, this Agreement 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 its funds are available shall be accepted by the Contractor and shall be final.

12. Release.

The Contractor, upon final payment of the amount due under this Agreement, 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 Agreement. 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 written authority to do so, and then only within the strict limits of that authority.

13. Confidentiality.

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

14. The Product of Service; Copyright.

All materials developed or acquired by the Contractor shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement.

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

However, it is understood that some of the materials utilized in this project have previously been copyrighted by the Contractor.

15. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. 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 as Exhibit 1.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be

excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement.

If the Contractor is found to not be in compliance with these requirements during the term of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

17. Civil Rights Laws and Regulations Compliance.

The Department and Contractor shall comply with all federal, state and local laws and ordinances applicable to the work called for herein. The Department and Contractor further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, Executive Order 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, 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 60). Accordingly, 49 CFR 21 is applicable to this Agreement and incorporated herein by reference.

18. New Mexico Employees Health Coverage

A. If 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 certifies, by signing this agreement, to 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 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Contractor agrees 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 agrees to advise all employees of the availability of State publicly financed health care coverage programs.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitation on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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.

19. Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico 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 PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. 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 PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. 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) 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 this requirement 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. Contractor further agrees 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, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, 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 subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

20. Disadvantaged Business Enterprise (DBE) Program.

a. Recipient/Contractor Assurances: All contracts and subcontracts applicable to the work called for herein shall include the following assurances:

(1) Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR 26. The Department shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of USDOT-assisted contracts. The Department's DBE Program, as required by 49 CFR 26 and as approved by USDOT, is incorporated herein by reference and made part of this Agreement. 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 recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

(2) The recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the recipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Department deems appropriate.

b. DBE Program Obligations: This Agreement does not have a specific DBE goal assigned to it. However, the Department encourages the Contractor to facilitate small business and DBE participation on this contract and to take all reasonable steps to eliminate obstacles that may preclude their participation.

c. Provision of DBE Program Information: The Contractor shall provide any DBE related information or data requested by the Department DBE Program to the Department's project manager or to the Department's Office of Equal Opportunity Programs.

21. Notice.

The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this Agreement. In addition, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation.

22. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement.

23. Contractor's Liability.

Contractor shall defend, indemnify and hold harmless the Department, acting through its agents, representatives and employees, from and against liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs and the cost of appellate proceedings) arising out or resulting from the negligence, act, omission or default of the Contractor, its agents, representatives or employees; provided that such indemnification shall not extend to liability, claims, damages, losses or expenses, including attorney's fees 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.

24. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

25. Merger.

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement.

No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

26. Amendment.

This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year written above.

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

BY _____ **DATE** _____
Michael Sandoval
CABINET SECRETARY OR DESIGNEE

Insert Contractor's full name here
CONTRACTOR

BY _____ **DATE** _____
(Insert Contractor's name here, and title, if any)

Approved as to form and legal sufficiency by the Department's Office of General Counsel.

BY _____ **DATE** _____
ASSISTANT GENERAL COUNSEL

I hereby certify that _____, tax identification number _____, is registered with the New Mexico Taxation and Revenue Department for payment of gross receipt taxes.

TAXATION AND REVENUE DEPARTMENT

BY _____ **DATE** _____

APPENDIX B: ACKNOWLEDGEMENT OF RECEIPT FORM

Request for Proposals No. RFP 19-35

Performance Management Program

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 D”.

The acknowledgement of receipt should be signed and returned to the Procurement and Facilities Management Division, NMDOT, by the close of business on **January 17, 2019**. 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.

Nancy Madrid
Procurement and Facilities Management Division
New Mexico Department of Transportation
1120 Cerrillos Rd., Rm #113
Santa Fe, NM 87504
Ph. (505) 690-7356
Email: Nancy.Madrid2@state.nm.us

APPENDIX C: 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 D: NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

1. If 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 certifies, by signing this agreement, to 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 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. Contractor agrees 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.
3. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs.
4. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitation on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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.

Signature of Offeror: _____ Date _____