

**REQUEST FOR QUALIFICATIONS**  
**No. 22-01**

**NEW MEXICO 31-128**  
**HIGHWAY IMPROVEMENTS**  
**DESIGN AND BUILD PROJECT**

Project Number  
Control Number: 2104330  
Federal Funds

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FORM F	Awards, Citations, and/or Commendations
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APPENDIX B - Conflict of Interest Policy

# REQUEST FOR QUALIFICATIONS

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## 1. Introduction and General Information

### 1.1. Abbreviations and Definitions

#### 1.1.1. Abbreviations

ATC	Alternative Technical Concept
CE	Categorical Exclusion
CFR	Code of Federal Regulations
D/B	Design and Build
DBE	Disadvantaged Business Enterprise
EA	Environmental Assessment
ESAL	Equivalent Single Axle Load
FHWA	Federal Highway Administration, US Department of Transportation
FONSI	Finding of No Significant Impact
IA	Independent Assurance
JV	Joint Venture
N/A	Not Applicable
MUA	Master Utility Agreement
NMDOT	New Mexico Department of Transportation
NMSA	New Mexico Statutes Annotated
OJT	On the Job Training
QA	Quality Assurance
QC	Quality Control
QCIF	Quality Control Independent Firm
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Documents
ROW	Right(s)-of-Way
SOQ	Statement of Qualifications
TCP	Temporary Construction Permit

#### 1.1.2. Definitions

<b>Acceptance Program</b>	means all factors that comprise the Department's judgment of the quality of the product as specified in the Contract Documents. These factors may include Verification Sampling and testing, Department oversight and auditing of Design-Builder activities, and Design-Builder QC and QA.
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<b>Affiliate</b>	With respect to an entity referenced in this RFQ: a) Any Person that directly or indirectly controls, or is controlled by, or is under common control with, such entity; and b) Any other Person that owns 20% or more of the entity's equity interest.
<b>Authorized Representative</b>	means the individual designated by the Department to serve as the single point of contact on the Department's behalf for this procurement.
<b>Clarifications</b>	means a written exchange of information that takes place after the receipt of SOQs. The purpose of clarifications is to address minor or clerical revisions in the SOQ.
<b>Constructor or Contractor</b>	means a Principal Participant or Subcontractor who is involved in the actual construction of the Project.
<b>Contract Documents</b>	means the Design-Build Agreement, the Technical Provisions, and all other documents incorporated therein.
<b>Contract Price</b>	means the lump-sum price for the work, as stated in the Design-Build Agreement.
<b>Design-Build Agreement</b>	means the written agreement that has been fully executed between the Department and the Design-Builder containing the terms and conditions for the Project.
<b>Design-Builder</b>	means the Person selected pursuant to the RFP, which enters into an agreement with the Department to design and construct the Project.
<b>Department</b>	means the New Mexico Department of Transportation or NMDOT.
<b>Design and Build or Design-Build</b>	means a project delivery methodology by which a using agency contracts with a single firm that has responsibility for the design and construction of a project.
<b>Designer</b>	means a Principal Participant or Subcontractor that leads the team performing the design of the Project.
<b>Determination</b>	means the written documentation by the Department Cabinet Secretary or designated representative, including findings of fact required to support a decision. A Determination becomes part of the procurement file to which it pertains.

<b>Disadvantaged Business Enterprise (DBE)</b>	means a for-profit small business concern that is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. See definition in 49 CFR, Part 26.
<b>Enhanced Conceptual Engineering Design</b>	means the conceptual design for the Project that the Department will prepare and provide to Proposers in the RFP to serve as a basis for the Project’s design.
<b>Final Acceptance</b>	means the Department’s final acceptance of the Project, when the Project is complete except for any obligations of the Design-Builder that survive beyond completion of the Project.
<b>Independent Assurance (IA)</b>	means activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the Acceptance Program. Test procedures used in the Acceptance Program that are performed in the Department’s central laboratory would not be covered by an IA program.
<b>Joint Venture</b>	means an unincorporated association of entities.
<b>Master Utility Agreement</b>	means the master agreement containing the terms and conditions governing Design-Builder’s work that affects Utilities.
<b>Person</b>	means any individual, firm, corporation, company, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.
<b>Principal Participant</b>	A Person that is, or is intended to be: <ul style="list-style-type: none"> <li>• A member of the joint venture, if Respondent is a Joint Venture;</li> <li>• The Respondent, if the Respondent is a corporation; or</li> <li>• An equity owner of the Respondent, if Respondent is organized as a business other than a corporation (e.g., a member, partner, or shareholder of the Respondent entity).</li> </ul>
<b>Project</b>	means the NM 31-128 Design-Build project (CN 2104330), as described further in this RFQ.
<b>Proposal</b>	means those documents submitted by a Short-Listed Respondent to the Department in accordance with the RFP.
<b>Proposer</b>	means a design-build entity that submits a Proposal in response to the RFP.

<b>Quality Assurance (QA)</b>	means those actions undertaken by personnel unrelated to production to ensure that the Design-Builder’s work meets established quality requirements. The broad term Quality Assurance applies to actions and responsibilities assigned to both NMDOT and the Design-Builder in different circumstances and may include audits, independent material testing, or the establishment of oversight quality processes.
<b>Quality Control (QC)</b>	means the total of all activities performed by Design-Builder, producer or manufacturer to ensure that a product meets the requirements of the Contract Documents. This includes design procedures and checking, materials handling and construction procedures, calibration and maintenance of equipment, shop drawing review, document control, production process control, and any inspection, sampling and testing done for these purposes. QC also includes documentation of QC efforts.
<b>Quality Control Independent Firm (QCIF)</b>	means an independent engineering/testing firm responsible for administering and managing the construction QC sampling and testing specified in the Design-Build Agreement. The QCIF firm cannot be owned or controlled by any Principal Participant or Subcontractor who is a Constructor, or an Affiliate of any of the foregoing. The Designer or a firm associated with or subsidiary to the Designer may serve as the QCIF, except any Designer who is a Principal Participant or any Designer (or subsidiary of a Designer) that is an Affiliate of any Principal Participant or construction Subcontractor cannot serve in the capacity of QCIF.
<b>Quality Manager (QM)</b>	means the individual employed by the Design-Builder that is responsible for the overall Quality Control program of the Design-Builder, including the quality of management, design, and construction.
<b>Quality Plan</b>	means the Design-Builder’s plan detailing its Quality Program for the Project.
<b>Quality Program</b>	means the overall quality program and associated activities including Department and Design-Builder QA, Design-Builder QC, the contractual quality requirements, and the Design-Builder’s Quality Plan.
<b>Respondent</b>	means a design-build entity submitting an SOQ in response to this RFQ.

<b>Short-List</b>	means the Respondents that have submitted a response to this RFQ and that the Department has determined, through evaluation of their responses to this RFQ, are the best qualified firms to complete the Project and will be invited to submit Proposals.
<b>Small business concern</b>	means a small business as defined in Section 3 of the United States Small Business Act (15 USC Section 632(a)) and relevant regulations promulgated pursuant thereto.
<b>Socially and economically disadvantaged individuals</b>	are presumed to include United States citizens (or lawfully admitted permanent residents) who are either women, Black Americans, Hispanic Americans, Native Americans (Indians, Eskimos, Aleuts or Native Hawaiians), Asian-Pacific Americans, Asian-Indian Americans and individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the United States Small Business Act, or certified as socially and economically disadvantaged by the Department pursuant to 49 CFR Part 26.
<b>State</b>	means the state of New Mexico.
<b>Statement of Qualifications (SOQ)</b>	means the information prepared and submitted by a Respondent in response to this RFQ.
<b>Subconsultant</b>	means a firm under contract with the Designer to perform a specified portion of the work for the Project.
<b>Subcontractor</b>	means a firm under contract with the Design-Builder to perform a specified portion of the work for the Project.
<b>Substantial Completion</b>	means the point at which the Project is complete such that it can be safely and effectively used by the public without further delays, disruption or impediments. The complete definition and all conditions thereto will be provided in the Design-Build Agreement.
<b>Tangible Net Worth</b>	The difference between the (i) the sum of paid-in capital stock plus preferred stock plus retained earnings, less (ii) the sum of treasury stock plus minority interest plus intangible assets, including goodwill, patents, and licenses, all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.
<b>Technical Provisions</b>	means the project's technical requirements.
<b>Verification Sampling and Testing</b>	means sampling and testing performed to validate the quality of the product. Verification Sampling and Testing will be statistically based and performed by a Department laboratory or a laboratory retained by the Department.



## 1.2. Department Contact

The Department has assigned a single Authorized Representative for all information concerning this procurement. The Authorized Representative is:

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

All communications regarding the procurement shall be directed to the Authorized Representative. Only written communications received from the Authorized Representative may be relied on throughout this procurement, subject to any limitations under the Contract Documents regarding reliance on certain materials provided. The Department is not responsible for oral communications or other communications that occur outside the communications protocol established by this RFQ.

## 1.3. Rules of Contact

As of the date of issuance of this RFQ, no Respondent or prospective Respondent shall contact any employee or representative of the Department concerning the Project, except for the Authorized Representative as specifically permitted in this RFQ.

This prohibition does not apply to discussions with the Department not related to the Project. However, Respondents are prohibited from any contact by any means whatsoever with the members of the Selection Committee identified in Section 5.5.

The following entities are considered “representatives” of the Department during this procurement and may not be contacted by any means whatsoever concerning the Project:

- WSP USA, Inc.
- Parametrix, Inc.
- T2 Utility Engineers
- Wood Environment & Infrastructure Solutions

In addition, Respondents or prospective Respondents are prohibited from contact with the following stakeholders concerning the Project:

- Utility owners
- Local jurisdictions and governments along the corridor
- Adjacent landowners

- Business owners in the vicinity of the Project

With respect to foregoing, the Department anticipates that the RFP will provide a revised communications protocol that allows certain contact during the Proposal phase. Permitted contact may include forums established for communications or certain one-on-one contacts with impacted utility owners. The RFP will contain the precise rules governing contact with any of the foregoing.

Further, no Respondent, or any constituent entity or personnel thereof may communicate with another Respondent or members thereof with regard to the Project. However, notwithstanding the foregoing, Respondents may communicate with Subcontractors or Subconsultants that have been identified as part of multiple Respondents (where membership on multiple Respondents is permissible under the terms of this RFQ), provided that Respondents establish a protocol to ensure that the prospective Subcontractor or Subconsultant will not impermissibly share information between Respondents or otherwise allow for collusion or the appearance thereof.

These rules of contact shall apply until the earliest of the following:

- Amendment to the rules of contact after the Short-List is announced;
- Amendment to the rules of contact or superseding of these rules, if any, in the RFP;
- The execution of the Design-Build Agreement and the expiration of any applicable protest period or resolution of any protest then pending; or
- Notification of cancellation of the procurement.

Any communication prohibited by these rules may be grounds for disqualification from further participation in the procurement. NMDOT may disqualify any participant for violation of these rules in its sole discretion.

## **1.4. Project Description**

### **a. Base Scope**

This Project is to improve a vital corridor in southeastern New Mexico. The base scope of the Project will include improvements to NM-31 from US 285 through the intersection of NM-128, including improvements to the NM-31 and NM-128 intersection.

Improvements will consist of expanding the existing 2-lane facility to 4 lanes, including construction of a new bridge and rehabilitation of the existing bridge at the Pecos River and potentially a new railroad crossing overpass bridge at the NM 31-128 intersection. Specifically, the Project may include:

- New roadway construction
- Roadway reconstruction and rehabilitation
- Bridge construction and rehabilitation

- Utility relocation

The estimated cost of the base scope is \$70-\$80 million.

**b. Optional Scope Additions**

In addition to the base scope, NMDOT is considering the option of adding three additional work items to the Project, consisting of the following:

- Option 1: Reconstruction of the existing three-lane section in the City of Jal (estimated cost: \$16-\$19 million).
- Option 2: Improvements to NM-128 from NM-31 through the Waste Isolation Pilot Project Road, including conversion to four lanes (estimated cost: \$40-\$45 million).
- Option 3: Site Specific Safety Improvements along the entire NM 31 and NM 128 corridors outside the areas in the base scope and options 1 and 2 (estimated cost: \$2-\$10 million).

The addition of any or all options is contingent on NMDOT's receipt of funding for these improvements. If funding is received and NMDOT elects to add any or all options prior to receipt of Proposals, NMDOT will either include it in the RFP at issuance or do so through an amendment to the RFP. NMDOT may also elect to defer these options until after execution of the Design-Build Agreement. The RFP and/or the Design-Build Agreement will contain the terms and conditions of payment and schedule adjustments if any or all options are added to the Project after execution of the Design-Build Agreement. NMDOT may elect, in its sole discretion, not to include any options as part of the Project. Respondents may be required to provide construction pricing of options 1-3 as part of their RFP price proposal. Additional details regarding this will be provided in the RFP.

**c. Additional Information**

A significant aspect of the Project will include utility relocations throughout the corridor. The Department is undertaking Level B Subsurface Utility Engineering ("SUE") to perform a preliminary identification of utilities throughout the Project location. The Department will provide these data to the Short-List with the RFP, and their use will be subject to the terms and conditions in the Design-Build Agreement.

Additionally, the Department is working with known utility owners in the corridor to develop the terms of a Master Utility Agreement that will govern utility work by the Design-Builder. The Department intends to enter all MUAs prior to release of the RFP. The Design-Builder will be responsible for using the preliminary utility information provided by the Department to prepare work orders for each utility that conflicts with the Project. The Department anticipates that it will establish procedures for Proposers to meet with affected utility owners during the preparation of the Proposal. Meeting with utility owners may consist of workshops and/or individual meetings with utility owners to gather information about utility conflicts that may exist within the Project boundaries.

## 1.5. Project Goals

The Department's goals for the Project are:

- A high quality, safe, environmentally responsible, durable, and maintainable Project;
- Minimum disruption to the local industries and traveling public during construction;
- Design-Build Agreement awarded and signed by September 2022; and
- Maximizing the value of the Design-Build delivery method.

## 1.6. Project Status

As of the date of issuance of this RFQ:

**Funding:** The Department anticipates that this Project will be funded with both federal and state funds. Accordingly, the Project will follow all required procedures for highway projects receiving federal assistance.

**Environmental:** The Department is preparing the necessary submissions to obtain environmental clearance for the Project, and at this time anticipates that the Project will qualify for categorical exclusions under the National Environmental Policy Act ("NEPA"). NMDOT, in coordination with FHWA, does not anticipate that the Enhanced Conceptual Engineering Design for the Project will have a significant effect on the human environment. However, as of the date of issuance of this RFQ, NMDOT has not finalized the environmental process for the Project and anticipates that it may not be complete until after issuance of the RFP. NMDOT will provide additional updates on the environmental status of the Project in the RFP and as necessary thereafter. NMDOT may not award the Design-Build Agreement unless and until the environmental NEPA process is final.

**ROW:** The Department will obtain all required ROW, including temporary construction permits, determined necessary for the Enhanced Conceptual Engineering Design. The RFP will identify the parcels of additional ROW that the Department will acquire and will contain a schedule of anticipated acquisition dates. The Department expects that the Design-Build Agreement will contain terms and conditions if the Design-Builder requests additional ROW (including additional TCPs) for convenience.

**Permits and Approvals:** The Department is determining the permits and approvals that may be required for the Project, including those that the Department may obtain and those that the Design-Builder will be required to obtain. Additional information will be provided in the RFP.

**Geotechnical:** The Department is undertaking preliminary geotechnical surveys and gathering other related information. Additional information will be provided in the RFP.

## 1.7. Project Schedule

The anticipated time for execution of the Design-Build Agreement is September 2022.

## 1.8. Project Website

This procurement will utilize a dedicated website (the “Project Website”) for the transfer and provision of information to interested Design-Builders. The Department will provide information to interested Design-Builders during the RFQ phase, as well as to Proposers during the RFP phase, through the Project Website. Respondents and Proposers are responsible for checking the Project Website regularly, and will be required to affirm in their SOQ, and Proposal, as applicable, that all information uploaded to the Project Website has been received.

All entities submitting an SOQ and Proposal will be required to register with the Department to receive notifications that information has been uploaded to the Project Website. During the RFP phase, the Department will establish a secure file transfer protocol to provide the RFP, addenda, and other information to the Shortlist.

To register, please send an e-mail to the Authorized Representative identified in Section 1.2 with the following information:

- Firm/Respondent name
- Contact name
- Contact e-mail

The Project Website is accessible through the following link:

[https://dot.state.nm.us/content/nmdot/en/RFP\\_Listings.html](https://dot.state.nm.us/content/nmdot/en/RFP_Listings.html).

## 1.9. Contract Type

The contract type for design and construction will be a design-build contract with a fixed-price lump sum, subject to adjustment only under specified circumstances in the Design-Build Agreement.

## 1.10. Role of the Department

In the context of the Project, the Department is responsible for:

- a. Providing the Enhanced Conceptual Engineering Design;
- b. The appropriate environmental clearances and mitigation based on the Enhanced Conceptual Engineering Design, except for those obligations specifically assigned to the Design-Builder;
- c. Overall program administration;

- d. Project financing;
- e. Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of the Short-List and selection of Design-Builder;
- f. Contract procurement and administration;
- g. Oversight and audit of design and construction, including Verification Sampling and Testing and Inspection;
- h. Independent Assurance;
- i. Geotechnical data included in the RFP, subject to the conditions specified in the Design-Build Agreement;
- j. Traffic Data, ESAL;
- k. Land acquisition for rights-of-way, permanent easements, and temporary construction permits necessary for the Enhanced Conceptual Engineering Design;
- l. Approval and acceptance of work and payment for work;
- m. Preparation of the Master Utility Agreements;
- n. Preliminary utility information identified in the RFP, subject to the conditions specified in the Design-Build Agreement; and
- o. Maintenance agreement(s).

At the Department's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this Section 1.10.

### **1.11. Design-Builder Responsibilities**

The Design-Builder will be responsible for:

- a. All work necessary to design and construct the Project;
- b. Certain public information roles to alert the public of traffic and construction;
- c. Coordination with Project stakeholders, other contractors, and utility owners;
- d. Design quality;
- e. Construction quality;
- f. Environmental mitigation efforts assigned to the Design-Builder;
- g. Environmental permitting efforts assigned to the Design-Builder;
- h. Obtaining governmental approvals for the Project;
- i. Preparation and implementation of a plan to manage traffic;
- j. Maintenance and protection of traffic;
- k. Maintaining access to adjacent facilities;
- l. Project safety and security;
- m. Preliminary and final engineering;
- n. Geotechnical investigations;
- o. ITS design and integration;
- p. Preparation of permitted design exceptions;
- q. Management and remediation of hazardous materials;
- r. Drainage and erosion control;
- s. Construction waste disposal;

- t. Obtaining and maintaining required clearances, licenses, and permits;
- u. Obtaining additional ROW or temporary construction permits desired for Design-Builder's convenience;
- v. Obtaining temporary work areas;
- w. Ancillary works;
- x. Material location, acquisition, permits, and transportation;
- y. Utility coordination and relocation, and protection of existing facilities;
- z. Compliance with the Master Utility Agreements;
- aa. Obtaining and complying with additional agreements with utility owners;
- bb. Site clearance and demolition; and
- cc. Such other responsibilities stated in the Contract Documents.

### **1.12. Quality Assurance/Quality Control**

The Design-Builder will be required to plan, implement, and provide a Quality Control (QC) program for its design and construction operations.

The Design Builder's QC program must follow the requirements of 23 CFR Part 637 and the Contract Documents. The Department will review the Design-Builder's program to ensure that it meets guidelines and minimum requirements. Department approval of the program will constitute Department concurrence that the program meets these criteria, but the Design-Builder shall maintain ownership of the program and shall be fully responsible for its execution.

The Department may establish and maintain its own quality assurance and/or an independent quality assurance organization to oversee and/or perform quality audits of the Design-Builder's management, design, construction, and maintenance activities, the Design-Builder's Quality Control procedures, Verification Sampling and Testing, and the quality of the final product.

### **1.13. Payment and Liquidated Damages and/or General Damages**

The Design-Build Agreement will establish the terms and conditions for payments to the Design-Builder. It is anticipated that payment will occur through monthly progress payments based on the progress of completed work. The Department anticipates that payments will be subject to retainage of 5% of the Contract Price, payable upon Final Acceptance of the Project. Retainage may be separated for design and construction work, such that retainage held for an element of the design work will be released when construction of the design element is completed.

The Design-Build Agreement will provide the terms and conditions of liquidated damages, including those due to the failure to meet certain contractual milestone or completion deadlines, unpermitted traffic restrictions, and the unpermitted removal or unavailability of Key Personnel.

#### **1.14. Governing Law**

The procurement process, including the RFQ and RFP, as well as the Project, will be governed by the laws of the State of New Mexico.

#### **1.15. Insurance, Bonding, Licensing, and Securities**

The Design-Builder shall provide specified insurance, including professional liability insurance covering design. Details of the insurance requirements will be provided in the RFP.

Each firm on the Short-List submitting a Proposal will be required to provide a proposal bond or other form of security acceptable to the Department. The selected Design-Builder will additionally be required to provide performance and payment bonds or other security acceptable to the Department. It is expected that the Design-Build Agreement will require the Design-Builder to furnish performance and payment bonds equal to 100% of the Contract Price. If NMDOT adds the optional scope additions after execution of the Design-Build Agreement, the Design-Builder will be required to furnish performance and payment bonds corresponding to the increase in the Contract Price. The amount of such bonds is anticipated to be approximately \$70,000,000 - \$150,000,000.

Prior to execution of the Design-Build Agreement, all Persons participating in this procurement and/or the Design-Build Agreement must obtain all licenses and permits and take all necessary steps to conduct business in the State of New Mexico consistent with the laws of the State of New Mexico.

Further, the Design-Builder shall be required to provide proof that all Principal Participants have jointly agreed to indemnify the Department as follows:

- Design-Builder shall defend, indemnify, and hold harmless the Department, acting through its agents, representatives and employees, from and against any and all claims and suits, liability, damages, losses or expenses, including attorney's fees and costs, to the extent that they arise out of or are in any way connected with any act or omission of the Design-Builder, its officers, employees or agents.
- Design-Builder agrees, at its own expense, and upon written request by the Department, to defend any suit, action or demand brought against the Department on any claim or demand related to the Project.

Additionally, if Design-Builder is organized as a partnership, consortium, or any other type of Joint Venture, each constituent entity therein must agree to be jointly and severally liable to the Department for all obligations of the Design-Builder.



## **1.16. Federal Requirements**

NMDOT anticipates that federal funds will be used to fund all or a portion of the Project. Therefore, the procurement documents and all agreements pertaining to the Project must conform to the requirements of applicable Federal law, regulations, policies, and executive orders. These include, but are not limited to, the following:

- Equal Employment Opportunity (Title VI of the Civil Rights Act of 1964, as amended)
- Disadvantaged Business Enterprises (DBE) (Title 49 C.F.R. Part 26, as amended)
- Small business requirements (15 U.S.C. §§ 631, et seq.)
- Buy America Requirements (23 U.S.C. § 313, 23 C.F.R. 635.410)
- Executive Order 11246
- Davis-Bacon Wage Rates

Additional details concerning applicable federal requirements will be specified in the RFP and the Design-Build Agreement.

## **1.17. Disadvantaged Business Enterprises**

NMDOT has established an overall goal for DBE participation on federal-aid contracts. NMDOT intends for the goal to be met with a combination of race-conscious and race neutral efforts. Race-conscious participation occurs where the Design-Builder uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

Accordingly, NMDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the regulations thereunder will affirmatively ensure that Disadvantaged Business Enterprises will be afforded full and fair opportunity to become engaged and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

An overall Project DBE goal, as well as sub-goals for different parts of the Project as deemed appropriate, will be set by NMDOT in the RFP. DBE sub-goals may be set for professional services and construction.

The Design-Builder will be required to meet the goals for both professional services and construction, as applicable, or demonstrate good faith efforts (as defined by applicable law) to do so. Proposers will be required to submit a DBE utilization plan in response to the RFP outlining how they plan to meet the Project's DBE goals. The plan must include how the Proposer plans to recruit, manage, provide oversight and monitoring, and report DBE utilization to NMDOT for the Project. The efficacy and quality of each Proposer's DBE utilization plan will be evaluated in the RFP process.

49 CFR Part 26.39 additionally requires that NMDOT's DBE Program include contracting requirements to facilitate participation by Small Business Concerns (SBCs). SBCs are for-profit businesses registered to do business in New Mexico and that meet the Small Business Administration size standards for average annual revenue criteria for its primary North American Industry Classification System code.

While the SBC component of the DBE Program does not require specific utilization goals on projects, NMDOT strongly encourages Proposers to utilize small businesses that are registered in New Mexico on their contracts, in addition to DBEs meeting the certification requirement.

### **1.18. Prevailing Wages**

Federal prevailing wages will apply to the Work. The applicable prevailing wages will be provided in the RFP and specified in the Design-Build Agreement.

### **1.19. On the Job Training (OJT) Policy and Participation Goals**

Contracts for Federal-aid projects are subject to Federal OJT participation provisions as set forth under FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts. The purpose of the OJT Program is to address the underrepresentation of minority, female, and veteran individuals in highway construction trades. The primary objective of the OJT Program is the training and upgrading of minorities, women, and veteran individuals on NMDOT federal-aid contracts through completion of a required number of levels and hours of training within a year and eventual achievement of journey-level status. In meeting its objectives, the OJT Program shall not be used to discriminate against any training applicant, regardless of whether or not they are a member of a minority group. By submitting an SOQ, Respondents acknowledge such requirements and commit to comply fully with the Design-Build program provisions and Federal OJT trainee participation goal.

***OJT Participation Goal:*** The Federal OJT participation goal for the Project is estimated to be comprised of a minimum number or range of total hours, a minimum number or range of trainees that must be employed on the Project, and a minimum number or range of trainees that must complete sufficient hours to achieve journey-level status. These requirements will be specified in the RFP and Design-Build Agreement.

Proposers will be required to submit an OJT plan in response to the RFP outlining how they plan to meet the project's OJT goals within the ranges. The plan must include how the Proposer intends to recruit, manage, provide oversight and monitoring, and track and report trainee progress and completion to NMDOT.

## 2. Procurement Process

### 2.1. Overall Procurement Process

This procurement will proceed in accordance with N.M.S.A. §§ 13-1-119.1 and 13-1-119.2. This procurement will consist of two steps: (1) an RFQ process that identifies a Short-List of Respondents determined by the Department to be most qualified to complete the Project; and (2) an RFP process in which the Short-List submits Proposals identifying such information as their approach to the Project and plan to manage the Project, among other information. Additional details of each step are identified below.

#### 2.1.1. RFQ Phase

The RFQ phase will proceed consistent with N.M.S.A. § 13-119.1(C)(1). The intent of the RFQ phase is to identify a Short-List of Respondents determined to be most qualified to complete the Project in accordance with the Department's goals.

SOQs submitted in response to this RFQ will first be reviewed for compliance with the pass/fail requirements. SOQs receiving a "pass" on all pass/fail requirements will then be reviewed based on qualitative evaluation factors. The Short-List of firms that will be invited to submit Proposals will be determined based on evaluation of the qualitative factors set forth herein. This RFQ sets out what is required during the RFQ phase of the procurement (see Section 4.0 for SOQ submittal requirements).

#### 2.1.2. RFP Phase

The RFP will provide further specific instructions on what to submit, the evaluation factors, the objectives and requirements for evaluation, and the evaluation rating guidelines for the RFP phase of the procurement. Evaluation factors for the RFP will include, but not be limited to:

- Pass/Fail;
- Legal;
- Financial;
- Completeness of Proposal;
- Quality;
- Technical approach;
- Management approach; and
- Price

Information to be submitted in the Proposals may include, but not be limited to:

- Legal documents demonstrating ability to enter the Design-Build Agreement with the Department;

- Financial information;
- Proposal Bond;
- Specified certificates and representations;
- Description of project management approach, including organizational structure, delegation of authority, schedule and budget controls, and quality management plan;
- Preliminary baseline Project schedule depicting the critical path methodology including all key decision-making processes;
- Technical approach including concepts for road and bridge construction, maintenance of traffic, pavement design and/or construction, drainage (temporary and permanent), community interaction, utility coordination and relocations, incident response, techniques proposed to accelerate critical work activities, avoidance of rework, and future maintenance;
- Specified design documents and conceptual diagrams and sketches; and
- Price proposal.

The RFP process will include the opportunity for Proposers to submit Alternative Technical Concepts (“ATCs”). Permitted ATCs will consist of proposed changes of equal or better quality to the Technical Provisions that a Proposer contends will enhance the Project and/or reduce the costs or time to complete the Project. ATCs will be permitted to allow Proposers to submit innovative concepts to the Department. Additional details of the ATC process will be included in the RFP.

The Department will score Proposals using a best value methodology, which accounts for a balance of technical and price factors. While price is an important factor in the RFP phase of the procurement, Proposers’ technical approach, management approach, and quality are also significant factors in determining the success of the Project.

The relative weights of technical and price in the best value proposal score will be specified in the RFP.

## 2.2. Procurement Schedule

Event	Date
Issuance of Letter of Interest	March 26, 2021
Response to Letter of Interest	May 7, 2021
Industry Forum	July 22, 2021
Release of RFQ	August 31, 2021
RFQ Questions Round 1 Due	September 15, 2021
Response to RFQ Questions Round 1	September 24, 2021
RFQ Questions Round 2 Due	October 8, 2021
Response to RFQ Questions Round 2	October 18, 2021
Final Date to Issue Addenda to RFQ	October 22, 2021
SOQ Due Date	October 29, 2021

Short-List announcement	December 2021
Draft RFP to Shortlist	March 2021
RFP Issue Date	April 2022
Proposal Due Date	July 2022
Announcement of presumptive Best Value Proposer	August 2022
Execution of Design-Build Agreement	September 2022

### 2.3. Stipend

NMDOT will pay a stipend to the responsible Proposers that submit a fully responsive but unsuccessful Proposal. The amount of the stipend is anticipated to be \$160,000 for only the base scope of work. The stipend may be adjusted if NMDOT adds one or more of the additional optional scope items or requires additional efforts associated with them in the RFP. Payment of the stipend will be conditioned on release by the Proposer of the rights to all work product to develop a Proposal and the provision of substantiation for the costs of Proposal preparation. Additional information about the stipend payment, including timing, will be provided in the RFP.

## 3. RFQ Process

### 3.1. RFQ Questions

Respondents may submit questions to the Department pertaining to the RFQ. Questions must be submitted via e-mail to the Authorized Representative by the deadlines in the Procurement Schedule. All questions must contain the following information, to the extent applicable, and shall be in the form provided in Form M, which Respondents shall submit in Microsoft Word format:

- RFQ Section Number or Form Number
- Question
- Department Response (to be added by NMDOT)

Respondents submitting a question that contains proprietary or other confidential information may identify the question as confidential. NMDOT will review questions marked confidential and if it concurs that the question contains confidential information, will not make the question or response public. If NMDOT disagrees that the question contains confidential information, NMDOT will notify the Respondent submitting the question and provide the option to withdraw the question, amend the question, or allow the question to remain submitted without confidentiality protection.

### 3.2. RFQ Amendments

The Department may amend the RFQ from time to time in its sole discretion. Any such amendments shall be incorporated into the RFQ through an addendum. The Department will upload addenda to the Project Website. Upon submission of an SOQ, Respondents will be required to affirm receipt of all issued addenda. The last day on which the Department may issue an addendum is stated in the Procurement Schedule.

### **3.3. Notification of Shortlist**

After review and consideration of SOQs received, the Department will notify all Respondents whether they have been named to the Short-List. Additionally, the Department will publicly announce the Respondents named to the Short-List. The date on which the Department anticipates providing notification and making the announcement is stated in the Procurement Schedule.

The Department anticipates that it will name no more than four Respondents to the Short-List.

### **3.4. Costs**

Except for the stipend provided in Section 2.3 and subject to the terms thereof, Respondents shall be responsible for all costs associated with participation in this procurement process, including but not limited to the preparation of SOQs and Proposals, submission of questions, participation in public forums or other meetings established pursuant to the procurement process, and any other efforts or costs arising from or related to this procurement.

Other than payment of the stipend to eligible Proposers provided in Section 2.3 and subject to the terms thereof, the Department assumes no liability whatsoever to any participant or possible participant in this procurement.

### **3.5. Ineligible Firms**

The Department retained the following Persons to assist in the preparation of technical specifications, Project scope of work, or consultation in the development of the qualifications and evaluation criteria for the SOQs and Proposals:

- WSP USA, Inc.
- Parametrix, Inc.

Pursuant to the New Mexico Government Conduct Act, Prohibited Bidding Statute (§ 10-16-13 NMSA), these Persons are ineligible to submit SOQs and Proposals or participate on any Design-Build team.

In addition, the following Persons directly and substantially participated in development of the preliminary engineering design incorporated into the procurement solicitation for the Project, potentially providing such Persons with an unfair competitive advantage in the Project procurement process:

- a) T2 Utility Engineers
- b) Wood Environment & Infrastructure Solutions

Pursuant to 23 CFR 636.116 and New Mexico state law, these Persons are not eligible to participate in this procurement on any Design-Build team in any capacity. The Department made this

determination in accordance the federal regulations and consistent with New Mexico law governing the integrity of the procurement process. If any firm listed above desires reconsideration of this determination of its ineligibility, a request for an exception may be made in writing to the Department.

In the Department’s discretion, exceptions may be granted on the grounds provided in the Project-specific conflict of interest policy included with this RFQ as Appendix B. The Department’s reconsideration determination will be in writing.

### **3.6. Organizational Conflict of Interest**

The Department’s procurement of this Design-Build Project is governed by the New Mexico Governmental Conduct Act, the New Mexico Procurement Code, and in accordance with relevant federal regulations, including Title 23 Code of Federal Regulations Part 636, “Design Build Contracting.”

Pursuant to these laws and regulations, the Department will not award the Design-Build Agreement to a Proposer found to have impaired objectivity or an unfair competitive advantage due to any interest of the Proposer or the Proposer’s Design-Build team that creates an actual conflict or potential conflict with the proposed contract. The Department believes that previous participation in the development of the Project or otherwise with the Department may create an impermissible organizational conflict or potential conflict. The Department’s conflict of interest policy is included with this RFQ as Appendix B.

In accordance with 23 CFR 636.116(a)(2), all Respondents and Proposers are required to provide information concerning potential organizational conflicts of interest in their SOQs and Proposals, as applicable. The apparent successful Proposer must disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest. Such firms must state how their interests, or those of their Affiliates, chief executives, directors, Key Personnel, or any proposed consultant, contractor or Subcontractor may result, or could be viewed as, an organizational conflict of interest. The information must be submitted in Section 8 of the SOQ and may be submitted in the form of a signed disclosure statement or a certification.

The Department will review the information submitted and make a written determination of whether the Respondent and/or Proposer’s interests create an actual or apparent organizational conflict of interest. The Department may award the Design-Build Agreement to an apparent successful Proposer where an organizational conflict of interest is determined to exist, provided that the Department determines that the conflict can be avoided, neutralized or mitigated.

If after award of the Design-Build Agreement, an organizational conflict of interest is discovered, the Design-Builder must make an immediate and full written disclosure to the Department, including a description of the action taken to avoid, neutralize or mitigate the conflict. If it is determined that the Design-Builder was aware, or should have been aware, of an organizational conflict of interest prior to award of the Design-Build Agreement and did not disclose the conflict

to the Department, the Department may terminate the contract for default and/or exercise any other remedies available.

### **3.7. Project Information Workshop**

A project information workshop was held on July 22, 2021. Additional workshops and/or forums may be established at the Department's discretion.

## **4. SOQ Submittal Requirements**

### **4.1. Rules Applicable to SOQ Submittal**

- a. Only prospective Respondents (Design-Build teams comprised of Principal Participants, Constructors, Designers, Subconsultants, and Subcontractors) who are capable of completing this Project in its entirety may submit SOQs. Respondents must be comprised of an entire design-build team that is capable of completing the Project. Individual firms without the capacity to operate as a design-build organization cannot submit an SOQ on their own behalf;
- b. In its SOQ, Respondents must identify, in the Cover Letter required in Section 4.4.1, at a minimum:
  - i. All Principal Participants (accounting for 100% of the equity interest in the Respondent);
  - ii. The Designer (including whether it is a Principal Participant);
  - iii. Any Subconsultant performing 20% or more of the design;
  - iv. Any Subcontractor performing 20% or more of the construction; and
  - v. The QCIF.
- c. If a firm is a Designer (as defined in this RFQ, or any Affiliate thereof) on one Design-Build team, it may not serve in any capacity on any other Design-Build team. Any Principal Participant, Designer or Subconsultant performing more than 20% of the design may only be on one (1) Respondent's team;
- d. Subcontractors performing more than 20% of the construction (or any Affiliate thereof) may only be on one (1) Respondent's team. This limitation does not apply to an entity acting in its capacity as a materials supplier. Therefore, an entity can be a Subcontractor performing greater than 20% of the construction on one (1) Respondent's team while providing pricing for the supply of materials only to other Respondents;
- e. For purposes of determining the 20% threshold for design Subconsultants or Subcontractors described in Sections 4.1(c) and (d), the Principal Participant(s) shall bear the burden of determining whether the threshold is met based on a good faith estimate of the value of anticipated work over the duration of the Project;



- f. Any violation of the limitations in Sections 4.1(c)-(d) may result in disqualification of all proposing Design-Build teams where the “duplicate” firms (or Affiliates) appear;
- g. It is the desire of the Department that Respondent organizations, including Principal Participants, Designers, Subconsultants, Subcontractors, and the QCIF, established for the SOQ assessment remain intact for the duration of the procurement process and through completion of the Project. A Respondent may propose substitutions for participants required to be identified as stated in Section 4.1(b) after the SOQ submittal; however, such changes will require written approval by the Department. Requests for changes must be made in writing no later than thirty (30) calendar days prior to the due date for submittal of Proposals. Approval of requests for changes in any of the entities required to be identified by Section 4.1(b) will not be automatic and will only be approved if it is determined by the Department that the change does not decrease the technical, financial, organization, personnel, safety capabilities, management, and other pertinent qualifications of the Respondent’s organization. A Respondent may add other Subcontractors and Subconsultants with written Department approval or as provided in the Design-Build Agreement;
- h. Pursuant to N.M.S.A. 1978, Section 10-16-13 (2003 Repl.), the Department will not accept an SOQ from a Person listed in Section 3.5;
- i. Prohibited Interests: Unless allowed by N.M.S.A. 1978, 10-16-18 (2003 Repl.), no former public officer and/or employee shall have any personal interest, direct or indirect, in this solicitation or any contract executed subsequently, or the proceeds thereof;
- j. Notice of Criminal and Civil Penalties: Respondents are advised that the New Mexico State Procurement Code, N.M.S.A. 1978, 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs; and
- k. Confidentiality of Records: Respondents may be given access to records, which are confidential under state laws, solely for the purpose of performing the required services under the Design-Build Agreement. Respondents shall be required to sign a nondisclosure statement prior to receipt of such documents obligating each employee, agent, Designer, Subconsultant, or Subcontractor of a Respondent not to make inappropriate use of or improperly disclose any of the contents of such documents.

#### **4.2. Date and Time of Receipt**

**Statements of Qualifications must be received no later than 2:00 PM (Mountain Time) on October 29, 2021.**

**SOQs received after this deadline will not be accepted.**

SOQs shall be submitted to NMDOT electronically in compliance with this Section 4.2. SOQs submitted by hard copy, by facsimile, or email will not be accepted.

Electronic SOQs must be submitted through Bid Express, which may be accessed at the following website: [www.bidexpress.com](http://www.bidexpress.com). Respondents must register prior to the submission deadline and create an account and a digital id with Bid Express to submit SOQs electronically. Electronic SOQs must be in a searchable PDF format to be submitted through Bid Express and are limited to 10MB.

A public log will be kept of the names of all Respondent organizations that submitted SOQs. Pursuant to NMSA 1978, § 13-1-116, the contents of SOQs shall not be disclosed prior to execution of the Design-Build Agreement and in accordance with the Inspection of Public Records Act.

### 4.3. Page Limit, Format, and Quantities

The Respondent shall organize its SOQ as follows. SOQs must contain tabs separating the information provided into the sections shown in the table below. The information that must be contained in each section, in addition to the page limit (if any) for each section, is contained in the table below and is further described in Section 4.4.

Section Number	Content	Required Submissions/ Page Limits
1	Section 4.4.1 – Cover Letter and Acknowledgement	<ul style="list-style-type: none"> <li>• Cover Letter: 2 pages</li> <li>• Form A</li> </ul>
2	Section 4.4.2.1 - Legal	<ul style="list-style-type: none"> <li>• Form B</li> <li>• Copy of Respondent formation agreement or material terms</li> <li>• Narrative Information: No page limit</li> <li>• Form C</li> <li>• Form D</li> </ul>
3	Section 4.4.2.2 – Financial (no page limits)	<ul style="list-style-type: none"> <li>• Financial Statements</li> <li>• Bank/Surety/Insurance letter</li> <li>• Credit Ratings</li> <li>• Material Changes in Financial Condition</li> </ul>
4	Section 4.4.2.3 – Experience of Firm	<ul style="list-style-type: none"> <li>• Form E</li> <li>• Form F</li> <li>• Form G</li> <li>• Form H</li> </ul>
5	Section 4.4.2.4 – Key Personnel	<ul style="list-style-type: none"> <li>• Form I</li> <li>• Key Personnel Resumes: 2 pages each</li> </ul>

Section Number	Content	Required Submissions/ Page Limits
6	Section 4.4.2.5 – Organization	<ul style="list-style-type: none"> <li>• Form J</li> <li>• Organizational Chart and description of relationship: 3 pages</li> <li>• Narrative description of quality organization and approach: 5 pages</li> </ul>
7	Section 4.4.2.6 – Project Understanding	<ul style="list-style-type: none"> <li>• Narrative: 12 pages</li> </ul>
8	Section 4.4.2.7 – Additional Forms	<ul style="list-style-type: none"> <li>• Conflict of Interest information</li> <li>• Form K</li> <li>• Form L</li> </ul>

Upload one (1) searchable .pdf copy of the SOQ in accordance with the instructions in Section 4.2. The document must be organized to correspond with the outline in this Section 4.3 and use “bookmarks” to separate the sections. Each SOQ must be named as follows: “[Respondent Name], [NM 31-128 SOQ], [Date].” If Respondent’s SOQ is larger than the file size that can be uploaded to the portal, Respondent must label each file, after the date ([File # X of X]; for example, “1 of 2”). All signatures required must be added using a program that applies electronic signatures.

SOQs must have a font size of greater than or equal to 10-point in a standard font, except that font size accompanying graphics must be greater than or equal to 8-point. Up to 2 pages in section 4.4.2.5 – Organization and also in section 4.4.2.6 – Project Understanding may be 11” x 17”; all remaining pages must be standard 8.5” x 11”. Margins must be at least ½”.

**4.4. Content of SOQ**

This section describes the specific information that must be included in the SOQ. An outline of the required format for the SOQ is provided in Section 4.3. Required forms for the SOQ are contained in Appendix A. Any modification to the forms may result in the SOQ being declared non-responsive.

Respondents should provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in Section 5.2. Lengthy narratives containing extraneous information are discouraged.

All materials submitted in response to this RFQ will become property of the State and will become public record after the evaluation process is completed and the Design-Build Agreement is awarded. If the Respondent submits information in an SOQ or a Proposal that it believes to be proprietary information exempt from disclosure to the public, the Respondent must:

- a. Clearly mark all proprietary information in its response at the time the response is submitted;

- b. Include a statement with its response justifying the trade secret designation for each item; and
- c. Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to the RFQ, the Respondent agrees that this indemnification survives as long as the proprietary information is in possession of the State.

The State will not consider the prices submitted by Proposers during the RFP phase to be proprietary information. Respondents are informed, unless otherwise provided by law, that proprietary information provided to the Department is not subject to inspection by third persons under the Inspection of Public Records Act, NMSA 1978, Section 14-2-1, et seq.

#### **4.4.1. Cover Letter**

The Respondent shall provide a cover letter indicating its desire to be considered for the Project and stating the official names and roles of all Principal Participants and the Designer, QCIF, Subconsultants, and Subcontractors required to be identified by Section 4.1(b), in addition to other team members Respondent chooses to identify. In the cover letter, the Respondent shall identify a single point of contact for the Respondent and the e-mail address, physical address, and telephone number where questions may be directed. The letter shall be signed by authorized representatives of the Respondent's organization.

If the Respondent is not yet a legal entity or is a Joint Venture or partnership, the letter shall be signed by authorized representatives of all Principal Participants.

Respondent shall attach the Acknowledgment Form (Form A) acknowledging receipt of the RFQ and any addenda and/or responses to questions issued by the Department.

#### **4.4.2. Evaluation Objectives and Requirements**

The following objectives and submittal requirements are the key to the evaluation factors of the procurement process. An objective is stated for each category to provide Respondents the minimum expectations of the Department. The requirements for each category and the information to be submitted are listed and described in detail. In providing the SOQ, Respondents should be guided by the Project goals in Section 1.5 and the objectives listed in Sections 4.4.2.1 through 4.4.2.7.

The SOQ evaluation ratings of Section 5.2.2 will be based on how well the SOQ responds to the requirements and meets or exceeds the Project goals and the objectives of each of the evaluation factors.

#### 4.4.2.1. Legal

Objective: To identify Respondents that are duly organized and do not present a material risk of the inability to complete the Project in line with the Department's goals.

##### Legal Structure

- a) Using Form B, identify Respondent's legal name or proposed legal name and Respondent's proposed legal structure and state of organization. Provide the legal structure and state of organization for each Principal Participant and the Designer, and the % of equity interest of each Principal Participant (and Designer, if applicable). Identify the QCIF.
- b) If Respondent is a consortium, partnership or any form of Joint Venture, provide a copy of the agreement between the constituent entities. If such agreement has not been executed, provide a copy of the anticipated key terms of the agreement. The agreement or the key terms must include, at a minimum, the percentages of ownership of each constituent entity, roles of the various entities, a stated commitment to execute an agreement prior to submission of a Proposal, and the provisions concerning joint and several liability stated in part (c) below.
- c) If the Respondent is a Joint Venture, consortium, or any type of limited liability entity, each constituent entity of the Respondent must agree to be jointly and severally liable for the Respondent's obligations with respect to the procurement and the Project.

##### Legal History

- a) Identify any legal issues that must be resolved by Respondent, any Principal Participant or the Designer to permit Respondent to carry out its obligations if awarded the Design-Build Agreement. If there are no such legal issues, affirmatively state that there are none. This information is to be provided as a narrative explanation.
- b) Using Form C, provide a list of all litigation, arbitration, mediation, dispute review board or other alternative dispute resolution proceedings, each involving amounts in excess of \$250,000 and related to performance in which any Principal Participant, Designer or other firms meeting criteria in Section 4.1(b) has been involved during the past 5 years. Include all proceedings by project owners. State whether each proceeding was resolved against the participant(s) or its insurers/sureties or resulted in reduction in compensation to the participant. Indicate any unresolved, outstanding proceedings.
- c) Liquidated Damages. Using Form C: Describe any assessment of liquidated damages against any Principal Participant over the past 5 years. Describe the causes/reasons for the assessment and the amounts assessed. Describe any outstanding damage claims by or damages due and owing to any owner/agency;

- d) Termination for Cause. Using Form C: Describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Designer or other firm meeting criteria listed in Section 4.1(b) over the past 5 years that has been terminated for cause, or which required completion by another party. Describe the reasons for termination and the amounts involved, and claims lost or won;
- e) Disciplinary Action. Using Form C: Explain any disciplinary action taken against any Principal Participant, Designer or other firm meeting the criteria in Section 4.1(b) within the past 5 years, including suspension from the right to propose/bid or removal from any offeror/bid list.
- f) Provide Form D for each Principal Participant and the Designer.

Where identified in Form C, provide the name of the Project and contact information for the owner's representative.

#### **4.4.2.2. Financial**

Objective: To identify Respondents with demonstrated capability to undertake the financial responsibilities associated with the Project, including bonding.

Requirements and information to be submitted:

- a) Financial Statements: Financial statements for the Principal Participant(s) for the three most recently completed fiscal years shall be provided.

Financial Statements must include:

- Opinion Letter (Auditor's Report)
- Balance Sheet
- Income Statement
- Statement of Changes in Cash Flow; and
- Footnotes

In addition, financial statements must meet the following requirements:

- i. GAAP or IFRS Compliant

Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant identifying and discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

ii. U.S. Dollars

Financial statements shall be provided in U.S. dollars, if available. If financial statements are not available in U.S. dollars, the Respondent must include summaries of the income statements, statements of cash flow, and balance sheets for the applicable time periods converted to U.S. dollars, within one month of the SOQ due date, by a certified public accountant.

iii. Audited

Financial statements must be audited by an independent party qualified to render audit opinions (e.g., a certified public accountant). If audited financials are not available for an entity, the SOQ shall include unaudited financial statements for such entity, certified as true, correct, and accurate by the chief executive officer, chief financial officer, or treasurer (or by such equivalent position or role) of the entity.

iv. English

Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be provided with the original financial statement information.

v. SEC Filings

If the Respondent or any other entity for whom financial information is submitted in the SOQ files reports with the Securities and Exchange Commission, then such financial statements shall be provided by including the entity's most recent Form 10-K. For all subsequent quarters, provide a copy of any report filed on Form 10-Q or Form 8-K that has been filed since the latest filed 10-K.

- b) Provide a letter from a bank, surety or insurance company stating that the Respondent is capable of obtaining (i) Proposal security and (ii) Performance and Payment Bonds in the amount of \$150,000,000. The surety or insurance company submitting such letter must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be on the list of companies approved by the State of New Mexico. The letter should recognize the firm's backlog and work-in-progress in relation to its bonding capacity. Letters indicating "unlimited" bonding/security capability are not acceptable.
- c) Credit Ratings: For each Principal Participant that has a credit rating, Respondent shall provide all current credit ratings for such Principal Participant(s).

d) Material Changes in Financial Condition:

Respondent shall provide information regarding any material changes in financial condition to each Principal Participant, and, if applicable, each Guarantor for the past three fiscal years and anticipated for the next fiscal year. In each case, if any of the foregoing entities is a consortium, partnership, or any form of Joint Venture, Respondent shall provide this information for all members. If no material change has occurred and none is pending, each of these entities shall provide a letter from their respective chief executive officer, chief financial officer, or treasurer (or equivalent position or role) so certifying.

In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the factors underlying the change will continue during the period of performance of the Project, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses, and the change in equity shall be provided separately for each material change certified by the chief executive officer, chief financial officer, or treasurer (or equivalent position or role). References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.

Where a material change will have a negative financial impact, the affected entity shall additionally provide a discussion of measures that it will undertake to insulate the Project from such negative material changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a representative list of events intended to provide examples of what NMDOT considers a material change in financial condition. This list is intended to be indicative only, and is not exhaustive.

List of Representative Material Changes:

- i. An event of default or bankruptcy involving the affected entity, or an entity directly or indirectly controlling of the affected entity;
- ii. A change in Tangible Net Worth of 10% or more of shareholder equity;
- iii. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition that in any way involves the



affected entity or an entity directly or indirectly controlling the affected entity;

- iv. A downgrade in credit rating for the affected entity or an entity directly or indirectly controlling the affected entity;
- v. Non-payment of any debt service when due;
- vi. Inability to meet material conditions of loan or debt covenants by the affected entity or an entity directly or indirectly controlling the affected entity, which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- vii. In the current and three most recently completed fiscal years, the affected entity or an entity directly or indirectly controlling the affected entity either:
  - (i) incurs a net operating loss;
  - (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or
  - (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity; or
- viii. Other events known to the affected entity that represent a material change in financial condition over the past three fiscal years or may be pending for the next fiscal year.

At the sole discretion of NMDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process.

- e) Guarantor: NMDOT may, in its discretion and based upon the review of the financial information provided, specify that an acceptable Guarantor is required as a condition of shortlisting. If NMDOT requires a Guarantor as a condition of shortlisting, NMDOT will require Respondent to provide the Guarantor's financial statements for the preceding three (3) years by a time specified in NMDOT's notice to Respondent that a Guarantor is required. If a Guarantor is required or the financial statements of a Guarantor are submitted, Respondent must still comply with all other requirements in the RFQ for the submission of financial information. NMDOT reserves the right to review a proposed Guarantor's financial capacity and reject the proposed Guarantor if there is a material risk that it would be unable to fulfill its obligations.

#### 4.4.2.3. Experience of Firm

##### Objectives:

- a) To identify the best design and construction firms available with demonstrated experience, expertise, and capacity in work of the nature included in the Project with a record of producing quality work;
- b) To identify Respondents that have the experience in successfully managing, designing, and constructing projects of the size and complexity of this Project;
- c) To identify Respondents with superior records of completing contracts on time and within budget;
- d) To identify Respondents that have experience in successfully managing the maintenance of traffic and community interaction aspects of this Project;
- e) To identify Respondents with excellent safety records;
- f) To obtain the commitment of Respondent, Principal Participants, and Designer regarding representations made in the SOQ; and
- g) To identify Respondents with a record of maximizing DBE participation.

##### Requirements and information to be submitted:

- a) Firm Experience: Using Form E, Project Description, provide at least 2 projects, but no more than 3 projects, for each Principal Participant and the Designer. Additionally, provide relevant project experience (no more than 2 projects each) from the QCIF and other team members meeting the criteria listed in Section 4.1(b). All project descriptions should highlight experience in the last 10 years relevant to the Project. Describe those projects having a scope comparable to that anticipated for the Project. If present, identify the requirements of those projects for maintenance of traffic and utility relocations. **The descriptions must include projects demonstrating that the Respondent meets the minimum required experience stated in Section 5.2.1(3);**
- b) Using Form F, Past Performance, list awards, citations, and/or commendations for performance relevant to this Project received by any Principal Participant, Designer, and/or other firms meeting criteria of Section 4.1(b) within the last 10 years. Describe the work for which award(s), citation(s) and/or commendation(s) were received;
- c) Safety: Submit Form G, Safety Questionnaire, for each Principal Participant and Construction Subcontractor meeting criteria listed in Section 4.1(b); and

- d) DBE Participation: Submit Form H, Record of DBE Participation, for each Principal Participant that is a Constructor reflecting the record of DBE participation in their contracts for the past four (4) years.

**4.4.2.4. Key Personnel**

Objective: To identify qualified individuals who lead the Project on behalf of the Design-Builder.

Respondent shall identify the following Key Personnel with the following minimum qualifications:

<b>Key Personnel</b>	<b>Minimum Qualifications*</b>
Project Manager	a) 10 years managing the delivery of highway projects b) 2 years of design-build project management of highways  The Project Manager is responsible for managing the Project on behalf of Design-Builder, and is responsible for overall design, construction, quality, and contract management. The Project Manager and Construction Manager roles may be filled by the same person, provided that the identified person meets the criteria for both positions.
Construction Manager	a) 10 years managing construction of highway projects b) 2 years managing design-build construction of highway projects  The Construction Manager is responsible for coordinating and overseeing all aspects of construction work. The Project Manager and Construction Manager roles may be filled by the same person, provided that the identified person meets the criteria for both positions.
Design Manager	a) 10 years managing design of highway projects b) 2 years managing design-build design of highway projects  The Design Manager must be a licensed Professional Engineer in New Mexico at the time of execution of the Design-Build Agreement.  The Design Manager is responsible for coordinating all aspects of the design, including coordinating between the design disciplines. The Design Manager will be responsible for ensuring that the overall Project design is completed in accordance with the Design-Build Agreement. The Design Manager must be an employee of the Designer.

Key Personnel	Minimum Qualifications*
MOT Manager	<ul style="list-style-type: none"> <li>a) 10 years managing MOT of highway projects</li> <li>b) 2 years of design-build highway projects</li> </ul> <p>The MOT Manager is responsible for overseeing MOT during construction. Responsibilities include evaluation of Design-Builder’s sequencing, designs, traffic plans, staffing, safety, notifications, and other functions related to MOT.</p>
Utilities Manager	<ul style="list-style-type: none"> <li>a) 10 years managing utility relocation and coordination for highway projects</li> <li>b) 2 years of design-build highway projects</li> </ul> <p>The Utilities Manager is responsible for coordinating all utility relocations and implementing the terms of the Master Utility Agreement. Responsibilities additionally include management and resolution of utility conflicts.</p>
Quality Manager	<ul style="list-style-type: none"> <li>a) 10 years managing and coordinating quality management programs for highway projects</li> <li>b) 2 years managing quality of design-build highway projects</li> </ul> <p>The Quality Manager must be a licensed Professional Engineer in New Mexico at the time of execution of the Design-Build Agreement. The Quality Manager must work directly for the Design-Builder under the direct supervision of an executive officer above the level of and under a line of authority independent of the Project Manager. The individual must have the ability to stop design or construction at any time and in the individual’s sole discretion.</p> <p>The Quality Manager is responsible establishing and implementing the Design-Builder’s Quality Program for design and construction.</p>

Key Personnel	Minimum Qualifications*
Environmental Compliance Manager	<p>a) 10 years on similar highway projects  b) 2 years managing environmental compliance activities and permitting for highway projects</p> <p>The Environmental Compliance Manager will be responsible for coordinating the environmental permitting requirements for the Design-Builder and ensuring that issues are resolved before and during construction work.</p>

*\*For purposes of calculating the years of experience of all Key Personnel, there is no limitation on the timing of those years. For example, the Project Manager’s required 10 years of delivering highway projects is not limited to projects completed in the last 10 years; rather, it can be from any projects completed over the course of the proposed Project Manager’s career.*

Respondent shall complete Form I with the required information for each Key Personnel position. In addition, Respondents shall affirm, using Form I, that each Key Personnel will commit the time during the design and construction phases of the Project necessary to fulfill the responsibilities of each position.

In addition to the information provided with Form I, Respondent shall submit a resume for each identified Key Personnel. Each resume shall not exceed 2 pages and shall highlight the following information, considering the evaluation factors for Key Personnel contained in Section 5.2.2(b):

- Proposed role on Project and experience in area of responsibility;
- History of employment with participant;
- Experience in the management, design, and/or construction of projects, especially any Design-Build projects with a scope similar to the Project;

Respondents may not substitute identified Key Personnel without the Department’s written consent. If a Respondent requests substitution of a Key Personnel position at any time prior to execution of the Design-Build Agreement, Respondent shall submit a request in writing. Such request must identify a substitute that meets the minimum qualifications stated in the table above and Respondent must affirm that the individual will meet the required time commitment for the Project. The Department may re-assess the qualifications of the Respondent or Proposer and determine whether the substitution affects eligibility to be named to the Short-List or to submit a Proposal. Substitutions of Key Personnel after execution of the Design-Build Agreement will be subject to the terms therein, and in certain circumstances, may be subject to the assessment of liquidated damages.

#### **4.4.2.5. Organization and Quality Management**

##### Objectives:

- a) To identify Respondents who will effectively manage all aspects of the Design-Build Agreement in a quality, timely, and effective manner; and
- b) To identify Respondents that have the technical and management experience and expertise to plan, organize, execute the design and construction, and assure the quality and safety of the Project.

##### Requirements and information to be submitted:

- a) Using Form J, Subcontractor Information, except for designated Designer and QCIF (who have already been included in Forms B and E), identify Subcontractors and Subconsultants the Respondent plans to use, to the extent they are known, including those required to be identified by Section 4.1(b). Submit maximum one (1) page summary of experience for each listed Subcontractor or Subconsultant;
- b) Provide an organizational chart identifying participating firms responsible for major functions to be performed in designing, constructing, and providing construction quality control and assurance services for the Respondent's organization. All Principal Participants, the Designer, QCIF, and known Subcontractors and Subconsultants must be identified on the chart. Provide a brief description of the significant functional relationships among these firms. The critical support elements of Project Management, Project/Contract Administration, Construction Management, Design Management, and Quality Control shall be identified; and
- c) Describe the critical aspects of Respondent's quality organization, including Respondent's approach to quality control for both design and construction. Explain how Respondent's proposed organization facilitates its Quality Program, and how Respondent's quality experience demonstrates its capability to complete a quality project.

#### **4.4.2.6. Project Understanding**

##### Objectives:

- a) To identify Respondents demonstrating an understanding of the management, technical, utility, and maintenance of traffic issues and risks associated with the Project; and
- b) To identify Respondents demonstrating an understanding of how the Design-Build process and the Design-Build team organization will contribute to the success of the Project and meeting the Department Project goals.

Requirements and Information to be submitted:

- a) Describe Respondent's understanding of the Project, the Department's goals, and the Respondent's preliminary approach to completing the Project on time and within budget;
- b) Describe how Respondent's identified experience demonstrates its ability to complete the Project in line with the Department's goals;
- c) Describe preliminary major risks and challenges associated with the Project and how the Respondent would plan to mitigate those risks and overcome those challenges;
- d) Describe Respondent's understanding of the Project's significant technical challenges, approach to their resolution, and how Respondent's experience demonstrates its capability to achieve such resolution;
- e) Describe Respondent's approach to maintenance of traffic and utility coordination for the Project, and how Respondent's experience with these critical issues will contribute to their successful implementation; and
- f) Briefly describe how the Respondent will use its organization and the Design-Build process (including ATCs) to ensure a successful, innovative Project, considering the Department's Project goals listed in Section 1.5.

#### **4.4.2.7. Conflicts of Interest and Additional Forms**

Respondent shall provide the following:

- a) Conflict of Interest information (See Section 3.6);
- b) Affidavit of Non-Collusion (Form K); and
- c) Lobbying Certificate (Form L).

### **5. Evaluation Process for the RFQ**

This Section 5 describes the evaluation factors for the RFQ phase of the procurement. The anticipated evaluation factors for the RFP phase of the procurement are listed in Section 2.1.2.

#### **5.1. Review and Evaluation of SOQs**

The Department will review SOQs in accordance with the Pass/Fail criteria and qualitative evaluation factors identified below. SOQs must receive a "Pass" on each of the "Pass/Fail" criteria to advance to the qualitative review factors.

## 5.2. Evaluation Factors

### 5.2.1. Pass/Fail Factors

The pass/fail review will evaluate the minimum required qualifications that the Department has deemed necessary to complete the Project. The pass/fail evaluation factors are:

1. **SOQ completeness:** All information requested in this RFQ has been provided in the format specified in Section 4.3 and is within any stated page limitations.
2. **SOQ Responsiveness:** The SOQ is responsive to the requirements of this RFQ.
3. **Experience:**
  - a) **Principal Participants:** To meet the minimum required experience, in the ten (10) years preceding the date of issuance of this RFQ, Respondent (or at least one or more of its Principal Participants that are Constructors) must have completed no fewer than two (2) projects, each of such projects meeting the following criteria:
    - i. New construction, rehabilitation, and/or improvement of a highway with a construction value of no less than \$50 million.

*\*For purposes of the foregoing requirement, “complete” means that the project has reached Substantial Completion, evidenced by the owner’s issuance of a Notice or Certificate of Substantial Completion or its substantive equivalent under the contract for the qualifying project. Further, to meet the requirement, either Respondent as a whole, or one or more of its Principal Participants must have completed a total of at least two projects meeting the minimum size requirement. For example, if Respondent has three Principal Participants that are Constructors, (a) if one such Principal Participant has completed two (or more) projects meeting the foregoing requirement, or (b) two separate Principal Participants have each completed at least one (or more) past projects meeting the foregoing requirements, then the Respondent meets the requirements of this section.*

- b) **Designer:** To meet the minimum required experience, in the ten (10) years preceding the date of issuance of this RFQ, the Designer must have completed the design of no fewer than two (2) projects, each of which meeting the following criteria:
    - i. The design of a new construction, rehabilitation, and/or improvement of a highway with a construction value of no less than \$50 million.

*\*For purposes of the foregoing requirement, “complete” means that the design of the project is complete, such that no further original design submittals are required to complete the design of the project. The design work is considered complete even if the*



*Designer is finalizing previously submitted designs, such as to make design changes, and/or is still performing ancillary design-related services during construction. Additionally, for purposes of measuring the construction value, Respondents may use the aggregate construction value of a single project, even if the construction contracts for the project were individually less than \$50 million. For example, if the proposed Designer completed final design work for a construction project where the owner completed the construction work through two separate construction contracts, each worth \$30 million, the design experience would meet the requirements for one of the representative projects of this Section 5.2.1(3)(b).*

**4. Legal:**

- a) The Respondent has presented evidence showing it has the proper organization to enter into and perform the Design-Build Agreement to design and build the Project;
- b) None of the Respondent, any Principal Participant, the Designer, or other firm meeting the criteria in Section 4.1(b), is currently disqualified, removed, debarred, or suspended from performing or bidding on work for the federal government, or the state or local government of or within any U.S. state or territory;
- c) The Respondent's organizational documents commit all Principal Participants to be jointly and severally liable for the obligations of the Respondent entity;
- d) Respondent does not indicate a material risk that the Respondent may be unable to undertake the Project;
- e) The Respondent's organization does not contain any entity prohibited by this RFQ from being part of its organization;
- f) There exist no conflicts of interest or there are no conflicts of interest for which the Department has not granted a waiver; and
- g) The Respondent has made the express, written commitments regarding Key Personnel required by Form I.

**5. Financial:**

- a) Demonstrated ability to obtain required payment and performance bonds in the required amounts;
- b) Demonstrated ability to obtain Proposal security;
- c) If required, commitment to provide a Guarantor;
- d) The Respondent, in the Department's sole discretion, has sufficient financial capacity to complete the Project; and
- e) The Respondent, in the Department's sole discretion, does not present a material financial risk that would hinder its ability to complete the Project.

- 6. Safety:** Respondent's safety record does not present a material risk of unsafe practices that might compromise the safety of workers and the public.

If a Respondent passes all pass/fail evaluations, its SOQ will be further evaluated using the qualitative criteria in Section 5.2.2.

### **5.2.2. Qualitative Evaluation Factors and Weights**

SOQs will be reviewed and scored as follows:

#### **a) Respondent experience and performance (35%)**

##### **i. For Principal Participants that are Constructors and other identified construction Subcontractors:**

- A. Experience in the past 10 years constructing projects of a similar scope and size as the Project;
- B. Successful completion in the past 10 years of projects with a similar scope and size as the Project;
- C. Experience in the past 10 years with design-build projects of a similar scope and size as the Project;
- D. Experience requiring management of multiple crews and segments;
- E. Collaboration with multiple jurisdictions on a corridor of highway;
- F. Successful maintenance of traffic on highway projects, demonstrated by minimizing lane closures, minimizing congestion, avoiding prolonged shutdowns, and minimizing disruption to commercial traffic;
- G. Experience with rural highway intersections;
- H. On-time management of construction with a demanding schedule;
- I. Extent and depth of experience using the ATC process and other innovative means of design and construction that resulted in cost savings and expediting of project completion; and
- J. Successful collaboration with multiple utility owners with numerous types of utility facilities along a highway corridor.

##### **ii. For the Designer and identified design Subconsultants:**

- A. Experience in the past 10 years designing projects with a similar scope and size as the Project;
- B. Successful completion of design in the past 10 years of projects with a similar scope and size as the Project;
- C. Experience in the past 10 years with design-build projects of a similar scope and size as the Project;
- D. Design experience with rural highway intersections; and
- E. Extent and depth of experience using the ATC process and other innovative means of design and construction that resulted in cost savings and expediting of project completion.

iii. Respondent Member Integration:

- A. Prior successful collaboration between the Principal Participants and the Designer; and
- B. Extent and depth of Respondent's experience managing and integrating all aspects of work under a design-build contract in a quality, timely, and effective manner.

**b) Organization and Key Personnel (35%)**

- i. The experience of Respondents' Project Manager and Construction Manager in managing projects of similar size and scope as the Project and facing constraints and challenges similar to the Project;
- ii. Experience of Respondent's Design Manager in managing the design of projects of similar size and scope as the Project and facing constraints and challenges similar to the Project;
- iii. Experience of Respondent's Quality Manager in developing, implementing, and maintaining quality management systems of similar size and scope as that required for the Project;
- iv. Experience of Respondent's MOT Manager in managing traffic flow, detours, necessary volume at peak times, and avoidance of unnecessary lane closures and shutdowns on similar past projects, including on highway projects with significant commercial traffic;
- v. Experience of Respondent's Utilities Manager in working and coordinating with multiple utilities on highway projects, implementing Master Utility Agreements, and coordinating multiple utility relocations in a manner that avoids delays;
- vi. Experience of Respondent's Environmental Compliance Manager in completing environmental permitting and managing environmental compliance for projects of a similar size and scope as the Project; and
- vii. The integration of Respondent's organization and its capability to function as a design-build team that will effectively manage the Project, minimize risks, and complete the Project on time.

**c) Approach to the Project and Use of Design-Build delivery (15%)**

- i. Respondent's preliminary approach to the Project;
- ii. Respondent's understanding of Project risks and approach to mitigating those risks;
- iii. Respondent's understanding of and approach to coordinating with utility owners and ensuring compliance with the Master Utility Agreement;
- iv. Respondent's understanding of maintenance of traffic issues associated with the Project; and
- v. Respondent's approach to using the design-build project delivery method to develop innovative concepts for the Project, expedite Project completion, reduce risks to the Department and Design-Builder, and overcome potential Project challenges.

**d) Quality Management (15%)**

- i. Respondent’s experience implementing and executing a quality management program on projects of similar size and scope as the Project;
- ii. Respondent’s experience implementing an effective quality management program on design-build projects where the project owner provides independent oversight of the design-builder’s quality program;
- iii. Respondent’s experience with quality management on highway construction; and
- iv. Respondent’s preliminary proposed approach to effective quality management on this Project.

To determine the Short-List, the Selection Committee will evaluate each category using the following adjectival ratings: Exceptional, Good, Acceptable, Weak, and Unacceptable. To rank the Respondents’ SOQs, the Selection Committee will reach a consensus adjectival rating for each of the categories identified above. The consensus adjectival ratings will be converted to numbers to assign a score to each SOQ. SOQs will be ranked in order of their SOQ score.

A Respondent that receives an Adjectival rating of “Unacceptable” in any of the categories above may, in the Department’s discretion, be eliminated from further consideration.

**5.3. Department Requests for Clarification**

It is the responsibility of the Respondent to provide accurate and complete information to the Department. If information is not complete, the Respondent will be notified and will not be allowed to participate further in the procurement of this Project until all information required is provided. Any deficient statements or incomplete forms will be returned directly to the Respondent by the Department with notations of the deficiencies or omissions and with a request for clarification and/or submittal of corrected, supplemental or missing documents.

The Department may waive technical irregularities in the form of the SOQ that do not alter the quality or quantity of the services or the management, design, and construction offered. The Department may, at its sole discretion, request clarifications and/or supplemental information from Respondents during the SOQ evaluation and short-listing process.

All requests and responses shall be issued in writing by e-mail from the Department’s Authorized Representative. Responses shall be limited to answering the specific information requested by the Department. No interviews or discussions will be conducted during the RFQ phase.

**5.4. Determination of Shortlist**

The Department will establish a Short-List of an appropriate number of the highest quality Respondents to ensure adequate competition. The Short-List will be created by eliminating the lowest rated Respondents until an appropriate number remains (maximum of 5). Neither the

overall ratings nor the ranking of the Respondents on the Short-List will be disclosed during the procurement process.

The Department anticipates that it will name no more than four (4) Respondents to the Short-List.

### 5.5. Composition of Selection Committee

The Selection Committee will consist of the following Department staff or their designees:

<b>Chair</b>	Michael Smelker
<b>Members</b>	Francisco Sanchez
	David Quintana
	Justin Reese
	Rick Padilla

## 6. Inspection of Public Records Act

All materials submitted in response to this RFQ will become property of the State and will become public record after the evaluation process is completed and the Design-Build Agreement is awarded. If a Respondent submits information that it believes to be proprietary information, the Respondent must:

- a. Clearly mark all proprietary information in its response at the time the response is submitted;
- b. Include a statement with its response justifying the trade secret designation for each item; and
- c. Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's Award of a contract. In submitting a response to the RFQ, the Respondent agrees that this indemnification survives as long as the proprietary information is in possession of the State.

The State will not consider the prices submitted by a Proposer during the RFP phase to be proprietary information.

Respondents are informed, unless otherwise provided by law, that proprietary information provided to the Department is not subject to inspection by third persons under the Inspection of Public Records Act, NMSA 1978, Section 14-2-1 et seq.

## **7. Protests**

Protests related to this solicitation must be submitted timely, in writing, and in conformance with N.M.S.A. 1978, § 13-1-172, and applicable procurement regulations. Protests must include the name and address of the protestor and the RFQ number. It must also contain a statement of grounds for protest including appropriate supporting exhibits.

The protest must be delivered to:

New Mexico Department of Transportation  
Procurement Services Bureau, Office of Business Support  
Attn: Christina Baca, Procurement Director  
1120 Cerrillos Rd., Room #112  
Santa Fe, New Mexico 87504

## **8. Debrief**

Respondents that submit an SOQ but are not named to the Short-List may request a debriefing. If requested and approved, the Department will seek to establish a mutually-acceptable time as soon as feasible after notification of the Respondents on the Short-List. Debriefings will be limited to discussion of the unsuccessful Respondent's SOQ and will not include discussions of competing SOQs. Debriefings shall be intended to provide information concerning the areas where the unsuccessful Respondent's SOQ contained weaknesses or deficiencies. Debriefings will not provide any specific information on or discussion of any Selection Committee member's notes or rankings.

## **9. Department Rights and Disclaimers**

### **9.1. Department Rights**

The Department may investigate the qualifications of any Respondent under consideration, may require confirmation of information furnished by a Respondent, and may require additional evidence of qualifications to perform the work described in this RFQ. The Department additionally reserves the right, in its sole and absolute discretion, to:

- a. Reject any or all SOQs;
- b. Issue a new RFQ;
- c. Cancel, modify or withdraw the RFQ;
- d. Modify the RFQ process (with appropriate notice to Respondents);
- e. Appoint a Selection Committee and evaluation teams to review SOQs, and seek the assistance of outside technical experts in the SOQ evaluation;
- f. Approve or disapprove the use of particular Subcontractors and/or substitutions and/or changes in SOQs;
- g. Waive deficiencies, informalities, and minor irregularities in SOQs; and/or

- h. Refuse to issue an RFQ to a prospective Respondent and to refuse to receive or open an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based upon, but not limited to, the following:
- Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, materials, supplies, or services legally due on previous or ongoing contracts;
  - Default on the part of a Principal Participant or Designer under previous contracts;
  - Unsatisfactory performance of previous work by the Respondent, a Principal Participant, and/or Designer;
  - Issuance of a notice of debarment or suspension under Department regulations to the Respondent, a Principal Participant, and/or Designer;
  - Submittal by the Respondent of more than one SOQ for the same work under the Respondent's own name or under a different name;
  - Evidence of collusion between a prospective Respondent (or any Principal Participant or Designer) and other Respondent(s) (or Principal Participants or Designer) in the preparation of an SOQ, Proposal or bid for any Department construction project; and/or
  - Uncompleted work or default on a contract in another jurisdiction for which the prospective Respondent or a Principal Participant is responsible, which in the judgment of the Department might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

The RFQ does not commit the Department to enter a contract, nor does it obligate the Department to pay for any costs incurred in the preparation and submission of the SOQs or in anticipation of a contract. By submitting an SOQ, a Respondent disclaims any right to be paid for such costs.

The execution and performance of a contract pursuant to this RFQ and any subsequent RFP is 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 a contract between the successful Respondent and the Department.

## **9.2. Department Disclaimers**

In issuing this RFQ and undertaking the procurement process contemplated hereby, the Department specifically disclaims the following:

- a. Any obligation to award or execute a contract pursuant to this RFQ; and
- b. Any obligation to reimburse a Respondent for any costs it incurs under this procurement.

A Respondent's submission of an SOQ and participation in the procurement process constitutes the Respondent's consent to these disclaimers.

## **10. Disadvantaged Business Opportunity (DBE) and Equal Employment Opportunity**

### **10.1. Policy**

The Department shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. Department of Transportation (DOT) assisted contract or in the administration of 49 CFR Part 26. The Respondents shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

### **10.2. Equal Employment Opportunity**

In connection with this RFQ and the Design-Build Agreement, Respondents 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 orientation.

Respondents shall take affirmative action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual orientation. 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.

## **11. Compliance with Applicable Laws**

Respondents shall comply with all applicable laws in all aspects in connection with the procurement process of this Project and the performance of the Design-Build Agreement.



# APPENDIX A

## RFQ Forms

**FORM A**

**ACKNOWLEDGMENT OF RECEIPT OF RFQ,  
ADDENDA, AND RESPONSES TO QUESTIONS**

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(Name of Respondent)

We hereby acknowledge receipt of RFQ No. 22-01, the NM 31-128 Design-Build Project RFQ dated August 31, 2021, subsequent amendments and responses to questions issued by the New Mexico Department of Transportation, and all other information about the Project uploaded to the Project Website.

<b><u>Addendum No.</u></b>	<b><u>Date Issued</u></b>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

<b><u>Response to Questions No.</u></b>	<b><u>Date Issued</u></b>
_____	_____
_____	_____
_____	_____
_____	_____

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(Signed)

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(Date)

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(Printed or Typed Name)

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(Title)

**FORM B**

**RESPONDENT'S ORGANIZATION INFORMATION**

<b>RESPONDENT (INDIVIDUAL FIRM/JOINT VENTURE / PARTNERSHIP)</b>			
<b>Name of Entity and State of Organization (if applicable):</b>			
Address:			
Contact Name:		Title:	
Telephone No.:		E-mail:	
<b>POINT OF CONTACT</b>			
<b>Name:</b>			
Address:			
Telephone No.:		E-mail:	
<b>NAME(S) OF DB TEAM MEMBER(S)</b>			
<b>Company Name</b>	<b>Address/Phone &amp; E-mail</b>	<b>State of Organization:</b>	<b>% Share of Equity Interest</b>
<b>Principal Participant(s)</b>			
<b>Designer</b>			
<b>QCIF</b>			

**FORM C**

**PAST PERFORMANCE**

**Name of Respondent:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_

Provide the following information in accordance with Section 4.4.2.1 of the RFQ.

**Dispute Resolution Proceedings**

<b>List</b>	<b>Owner Initiated Proceedings (Y/N)</b>	<b>Resolution/Outcome</b>	<b>Indicate if Unresolved or Outstanding</b>	<b>Current Owner Contact Name, Phone &amp; E-mail.</b>

**Liquidated Damages**

<b>Project Name</b>	<b>Cause of Delay(s)</b>	<b>Amount Assessed</b>	<b>Describe Outstanding Damage Claims by Any Owner</b>	<b>Current Owner Contact Name, Phone &amp; E-mail.</b>

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**Termination for Cause**

<b>Project</b>	<b>Describe Reason for Termination</b>	<b>\$ Amount Involved/ Claims Lost or Won</b>	<b>Current Owner Contact Name, Phone &amp; E-mail.</b>

**Disciplinary Action**

<b>Project</b>	<b>Describe Action Taken</b>	<b>Current Owner Contact Name, Phone &amp; E-mail.</b>

**FORM D**

**PRINCIPAL PARTICIPANT AND DESIGNER CERTIFICATION**

**Complete for each Principal Participant and the Designer.**

1. Has the firm ever failed to complete any work it agreed to perform, or had a contract terminated because it was in default? If yes, describe.
  
2. Has the firm or any other officer or director thereof been indicted or convicted of bid, procurement, fraud or other contract related crimes or violations or any felony or serious misdemeanor within the past five years? If yes, describe.
  
3. Has the firm ever sought protection under any provision of any bankruptcy act? If yes, describe.
  
4. Has the firm ever been debarred or suspended from performing work for the federal government or any state or local government? If yes, describe.

(Must be signed by an authorized representative of each  
Principal Participant and the Designer)

Firm: \_\_\_\_\_

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

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

Name of Respondent: \_\_\_\_\_

**FORM E**

**PROJECT DESCRIPTION**

**Name of Respondent:** \_\_\_\_\_

Firm Name (Entity that participated on the project):
Project Name, Location, Description, and Nature of Work for which Company was Responsible:
Describe Site Conditions and challenges:
(Use additional sheets as necessary to describe project and site conditions)
List any awards, citations, and/or commendations received for the project:
Name of Client (Owner/Agency, Contractor, etc.):
_____
Address: _____
Contact Name: _____ Telephone: _____
Owner's Project or Contract No.: _____ E-mail: _____
Initial Contract Value (US\$): _____ Final Value (US\$): _____
Percent of Total Work Performed by Company: _____
Commencement Date: _____ Planned Completion Date: _____
Actual Completion Date: _____
Amount of Claims: _____ Any Dispute Proceedings? Yes* __ No __
*If yes, describe on a separate sheet.

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**FORM F**

**AWARDS, CITATIONS, AND/OR COMMENDATIONS**

<b>Name of Award, etc.</b>	<b>Year Received</b>	<b>Project &amp; Location</b>	<b>Work for Which Award, etc. Received</b>



**FORM G**

**SAFETY QUESTIONNAIRE**

Respondent's Name: \_\_\_\_\_

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

1. Provide the following information for the preceding three years:

Item	2018	2019	2020
Employee hours worked (Do not include non-work time, even though paid)			
Number of lost workday cases			
Number of restricted workday cases			
Number of cases with medical attention only			
Number of fatalities			

2. Are internal accident reports and report summaries sent to management? To what levels and how often?

Position	No	Yes	Monthly	Quarterly	Annually

3. Do you hold site meetings for supervisors? Yes \_\_\_\_\_ No \_\_\_\_\_

How Often?

Weekly \_\_\_\_\_ Bi-Weekly \_\_\_\_\_ Monthly \_\_\_\_\_ Less often, as needed \_\_\_\_\_

4. Do you conduct Project Safety Inspections? Yes \_\_\_\_\_ No \_\_\_\_\_

By Whom? \_\_\_\_\_

How Often?

Weekly \_\_\_\_\_ Bi-Weekly \_\_\_\_\_ Monthly \_\_\_\_\_

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5. Does the firm have a written Safety Program? Yes \_\_\_\_\_ No \_\_\_\_\_

6. Does the firm have an Orientation Program for new hires?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what safety items are included?

7. Does the firm have a program for newly hired or promoted foremen?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, does it include instruction of the following?

Topic	Yes	No
Safety Work Practices		
Safety Supervision		
On-site Meetings		
Emergency Procedures		
Accident Investigation		
Fire Protection and Prevention		
New Worker Orientation		

8. Does the firm hold safety meetings which extend to the laborer level?

Yes \_\_\_\_\_ No \_\_\_\_\_

How often? Daily \_\_\_\_ Weekly \_\_\_\_ Bi-Weekly \_\_\_\_ Less often, as needed \_\_\_\_

9. Provide the safety record on the last Project to which the indicated Key Personnel were assigned:

Key Person	Total hours worked by all employees on Project	Number of lost workday cases on Project	Number of restricted workday cases on Project	No. of cases with medical attention only on Project	No. of fatalities on Project
Project Manager					
Construction Manager					



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**FORM I**

**KEY PERSONNEL**

**Name of Respondent:** \_\_\_\_\_

<b>Key Personnel Position</b>	<b>Name of Individual</b>	<b>Years of Experience</b>	<b>Education and Registrations</b>	<b>Employer Name</b>	<b>Reference Name, Title, Phone Number, and E-mail Address</b>
Project Manager		____ years managing the delivery of highway projects  ____ years of design-build project management of highways			1.  2.  3.
Construction Manager		____ years managing construction of highway projects  ____ years managing design-build construction of highway projects			1.  2.  3.
Design Manager		____ years managing design of highway projects  ____ years managing design-build design of highway projects			1.  2.  3.
MOT Manager		____ years managing MOT of highway projects  ____ years of design-build highway projects			1.  2.  3.

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Utilities Manager		____ years managing utility relocation and coordination for highway projects  ____ years of design-build highway projects			1.  2.  3.
Quality Manager		____ years managing and coordinating quality management programs for highway projects  ____ years managing quality of design-build highway projects			1.  2.  3.
Environmental Compliance Manager		____ years on similar highway projects  ____ years managing environmental compliance activities and permitting for highway projects			1.  2.  3.

**KEY PERSONNEL COMMITMENT:**

Respondent affirms that the Key Personnel identified above are available for the Project and will commit the time necessary to fulfill the duties and responsibilities of the Key Personnel position. In the event that any identified Key Personnel cannot meet such commitment, the Department will be damaged. Due to the imprecise nature of the damages, Respondent, if chosen as the Design-Builder for the Project, may be subject to liquidated damages as provided in the Design-Build Agreement due to the failure to commit identified Key Personnel to the Project. Respondent may not substitute or remove identified Key Personnel throughout the duration of this procurement, except as otherwise specified in Section 4.4.2.4 of the RFQ.

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The following must be signed by an authorized representative of Respondent. If Respondent has not been formed as of the date of submission of the SOQ or is a consortium, partnership or any type of Joint Venture, an authorized representative of each Principal Participant must sign below. Use additional forms as necessary.

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

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

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

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



**FORM K**

**AFFIDAVIT OF NON-COLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner in the partnership (if the Respondent is a partnership), an equity member of the Respondent (if the Respondent is a joint venture), or an officer or employee of the Respondent corporation having authority to sign on its behalf (if the Respondent is a corporation);
2. That the attached SOQ submitted in response to the 31-128 Design and Build Project Request for Qualifications has been arrived at by the Respondent independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other provider of materials, supplies, equipment or services described in the RFQ, designed to limit fair and open competition;
3. That the contents of the SOQ have not been communicated by the Respondent or its employees or agents to any person not an employee or agent of the Respondent and will not be communicated to any such persons prior to the SOQ Due Date; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature \* : \_\_\_\_\_

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

Respondent's Firm Name: \_\_\_\_\_

Respondent's Federal Employer Identification Number: \_\_\_\_\_  
(Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941)  
(if Respondent does not have an EIN, then the EIN for each Principal Participant)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public \_\_\_\_\_

My commission expires: \_\_\_\_\_

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\* If Respondent is not organized as an organization or is a Joint Venture, partnership, or any form of consortium, then an authorized representative of each Principal Participant must sign this Affidavit.



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**FORM L**

**LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) **No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned,** to any person for influencing or attempting to influence an officer or employee of any 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, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
  
- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].
  
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Respondent/Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

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

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

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

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

(Print)

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

**NOTE: CONTRACTORS ARE REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.**

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**FORM M**

**RESPONDENT'S INFORMATION REQUEST**

**Respondent's/Firm's Name:** \_\_\_\_\_

RFQ Section No. or Form	Question	Reserved for Department Response

Use additional sheets as necessary.

## **APPENDIX B**

### **Conflict of Interest Policy**

## CONFLICT OF INTEREST POLICY

### I. Introduction

This policy shall apply to conflicts of interest, or potential conflicts of interest, relating to the Project. This conflict of interest policy provides rules applicable to Consultants and Respondents that are participating in, or desire to participate in, the Project. Failure to comply with this policy may result in potential liability and preclusion of participation in the Project.

### II. Definitions

<b>Term</b>	<b>Definition</b>
<b>Affiliate</b>	With respect to an entity referenced in this RFQ: <ul style="list-style-type: none"><li>a) Any Person that directly or indirectly controls, or is controlled by, or is under common control with, such entity; and</li><li>b) Any other Person that owns 20% or more of the entity's equity interest.</li></ul>
<b>Conflict of Interest</b>	A circumstance arising out of a Consultant's or Affiliate's (a) existing or past activities, including past activities as a Consultant to or employee of NMDOT, (b) existing or past activities, including past activities as a Consultant to or employee of a Stakeholder; (c) business interests, (d) familial relationships, (e) contractual relationships, and/or (f) organizational structure (i.e., Affiliates, etc.); wherein (i) the Consultant is or may be unable to render impartial assistance or advice to NMDOT, (ii) the Consultant's objectivity in performing the scope of work sought by NMDOT is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of NMDOT or a Stakeholder does or may provide an unfair competitive advantage to a Respondent; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a Respondent as a result of the Consultant's Services to NMDOT or Stakeholder.
<b>Consultant</b>	Any person or business entity, any individual employee of such entity, or any division and/or Affiliate of such entity previously or currently retained, or in the process of being retained, by NMDOT or a Stakeholder to provide Services in connection with the Project, including subconsultants and individual employees of subconsultants.
<b>The Department or NMDOT</b>	The New Mexico Department of Transportation
<b>Person</b>	Any individual, firm, corporation, company, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.
<b>Policy</b>	This Conflicts of Interest Policy.
<b>Project</b>	The NM-31-128 Design and Build Project.

<b>Respondent</b>	Any person or business entity, including joint ventures, partnerships, limited liability companies, corporations, consortiums, teams or other groups or organizations of individuals or entities, or the individuals and entities that comprise the foregoing, that have submitted a Statement of Qualifications or Proposal for work on the Project or are interested in submitting a Statement of Qualifications or Proposal for work on the Project.
<b>Services</b>	In the context of this Policy, consulting services related to the Project, which may include, but are not limited to, some or all of the following: planning services; procurement services; federal and state environmental services; financial advisory services; legal services; risk management analysis or services; insurance advice or services; traffic and revenue studies; maintenance planning services; program oversight; design and construction management services; design concept services; preliminary engineering services (including right-of-way, structures, survey, and utility); and public and community outreach services.
<b>Stakeholder</b>	In the context of this Policy, an entity that participates with the Department on the Project, or is impacted by the Project, and, in either case, has received information about the Project that is not known to the general public. Stakeholders may include, but are not limited to, municipalities, agencies providing funding, and agencies providing Project oversight.

### **III. Conflicts of Interest**

#### **a. Purpose**

This Section describes the Department’s policy on Conflicts of Interest relating to Consultants participating in, or desiring to participate in, the planning, procurement, design, construction, or development of the Project. This purpose of this policy is to:

- i. Protect the integrity and fairness of the process;
- ii. Avoid situations where a Consultant or Respondent obtains, or appears to obtain, an unfair competitive advantage as a result of services performed for the Department, a Stakeholder or a Consultant or information obtained from the Department or a Stakeholder;
- iii. Provide guidance to firms participating in the Project so that they may assess their role and the scope of any roles taken on the Project; and
- iv. Protect the Department’s interests and confidential and sensitive information.

#### **b. Applicability**

This Policy applies to Consultants who desire to participate in, have participated in or are participating in the performance of Services for the Department or a Stakeholder related to the Project. This Policy may prohibit or restrict the ability of a Respondent to have a Consultant participate on a Respondent team, act as a Consultant or subconsultant to the Respondent, or have a financial interest in the Respondent. This Policy relates solely to the Project and does not address the Department's approach to conflicts of interest on other state transportation projects.

### **c. Disclosure**

Consultants and Respondents participating in the Project shall arrange their affairs to prevent Conflicts of Interest from arising. Any Consultant or Respondent having an actual, potential or perceived Conflict of Interest shall disclose the matter to the Department in writing to the Authorized Representative for the Project.

Requests for waivers shall be directed to the Authorized Representative, and must be in writing. Such requests must, at a minimum, contain the following information:

- i. An explanation that details: (1) how the Consultant's proposed participation conforms to federal and state conflict of interest rules and regulations and (2) how the Consultant does not have an unfair competitive advantage due to the work it has or will perform on behalf of a Consultant, the Department or a Stakeholder;
- ii. A copy of the agreement under which the Consultant performed work related to the Project;
- iii. Disclosure of all the work performed in relation to the Project;
- iv. Provide copies of all deliverables previously submitted to NMDOT, a Stakeholder or to the Consultant working directly for NMDOT or a Stakeholder;
- v. Provide the date on which all services related to the Project under the Consultant's contract with NMDOT, another Consultant or a Stakeholder, expired or was terminated or will expire or be terminated; and
- vi. Provide any further information requested by NMDOT to facilitate its assessment.

A Consultant's and Respondent's Conflict of Interest disclosure obligation is ongoing. Consultants and Respondents shall undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential or perceived Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, if the Consultant being investigated is an entity, to officers or directors of the Consultant. If a Consultant or Respondent becomes aware of an actual, potential or perceived Conflict of Interest at any time during its participation in the Project, the Consultant or Respondent, as applicable, shall promptly disclose the matter to the Department as described herein.

### **d. Failure to Comply**

If a Consultant or Respondent fails to comply with this Policy, including failure to comply with any mitigation measures imposed under this Policy, or otherwise fails to disclose an actual, potential or perceived Conflict of Interest, the Department may, in its sole discretion:

- i. Preclude and/or disqualify the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had affiliated, from participation in the planning, procurement, design, construction, and/or development of the Project, including any competitive process associated therewith;
- ii. Require the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had affiliated, to implement mitigation measures;
- iii. Segregate or terminate the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had affiliated, from planning, procurement, design, construction, and/or development of the Project; and/or
- iv. Pursue any and all other rights and remedies available at law, in equity or set forth in any request for qualifications or request for proposals, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the Consultant's or Respondent's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or the Department's re-procurement of the Project.

**e. Period of Applicability**

If the Department determines that the performance of Services by a Consultant creates an actual, potential or perceived Conflict of Interest, the provisions in this Policy and any decisions made by the Department related to such Conflict of Interest (including prohibitions, mitigation measures, etc.) shall continue and apply for the duration of the planning, procurement, design, and construction of the Project. The Department may, on a case-by-case basis and its sole discretion, modify the length of this time period in writing if it determines that the modification is in the best interests of the State and the Project.

**f. Consultant Employees and New Employers**

If, in the Department's determination, the performance of the Services described in this Policy raises a potential or actual Conflict of Interest for a Consultant, such Conflict of Interest shall apply individually to any employee of such Consultant that has participated in a material way in the performance of the Services on the Project. If such individual leaves the Consultant's employment, the potential or actual Conflict of Interest shall continue to apply to both the individual as well as the Consultant for the applicable period set forth in Section III(e). If a Conflict of Interest applies to an individual, the Conflict of Interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an Affiliate of the employee's previous employer. If the new employer is not an Affiliate of the previous employer and is otherwise eligible to perform Services for Department pursuant to this Policy and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer

with respect to the employee.

**g. Federal and State Law**

For federal-aid projects and in certain other circumstances, the Department must comply with the Federal Highway Administration's organizational conflict of interest regulations found in 23 Code of Federal Regulations §636.116. A Federal Highway Administration (FHWA) regulation addresses organizational conflicts of interest related to design-build projects financed in whole or in part with federal funds (see 23 CFR §636.116, hereinafter the “Regulation”). The Regulation supplements, and does not replace, applicable New Mexico laws and rules.

The Department must also comply with certain New Mexico laws and regulations, including, without limitation, N.M.S.A. §§ 13-1-28 through 13-1-199. Among other measures, the Procurement Code prohibits using confidential information for private gain, limits participation in the procurement when an employee or family member may have a financial interest in the outcome, prohibits bribes, kickbacks, or gratuities, and prohibits other conflicts that may impact a participant’s neutrality or otherwise confer an unfair advantage.

In addition, the New Mexico Board of Licensure for Professional Engineering & Professional Surveyors has promulgated a code of professional conduct for Engineering and Surveying. See Administrative Code Title 16, Chapter 39, Part 8 at:

[https://www.sblpes.state.nm.us/wp-content/uploads/2020/08/NMAC\\_2017\\_Book\\_1.pdf](https://www.sblpes.state.nm.us/wp-content/uploads/2020/08/NMAC_2017_Book_1.pdf)

Respondents’ and potential Respondents’ attention is directed to such federal and state laws and regulations. Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of those laws and regulations, and the Department will apply this Policy consistent with those laws and regulations.

**IV. General Conflict of Interest Standard**

Except as provided in Section V of this Policy, no Consultant that has previously provided Services or that is currently providing Services to the Department or a Stakeholder with respect to the Project may be a Respondent or participate as an equity owner, team member, consultant or subconsultant of or to a Respondent for the Project, or have a financial interest in any of the foregoing entities with respect to the Project.

**V. Determination Process**

In response to a disclosure under Section III(c) above or information the Department obtains independent of a Consultant or Respondent, and in response to requests for waiver, the Department will conduct a review. The Department will determine whether a Consultant has an actual potential or perceived Conflict of Interest that should prevent the Consultant from (i) being a Respondent, (ii) participating as an equity owner, team member, consultant or



subconsultant of or to a Respondent for the Project, (iii) having a financial interest in any of the foregoing entities with respect to the Project or (iv) otherwise participating in the design, construction or development of the Project. The Department will also analyze what actions may be appropriate to avoid, neutralize or mitigate any actual, potential or perceived Conflict of Interest.

The Department retains the ultimate and sole discretion to determine on a case-by-case basis whether an actual, potential or perceived Conflict of Interest exists, whether to grant a waiver, and what actions may be appropriate to avoid, neutralize, or mitigate any actual, potential or perceived Conflict of Interest. Once the Department makes this determination, it will send the Consultant a written notice regarding the decision and, if participation is approved, whether the approval and participation is limited or subject to the Consultant meeting certain conditions.

**a. Determination Factors**

The Department will consider some or all of the following factors when making the determination:

- i. Whether the Consultant will not, or in the case of the previous performance of Services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies, decisions, and processes that could provide, or could be perceived to provide, an unfair competitive advantage with respect to the procurement, design, construction or development of the Project;
- ii. Whether the data and information provided to the Consultant in the performance of the Services is either not material to the procurement for the Project or is generally available on a timely basis to all Respondents;
- iii. The type of services at issue;
- iv. The particular circumstances at issue, including the Consultant's ability to effectively implement the safeguards described in Section V(b), including an ethical wall, or to otherwise mitigate the Conflict of Interest in a manner satisfactory to the Department;
- v. The specialized expertise, if any, needed by the Department and Respondents to implement the Project;
- vi. The period of time between the previous work for the Department or a Stakeholder and the potential Conflict of Interest situation;
- vii. Whether the Consultant's work for the Department or a Stakeholder has been completed or is ongoing;

- viii. The potential impact on the procurement and implementation of the Project, including impacts on competition;
- ix. Whether, with respect to a Consultant's prior environmental services related to the Project, if any, a record of decision (ROD) or finding of no significant impact (FONSI) has been issued for the Project;
- x. Whether the Consultant has a contract with NMDOT that specifically excludes participation as part of a design-build team for a specific project; and
- xi. Any other factors or circumstances deemed relevant by the Department.

**b. Restrictions, Conditions, and Exceptions**

To address actual, potential or perceived Conflicts of Interest, the Department, as part of providing consent to the participation of a Consultant may, in its sole discretion:

- i. Restrict the scope of Services the Consultant may be eligible to perform for the Department or the Respondent team to further the intent and goals of this Policy; and
- ii. Condition a consent, approval, determination or exception as the Department determines appropriate to further the intent and goals of this Policy, including by requiring the Consultant or Respondent to implement certain safeguards, including:
  - A. The execution of confidentiality agreements satisfactory to the Department, which may, among other things, include the segregation and protection of information obtained in connection with the Consultant's prior or ongoing work for the Department or a Stakeholder or from former or current NMDOT employees; and/or
  - B. The execution of ethical wall agreements satisfactory to the Department, which (1) segregate certain personnel from participation in the Project, (2) bar such personnel from communicating regarding the Project, the procurement or Services with any person working for or with the Consultant, and (3) require implementation of procedures to prevent such personnel from accessing any files and communications of the Consultant regarding the Project, the procurement or Services; and/or
  - C. The execution of agreements satisfactory to the Department regarding the dissemination of work product and materials created in connection with the Consultant's prior or ongoing work for the Department or a Stakeholder, including dissemination to the Department and restrictions on dissemination by the Consultant to any Respondent team, including a team on which they intend to participate.

### **c. Withdrawal or Amendment of Consents and Approvals**

NMDOT shall not withdraw or amend a prior consent or approval granted to a Consultant under this Policy unless:

- i. The application of the federal and state laws and regulations described in Section III(g) requires the consent or approval to be withdrawn or amended; or
- ii. The Department decides, in its sole discretion, to withdraw or amend the consent or approval based on factual circumstances that the Department has been made aware of that were not disclosed when NMDOT made its original decision, or factual circumstances that are new or have changed since NMDOT made its original decision; or
- iii. The Consultant or Respondent team fails to comply with any mitigation measures imposed under this Policy.

## **VI. Procurement, Financial Services, and Oversight**

Independent of the process described in Section V, a Consultant actively engaged in performing procurement services or financial services with respect to the Project may not be a Respondent or participate as an equity owner, team member, consultant or subconsultant of or to a Respondent for the Project, or have a financial interest in any of the foregoing entities with respect to the Project. Additionally, any firm or its Affiliates that performs any oversight services on the Project after contract execution may not be a Respondent or participate as an equity owner, team member, consultant or subconsultant of or to a Respondent for the Project, or have a financial interest in any of the foregoing entities with respect to the Project.

This includes, but is not limited to, a General Engineering Consultant (“GEC”) or Owner’s Representative for a specific design-build project. Additionally, subconsultants of the GEC or Owner’s Representative are presumptively deemed to have a Conflict of Interest, but may submit a request for a waiver by following the procedures in this Policy.

## **VII. Multiple Services**

If a Consultant is providing more than one category or type of Services to the Department or a Stakeholder for the Project (e.g., environmental services and procurement services) and there are differences in this Policy's considerations, standards, restrictions, limitations, and outcomes applicable to those categories or types of Services, the standards, restrictions, limitations, and outcomes applicable to a category that are more stringent will be applied. For example, if a Consultant were only providing preliminary engineering services that have been completed, they may be approved to participate on a Respondent team, whereas, if they were also providing ongoing procurement services for the Project, they may not participate on a Respondent team.

## **VIII. Nonexclusivity**

The provisions in this Policy do not address every situation that may arise in the context of NMDOT's planning, procurement, design, construction or development of the Project, nor require a particular decision or determination by the Department when faced with facts similar to those described in this Policy. In addition, at any time the Department may impose additional policies, procedures, and limits related to conflicts of interest or similar issues with respect to the Project or any other NMDOT projects.