

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

**REQUEST FOR PROPOSALS
ENGINEERING CONSULTANT SERVICES**



NM DOT

RFP No. 22-03

CN U900223

FEDERAL FUNDS

Environmental Services for MS4 Requirements On-Call

JUNE 2021

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Department of Transportation (NMDOT, Department or Agency) is requesting proposals from qualified Offerors, to assist NMDOT Districts 1, 3 and 5 to be in compliance with EPA MS4 Permits. This work includes preparing annual reports in compliance with the MS4 permits, and other tasks as described. This work will be performed as an on-call basis.

B. SCOPE OF WORK

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

C. SCOPE OF PROCUREMENT

The Department intends on establishing a contract with a four (4) year term. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial contract. The Department, at its discretion, may issue multiple awards as a result of this RFP.

D. PROCUREMENT MANAGER

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

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

In order for the Department to ensure transparency in its procurement process, that the process is fair, equitable, and that the process complies with the Procurement Code, any inquiries or requests regarding this RFP, the underlying procurement, or the procurement process must be submitted to the Procurement Manager in writing. Offerors will contact ONLY the Procurement Manager regarding the RFP, the underlying procurement and procurement process. Other state employees or Professional Services Selections Committee (PSSC) members do not have the authority to respond on behalf of the NMDOT. Any communication regarding this procurement or the procurement process that is not with the Procurement Manager is not in compliance with this directive and will result in disqualification of the Offeror's proposal in accordance with 1.4.1.69 NMAC.

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document. Definitions should be read consistent with the Procurement Code, NMSA 1978, Sections 13-1-1 through 13-1-199, and 1.4.1 NMAC, Procurement Code Regulations.

- “Agency,” “Department,” or “NMDOT” means the New Mexico Department of Transportation.
- “Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.
- “Award” means the final execution of the contract, typically indicated by last dated signature of all identified signatories to that contract.
- “Business Day” means any day except Saturday, Sunday or state- or federal-legal holiday recognized in the State of New Mexico by the Department.
- “Business Hours” means 7:45 AM thru 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
- “Calendar Day” means each day on the calendar, including Saturdays, Sundays and holidays. For purposes of deadlines, calendar days mean each day, not including the day of the defining event, from which a designated period of time begins to run, including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. The term “day” means calendar day whether or not expressly identified.
- “Close of Business” means 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
- “Confidential” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3-A-1 through 57-3A-7. See also, 1.4.1.45 NMAC. No information that could be obtained from a source outside this RFP can be considered confidential information.
- “Contract” means any agreement for the procurement of items of tangible personal property, services or construction. A contract is also referenced in this RFP as an “Agreement.”
- “Contractor” means any business having a contract with a state agency or local public body. A contractor may also be referenced in this RFP as “Consultant” or “Engineer.”
- “Desirable” includes the terms “may”, “can”, “should”, “preferably”, or “prefers,” and identifies a desirable or discretionary item or factor, as opposed to “mandatory” item or factor.
- “Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

- “Finalist” is defined as an Offeror who meets all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Professional Services Selections Committee (PSSC).
- “Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
- “IT” means Information Technology.
- “Mandatory” includes the terms “must”, “shall”, “will”, “is required”, or “are required”, and identifies a mandatory item or factor, as opposed to “desirable” item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.
- “Minor Technical Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.
- “Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
- “Non-Responsive” means not adequately addressing or meeting the requirements contained in a request for competitive bids on a contract. Any Offeror that does not comply with the RFP’s mandatory items or factors, or whose offering fails to meet the RFP’s acceptability requirements will be rejected as Non-Responsive, with Non-Responsive proposals disqualified and eliminated from further consideration.
- “Offeror” is one who submits a proposal in response to a RFP. In the context of a proposal, an offeror may also be referenced in this RFP as “Consultant” or “Engineer.”
- “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.
- “Procurement Division” means the Procurement Division within the NMDOT Office of Business Support.
- “Procurement Manager” means the person or designee authorized by the Department to enter into or administer contracts and make written determinations with respect thereto.
- “Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
- “Professional Services Selections Committee” or “PSSC” means a body appointed by the Department to perform the evaluation of Offerors’ proposals.
- “Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

- “Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.
- “Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.
- “Responsive Offer” or “Responsive Proposal” means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.
- “Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted, except for packages that may have been damaged by the delivery service itself. The Department reserves the right to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.
- “Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
- “State” or “the State” means the State of New Mexico.
- “State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State Agency” means for this RFP, the New Mexico Department of Transportation.
- “Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offeror’s proposal, e.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable,” etc.
- “Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement. Failure to comply with mandatory conditions governing procurement will result in the Offeror's proposal being regarded as Non-Responsive.

A. SEQUENCE OF EVENTS

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issue of RFP	NMDOT	6/11/2021
2. Pre-proposal Conference (Due 1:30 p.m. MDT)	NMDOT & Offerors	No Pre-Proposal
3. Acknowledgement of Receipt Form ("Appendix C")	Offerors	6/28//2021
4. Deadline to Submit Additional Written Questions	Offerors	6/30/2021
5. Response to Written Questions/RFP Amendments	NMDOT	7/2/2021
6. Submission of Proposal (Due 2:00 p.m. MDT)	Offerors	7/13/2021
7. Proposal Evaluation	PSSC	July 2021
8. Selection of Finalists	PSSC	July/Aug 2021
9. Oral Presentation by Finalists (if applicable)	Offeror	Aug/Sept 2021
10. Best and Final Offers	Offeror	Sept/Oct 2021
11. Finalize Contract	Offeror/NMDOT	Oct/Nov 2016
12. Contract Award	NMDOT	November 2021

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

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

2. Pre-proposal Conference

A pre-proposal conference will **NOT** be held for this project.

3. Acknowledgement of Receipt Form

Potential Offerors must email or send by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document to have their organization placed on the procurement distribution list. (See Appendix C.) The form must be signed by an authorized representative of the organization, dated, and returned by the close of business on **June 28, 2021**.

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

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

4. Deadline to Submit Additional Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until the close of business on **June 30, 2021**. All written questions must be addressed to the Procurement Manager. (See Section I, Paragraph D.)

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on **July 2, 2021** to all potential Offerors whose organization name appears on the procurement distribution list.

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

6. Submission of Proposal

Proposals must be submitted to the Department electronically through Bid Express, which may be accessed at the following website: www.bidexpress.com. Offerors must register prior to the submission deadline and create an account and a digital ID with Bid Express in order to submit proposals electronically. Electronic proposals must be in a PDF format in order to submit through Bid Express.

Proposals submitted by hard copy, facsimile, email, or any other manner other than the prescribed means will be rejected.

ALL OFFERORS MUST SUBMIT ELECTRONIC COPY THROUGH BID EXPRESS FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. MDT ON JULY 13, 2021. The date and time will be recorded on each proposal. Proposals received after this deadline will be rejected.

A public log will be kept of the names of all Offerors that submitted proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this RFP.

7. Proposal Evaluation

The evaluation of proposals will be performed by the PSSC appointed by the Department. This process will take place during the month of **July 2021**. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals; however, proposals may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by the Offerors.

8. Selection of Finalists

The PSSC will select and Procurement Manager will notify the finalist Offerors in the month(s) of **July/Aug 2021**. Only finalist Offerors will be invited to participate in the subsequent steps of the procurement. If applicable, the schedule for Oral Presentations will be determined at that time.

9. Oral Presentation by Finalists (if applicable)

In the event of a tie, scores are too close, or based on the size and complexity of the project, executive management or the Chief Procurement Officer (CPO) will determine whether to conduct oral presentations. Offerors identified to conduct oral presentations will prepare a presentation to the PSSC and present to all members at a given time and location identified by the Procurement Manager. In the event of Oral Presentations, presentations for this procurement will be held in **Aug/Sep 2021** and are limited to one (1) hour in duration for each Offeror.

The CPO has determined the point value will be forty (40) points. Each PSSC member will determine the distribution of the points to each team. The team with the highest score will be considered the top ranked Offeror. Additional discussion or presentations may be necessary.

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

Finalist Offerors may be asked to submit revisions to their proposals by **Sept/Oct 2021** for the purpose of obtaining best and final offers. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror in the month(s) of **Oct/Nov. 2021**. This date is subject to change at the discretion of the Department. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Department reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Award

NMDOT anticipates awarding the contract in the month of **November 2021**. These dates are subject to change at the discretion of the Department.

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

13. Right to Protest

Any protest by an Offeror must be timely and in conformity with NMSA 1978, Section 13-1-172 and applicable procurement regulations. The Department's Chief Procurement Officer serves as protest manager for this RFP. Pursuant to NMSA 1978, Section 13-1-172, ONLY protests delivered directly to the protest manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Request for Proposals. The fifteen (15) calendar day protest period shall begin on the day following the award of contract(s) and will end at 4:30 p.m. Mountain Standard Time/Daylight Time on the fifteenth (15th) day.

Protests must be written and must include the name and address of the protestor and the Request for Proposal number. Protests must also contain a statement of the grounds for protest, including appropriate supporting exhibits, and must specify the ruling requested from the party listed below. Emailed protests will not be considered as properly submitted. Protests must be mailed or hand delivered to:

New Mexico Department of Transportation
Procurement Division
Attn: Christina Baca, Chief Procurement Officer
1120 Cerrillos Rd., Room #112
Santa Fe, New Mexico 87504

C. GENERAL REQUIREMENTS

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

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section

in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

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

State departments of transportation are required to provide reasonable assurance that architectural and engineering consulting firms are in compliance with the federal cost principles on Federal-Aid Highway Program (FAHP) funds. A procedure has been developed by the NMDOT Office of the Inspector General (see links below), which will determine, with reasonable assurance, engineering and design consultant compliance with applicable cost principles contained in the Federal Acquisition Regulations (48 CFR part 31), specified under the 23 USC Section 112(b)(2) and defined in 23 CFR Section 172.3. The procedure explains what is to be submitted, how it will be submitted, when it's required and additional resources for questions. Eligibility for NMDOT engineering & design contracts is dependent upon the consultant's compliance with this procedure. A list of eligible consultants will be updated by the fifth day of each month and posted on the NMDOT public website at:

https://dot.state.nm.us/content/dam/nmdot/OIG/Consultant_Overhead_List.pdf

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

http://dot.state.nm.us/content/nmdot/en/Program_Management.html#d

https://dot.state.nm.us/content/dam/nmdot/OIG/Overhead_Rate_processing_procedure3-24-20.pdf

In all cases, Consultants must follow this procedure and receive eligibility acknowledgement from the NMDOT Office of the Inspector General (OIG) prior to the proposal deadline for this RFP. Eligibility shall be evidenced by the inclusion of the Consultant on the eligibility list posted on the NMDOT public website and/or an email acknowledgement of eligibility from the NMDOT OIG. Engineering and Design Consultant firms who do not adhere to the requirements of this section shall be determined non-responsive and their proposal will be rejected from consideration for award.

The indirect cost rate approved by the OIG at the time of proposal deadline date will be the rate recognized for the duration of the contract, which includes all term extensions.

3. Incurring Cost

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

4. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime Contractor is solely

responsible for fulfillment of the contract with the Department. The Department will make contract payments only to the prime Contractor.

5. Subcontractors/Consent

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

6. Certifications and Licenses

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

Corporations:

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

Limited Liability Companies:

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

Limited Partnerships:

- Apply for Certificate of Limited Partnership with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-2A-101 through 54-2A-119.
- File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

General Partnerships:

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

Sole Proprietorships and Joint Ventures:

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

7. Amended Proposals

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

8. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative and addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations. (See 1.4.1 NMAC.)

9. Proposal Offer Firm

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

10. Disclosure of Proposal Contents

A. Proposals will be kept confidential until negotiations and the award are completed by the Department. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

1. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
2. Confidential data is restricted to:
 - a. confidential financial information concerning the Offeror's organization; and

b. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.

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

Please note: The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

11. No Obligation

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

12. Termination

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

13. Sufficient Appropriation

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

14. Legal Review

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

15. Governing Law

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

16. Prohibited Bidding

Pursuant to NMSA 1978, Section 10-16-13, the Department shall not accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person in this context includes the person's agents, employees, or representatives.

A person accepting a bid or proposal on behalf of a state agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.

17. Consent to Jurisdiction and Venue

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

18. Basis for Proposal

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

19. Contract Terms and Conditions

The negotiated contract between the Department and the Contractor will follow the format specified by the Department and contain the terms and conditions as set forth in Appendix B (Contract for Federal Funding). The Department reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

The Department discourages exceptions from the contract terms and conditions as set forth in the RFP sample contract at Appendix B. Such exceptions may cause a proposal to be rejected as non-responsive when, in the sole judgment of the Department, the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

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

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

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

If an Offeror fails to propose any alternate terms and conditions during the procurement process, i.e., the RFP process prior to selection as successful Offeror, then no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process constitutes an explicit agreement by the Offeror that the contractual terms and conditions contained in this RFP are accepted by the Offeror.

20. Offeror's Terms and Conditions

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

21. Contract Deviations

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

22. Contract Negotiations

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

23. Offeror Qualifications

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

24. Right to Waive Minor Irregularities

The PSSC reserves the right to waive minor irregularities. The Chief Procurement Officer reserves the exclusive right to determine whether discrepancies regarding mandatory requirements result in an offer being Non-Responsive.

25. Change in Contractor Representatives

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

26. Notice of Penalties

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

27. Agency Rights

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

28. Right to Publish

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

29. Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the Department.

30. Confidentiality

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

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

31. Electronic Mail Address Required

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

32. Use of Electronic Versions of this RFP

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

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

A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month

period during the term of the executed contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

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

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

35. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor:
 - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;

3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure; or
 4. has, preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have had within a three year period preceding this offer, one or more contracts terminated for default by any federal or state agency or local public body.
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Department's Chief Procurement Officer, at any time during the term of the contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of the contract. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror non-responsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of the contract. If during the performance of the contract, the Contractor is indicted for, or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Department's Chief Procurement Officer.

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

36. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, Section 13-1-21, Offerors must include a copy of their preference certificate with their proposal. Certificates for New Mexico Business Preference and New Mexico Resident Veterans Business Preference must be obtained through the New Mexico Department of Taxation & Revenue. An agency shall not award a business both a resident business preference and a resident veteran business preference. See:

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

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

37. Conflict of Interest; Governmental Conduct Act

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

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

38. Equal Employment Opportunity

A. **The following requirements shall apply to state- and federal-funded contracts:** In connection with this RFP and the anticipated contract, the Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, age, marital status, disability, or other protected class.

The Offeror shall take affirmative action to insure that all applicants are treated fairly during employment, without regard to their race, color, religion, sex, sexual preference, national origin, age, marital status, disability, or other protected class.

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

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

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

1. DBE Policy: It is the policy of the Department to implement the provisions of 49 CFR Part 26 (49 CFR 26), other pertinent regulations, and source legislation. The objectives are:
 - a. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the USDOT's highway, transit, and airport financial assistance programs;
 - b. To create a level playing field on which DBEs can fairly compete for USDOT-assisted contracts;
 - c. To ensure that USDOT's DBE Program is narrowly tailored in accordance with applicable law;
 - d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
 - e. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
 - f. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
2. DBE Obligations: The Department will establish the DBE goal on a triannual basis. The approved FFY 21 DBE goal is established at 12.3% for federal-aid highway construction and design of which 12.3% will be attained through race neutral measures and 0% through race-conscious measures.

Record Keeping Responsibilities: The Contractor is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's project manager or to the NMDOT Construction and Civil Rights Bureau DBE Program at the following address:

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

3. Department's DBE Program: The USDOT's DBE Program as required by 49 CFR 26 and as approved by USDOT, is incorporated herein by reference and made part of this agreement. If any provision of the DBE Program conflicts with 49 CFR 26, the provisions of 49 CFR 26 shall prevail. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out the

terms and conditions of the DBE Program, the USDOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

DBE Obligations – The Department and the Offeror agree to ensure that DBEs as defined in 49 CFR 26 shall have the maximum opportunity to participate in the performance of services and work financed in whole or in part with federal funds under the Agreement. In this regard, the Offeror shall not discriminate on the basis of race, color, national origin, sex or other protected class in the performance of USDOT-assisted contracts. The Offeror shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the Offeror to carry out these requirements is a material breach of contract, which may result in the termination of the contract or such other remedy as the Department deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Offeror from future bidding as non-responsive.

4. Certification for Federal-Aid Contracts: The selected Offeror who becomes the Contractor shall certify, by signing the negotiated contract, that to the best of its knowledge and belief:
 - no federal appropriated funds have been paid or will be paid, by or on behalf of the Offeror, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of and federal grant, the making of any federal loan, extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
 - if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Offeror shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
 - this certification is a material representation of fact upon which reliance will be placed when the contract is executed, with submission of this certification a prerequisite for making or entering into the contract as imposed by 31 U.S.C. Section 1352, and any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure;

- the Offeror agrees by signing the contract that the Offeror shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly; and
- the Offeror shall furnish all necessary information and reports and shall permit access to its books, records, and accounts by the Department for purposes of investigation to ascertain compliance with the non-discrimination provisions of the contract.

A copy of the NMDOT Design Consultant Offeror's List (Form No. A-1013) is attached and must be completed at time of proposal submittal. For projects with federally participating funds, failure to complete the forms listed above will render the Offeror's proposal non-responsive.

The Disadvantaged Business Enterprise (DBE) Program rules and regulations, and the listing of Certified DBE Firms can be located on the NMDOT Website at <http://dot.state.nm.us/content/nmdot/en/OEOP.html>. The Construction and Civil Rights Bureau (CCRB) may be contacted at (505) 629-9938 for more information. The complete rule for Title 18, Chapter 28, Part 2, and all revisions, is available at the Construction and Civil Rights Bureau, 1570 Pacheco Street, Suite A-10, Santa Fe, New Mexico 87505.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

One copy will be required through the Bid Express website in PDF format.

C. PROPOSAL FORMAT (Electronic)

Offerors must utilize page indicators within their PDF document that clearly identify the different sections of the proposal, including by creating a bookmark on the PDF document. Offerors must use a standard 8 1/2 x 11 document. (Larger paper is permissible for charts, spreadsheets, et cetera; however, this will count as two pages when used. Offerors are strongly encouraged to limit their proposals to a maximum of thirty (30) pages. Exclusions to this limitation include the letter of introduction, table of contents, covers, proposal summary, dividers, other information, e.g., letters of appreciation, and acknowledgement of amendments (if applicable). Offerors are strongly encouraged to create the document with a minimum of 12 point font size.

1. Proposal Organization

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

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

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

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

2. Letter of Transmittal

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

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

IV. SPECIFICATIONS

A. Information

The contract is scheduled to begin in or around **November 2021**. The Department intends on awarding a contract with a four (4) year term.

B. Mandatory Specifications and Forms

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

1. General Information

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

2. Specialized Design and Technical Competence

The Offeror must describe or provide a work plan to perform the services required by the project scope, including the Offeror's specialized problem-solving techniques or approaches, innovative practices/ideas, and advantages its team brings or offers to the project. Proposals should include a bar chart schedule and describe all work proposed to fulfill the project scope.

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

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

4. Past Record of Performance

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

5. Proximity to or Familiarity with Site Location

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

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

It is in the Department's best interest to support in-state businesses. Proposals should indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms. The Offeror must identify any out-of-state consultant(s) or business relationships that will be involved on the project and the extent of services to be provided by that firm or firms.

7. Volume of Work Currently Being Performed

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

*Contract Balance Amount

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

*Contract Balance Amount is defined as:

- a. Single Phase Contracts: Amount of contract including supplemental agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project).

- b. Multi-Phase Contracts: Amount of contract including all subsequent phases and supplemental agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project). On multi-phase contracts over \$1,334,000.00, a minimum one (1) point deduction will be carried on initial and subsequent phases (except final phase) regardless of percent complete.

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

The Procurement Division will calculate deduction points.

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

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

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

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

10. Resident Business and Resident Veteran’s Preference (does not apply to federally funded projects)

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

- (1) five percent (5%) of the total possible points to a resident business; or
- (2) ten percent (10%) of the total possible points to a resident veteran business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

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

A resident veteran business shall not benefit from the preference for more than ten (10) consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference for more than ten consecutive years. A person shall not benefit from the provisions as specified in NMSA 1978, 13-1-21, on more than one business concurrently.

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

Applications for Resident Business Preference and Resident Veteran's Preference are processed through the New Mexico Department of Taxation & Revenue. If an Offeror has a preference certification number that was issued by the New Mexico State Purchasing Division, it will need to follow the link below to apply for a new Resident Business or Veteran Business Preference number:

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

IF AN OFFEROR DOES NOT QUALIFY FOR A RESIDENT BUSINESS OR RESIDENT VETERAN PREFERENCE, IT MUST PROVIDE A STATEMENT STATING IT DOES NOT QUALIFY IN THIS SECTION OF THE PROPOSAL. IF AN OFFEROR DOES NOT QUALIFY FOR EITHER PREFERENCE, THE PROPOSAL WILL BE ACCEPTED; HOWEVER, IT WILL NOT RECEIVE POINTS FOR PREFERENCE.

11. Form - Proposed Work Participation Chart ("Appendix G")

The Offeror will not offer services as "the prime" on any NMDOT Quality-Based Selection (QBS) RFP where the prime Offeror performs less than thirty five percent (35%) of all contractual services. The percentage above means in price and in actual contract work.

12. Form A-1013, Design or Other Consultant Offeror's List ("Appendix H")

13. Form A-1036, Confidentiality and Non-Disclosure Agreement ("Appendix I")

V. EVALUATION

A. Evaluation Factors/Points

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

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

EVALUATION FACTORS	POINTS AVAILABLE
1. General Information	5
2. Specialized Design and Technical Competence	25
3. Capacity and Capability of the Offeror to Perform the Work	30
4. Past Record of Performance	25
5. Proximity to or Familiarity with Site Location	15
6. New Mexico Produced Work (state funded projects only)	(verification only)
7. Volume of Work Currently Being Performed	(0-4 Pt. Deduction)
8. New Mexico Preference Advantage (state funded proj.)	(5-10 Pt. Preference)
Total Maximum Allowable Points	100-110 Points

B. Evaluation Process

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror(s) for clarification of the response as specified in Section II, Paragraph B.7.
3. The PSSC may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.23.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible Offeror(s) whose proposal is most advantageous to the Department, taking into consideration the evaluation factors in Section V and successful negotiations, will be recommended for contract award as specified in Section II, Paragraph B.12. *Please note that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.*
5. In the event of oral presentations, responsible Offerors with the highest scores resulting from the written evaluations will be selected as finalist Offerors. Points awarded from the oral presentations will be added to the previously assigned points from the written evaluations to attain final scores.

**APPENDIX A TO RFP 22-03
PROJECT INTRODUCTION AND SCOPE OF WORK**

Environmental Services for MS4 Requirements (Federal) On-Call

Control Number: U900223

Project Number: U900223

Type of Work: Assist NMDOT District 1, District 3, & District 5 in compliance with the EPA MS4 Permits. This work includes preparing annual reports in compliance with the MS4 permits, and other tasks as described below.

Posted Route: statewide

Limits: statewide

Total Study Length: statewide

NMDOT Districts: 1, 3, 5

County: Bernalillo, Dona Ana, Los Alamos, San Juan, Santa Fe, Valencia

Functional Classification: All

Terrain Type: Varied

Construction Programmed Year: N/A

Anticipated Notice to Proceed Date:

Project Development Manager: Antonio Griego

Urban or Rural: Urban

Project Description

The engineer shall provide services for fulfilling the requirements of EPA's Municipal Separate Storm Sewer System (MS4) Phase I permit in District 3, Phase II permits in Districts 1, 3, and 5, the Middle Rio Grande Watershed Based MS4 Permit, state wide general permits and the Los Alamos Permit. This includes revising and or drafting new Storm Water Management Plans (SWMP) for all permits, attending meetings and workshops pertaining to NPDES and MS4 permits, assisting the NMDOT in complying with EPA's Phase I, Phase II, and watershed-based permit requirements, and preparing reports and other documentation as requested by NMDOT

Environmental Bureau. It is the intent of the NMDOT to negotiate a lump sum fee for each task assigned. This work shall include, but not be limited to the above description (exact scope shall be negotiated on this contract).

Scope of Services

The scope of work for this project shall consist of EPA's MS4 related permit activities. This project consists of twelve work activities described as follows:

Activity I:

Develop or revise SWMPs to comply with the existing or proposed EPA permit requirements. This work entails developing or revising rewriting existing SWMPs in Microsoft Office, and presenting to the Environmental Bureau for review. This includes writing and submitting appropriate Notice of Intent (NOI) documents for MS4 permits.

Deliverable: Stormwater Management Plans in Microsoft Word or PDF format, filing of Notice of Intent documents with the EPA on behalf of NMDOT

Activity II:

Attend meetings with other MS4 co-permittees on a monthly basis or as needed to continue to comply with MS4 requirements and discuss related issues. This task includes participating in any activity that the MS4 partners deem necessary, such as public meetings, participation in local events, etc. It is estimated that approximately two to three meetings per month will be required, and should be included in the estimate.

Deliverable: Meeting notes and sign-in sheets, documentation of public outreach activities or other related tasks

Activity III:

Attend meetings with NMED, EPA and local agencies concerning issuance or reissuance of MS4 permits. The consultant shall aid NMDOT in reading and interpreting any draft permit documents provided by the EPA. The consultant shall also aid in providing written comments to the EPA during the permit development process .

Deliverable: Meeting notes and sign-in sheets, guidance documents addressed to NMDOT to assist in written correspondence to the EPA in support of permit development

Activity IV:

Participate and take active role in Low Impact Development/ Green Infrastructure (LID/GI) meetings with other stakeholders, and finish tasks assigned to the NMDOT, as directed by the Environmental Bureau.

Deliverable: Meeting notes and sign-in sheets from Arid Lid Coalition or other LID/GI group meetings

Activity V:

Participate in Storm Water Quality Team (SWQT), or other regional organizations outside the Albuquerque metropolitan area, meetings for the Public Outreach and Education portion of the Phase I, Phase II, and watershed-based permit requirements as needed.

Deliverable: Meeting notes and sign-in sheets, documentation of public outreach activities or other related tasks

Activity VI:

Become familiar with and keep updated with EPA correspondence regarding the MS4 permits and provide relevant information, as requested by the Environmental Bureau. This includes accessing any updated information regarding the rules and regulations associated with the MS4 permit for New Mexico online or through email, and complying with any new requirements that the EPA is mandating.

Deliverable: Correspondence regarding updates to MS4 regulations and other associated subjects

Activity VII:

Provide stormwater water quality sampling, testing, and reporting as required by current or future permit requirements. Work shall include at a minimum identification and mapping of outfall points, sampling points, development of quality and control documents.

Deliverable: GIS mapping products, water quality sampling plans, quality assurance program documents

Activity VIII:

Produce Geographic Information Systems (GIS) maps of NMDOT facilities, roadways and drainage features, in permit-designated Urbanized Areas (UA). Survey and GPS capture of water quality features and drainage outlets. Create an MS4 database management system for records for D1, D3, and D5.

Deliverable: GIS mapping products of NMDOT facilities, roadways and drainage features, in permit-designated Urbanized Areas

Activity IX:

Develop training programs to be given to NMDOT employees. These will cover, at a minimum, the Illicit Discharge Detection and Elimination program, construction and post-construction inspection related to Storm Water Pollution Prevention Plans, Good Housekeeping for NMDOT owned properties, and maintenance of Low Impact Development/ Green Infrastructure.

Deliverable: Develop training programs and associated documents for NMDOT employees

Activity X:

Design and development of plans for the retrofitting of existing NMDOT facilities to better comply with MS4 BMPs.

Deliverable: Plans for retrofitting NMDOT facilities to promote compliance with water quality standards

Activity XI:

Develop Standard Operating Procedures manual (to accompany the training activity) for NMDOT Construction, Drainage, Maintenance, and Patrol Yards. These procedures will be in accordance with the Good Housekeeping section of the proposed/current permits and possible Multi-Sector General Permit (MSGP) requirements.

Deliverable: Standard Operating Procedures manual(s) to aid in compliance of MS4 Good Housekeeping requirements

Activity XII:

Provide assistance as needed for compliance with Construction General Permit and Multi-Sector General Permit activities located with designated MS4 areas. This task shall include filing NOI documents, drafting Storm Water Pollution Prevention Plans, and filing Notice of Termination (NOT) documents.

Deliverable: Stormwater Pollution Plans, drafting and submitting of NOI and NOT documents for Construction General Permits and Multi-Sector General Permits

The Department will provide the consultant with the following during the duration of the contract:

- An Environmental Scientist to serve as a Project Manager, who will provide guidance and direction on all assigned work and deliverables.
- Current NMDOT Phase I and Phase II EPA Permits, and Phase II applications and supporting documents.
- A briefing of the past cycle of MS4 activities that have been done in cooperation with other MS4 co-permittees, along with any written documents and correspondence (this briefing will require approximately several hours of consultation and discussion).
- EPA contact information for Region 6 and within NMED.
- MS4 co-permittee contact information.
- The current sampling and testing agreements and results.
- The current Public Education and Outreach Program details.
- Miscellaneous information as required by the Consultant to complete assigned work.

**APPENDIX B TO RFP 22-03
CONTRACT FOR FEDERAL FUNDING**

Contract No.
Vendor No.
Control No.

ENGINEERING SERVICES AGREEMENT

This Engineering Service Agreement (Agreement or Contract) is between the **New Mexico Department of Transportation** (NMDOT or Department) and <<Insert Company Name >> (Contractor or Consultant). The start date of this Agreement is the date of the Notice to Proceed to the Contractor for the project described in Section 1, below.

Now Therefore, the parties agree follows:

1. Scope of Work.

The Contractor shall perform the services described in **Appendix A, Scope of Work**.

This is <<Choose one: project specific/an on-call >> Engineering Services Agreement for <<Insert name of project or type of on-call service>>: CN <<Insert>>. <<Add following sentence if federally funded: This Agreement is funded in whole or in part by the Federal Highway Administration (FHWA). >>

2. Payment for Services.

a. Compensation.

The Department will pay for engineering services based on compensation, unit rate schedule, applicable New Mexico gross receipt taxes (GRT), liquidated damages and retainage, all of which are identified in **Appendix B, Compensation/Rates**. Payment will not be made for services provided prior to the Contractor's receipt of a **Notice to Proceed** and after the expiration of this Agreement. Contractor must use the Department's form for the submission of an invoice.

b. Acceptance/Rejection.

Contractor must submit a detailed statement with supporting documentation accounting for all services performed and expenses incurred. The Department will determine if the invoice is appropriately documented and the services provided meets federal and state specifications and complies with the requirements of this Agreement.

Within thirty (30) calendar days after the Department receives an invoice, the Department will issue a written notice of complete or partial acceptance or rejection of services. If the Department finds that the invoice and/or the services are not acceptable, it will provide to the Contractor written notice explaining the defect, indicating issues, unacceptable items

and/or requested revisions. The Contractor has ten (10) business days from the date of the notice to resubmit the invoice and services with all appropriate corrections or modifications made and/or addressed. If the work is once again determined to be unacceptable, the Contractor will be required to provide a remediation plan that must include a timeline for corrective action acceptable to the Department. The Contractor shall be subject to all damages and remedies attributable to the late delivery of the services and available at law or equity. In the event that services must be resubmitted more than twice for Acceptance, the Contractor will be deemed in breach. The Department may terminate this Agreement without further consideration by issuing a written Notice of Termination for Cause subject to Section 4b below.

Upon acceptance of the services, payment will be made to the Contractor within thirty (30) calendar days. If payment is made by mail, the payment will be deemed tendered on the date it is postmarked. The Department will not incur late charges, interest, or penalties for failure to make payment within the time specified in this Section 2b.

c. **Taxes.**

Unless exempt, the Contractor is responsible for making payment of gross receipts taxes to the New Mexico Department of Taxation and Revenue.

3. Notice to Proceed and Term.

The term of this Agreement is based upon the issuance date of the Notice to Proceed to the Contractor, which is after the Agreement has been fully executed and funding has been obligated for the project described in Section 1, above. This Agreement will terminate four (4) years from the issued Notice to Proceed unless terminated pursuant to Section 4 or Section 5 below. A professional services contract, including extensions and renewals, is limited to four (4) years, except as set forth in NMSA 1978, Section 13-1-150.

4. Termination, Suspension and Delays.

a. **Termination for Convenience.**

The Department may terminate this Agreement for convenience, in whole or in part, if the Department determines that termination is in its best interest. Such a notice will be in writing, and effective thirty (30) calendar days from the date on the notice.

b. **Termination for Cause.**

The Department may terminate this Agreement for default for the Contractor's failure to:

1. Perform services as detailed in **Appendix A** and in any amendments,
2. Complete this Agreement within the timeframe specified and in any amendments, or
3. Comply with any material term of this Agreement.

If the Department contemplates termination under the provisions of this Section 4b, the Department will issue a written notice of default, indicating issues, unacceptable items and/or requested revisions. Upon receipt of notice, the Contractor has ten (10) business days to correct the deficiency. If the work is again determined to be unacceptable, the Contractor will be required to provide a remediation plan that must include a timeline for corrective action acceptable to the Department. The Contractor will be subject to all

damages and remedies attributable to the late delivery of the services, and available at law or equity.

In the event that services must be resubmitted more than twice for Acceptance, the Contractor will be deemed in breach. The Department may terminate this Agreement without further consideration by issuing a written Notice of Termination for Cause effective immediately.

c. Suspension.

Work under this Agreement may be suspended by written order at the Department's sole discretion. The Contractor is not entitled to any compensation when work is suspended. A suspension will be treated as a delay caused by the Department under Section 4d1 below, and may receive a reasonable time extension.

d. Delays.

The parties agree to perform their obligations with due diligence and to cooperate so that the project will be completed within the time frame(s) provided in **Appendix A** and the **Notice to Proceed**.

1. In the event of delays caused by the Department, the Contractor may receive a reasonable extension of time, but in no event will the Contractor terminate work for delays caused by the Department.
2. If a delay is attributable to the Contractor's fault or to matters within its control, extensions will not be granted. The Contractor will be subject to assessment of liquidated damages.

e. Termination and Suspension Management.

1. Within five (5) business days of the effective date of termination for convenience, termination for cause, or suspension, the Contractor shall deliver to the Department:
 - a. All design plans, construction estimates, drawings, documents, survey books and any or all other materials developed under this Agreement, and
 - b. An engineering progress report.
2. The Contractor will be compensated only for work that was accepted prior to the termination or suspension of this Agreement.
3. The Department may withhold reasonable amounts of payments for the purpose of setoff until such a time as the exact amount of damages due from the Contractor are determined.
4. In the event of termination for convenience, there will be no payment for anticipated profit, unperformed services or unabsorbed overhead.
5. In the event of Termination for Default, the Department is entitled to recover all direct, indirect, and consequential costs for completion of the Scope of Work, **Appendix A**, whether performed by the Department or by another contractor.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico or the Congress of the United States. If sufficient appropriations and authorizations are not made by the Legislature or the Congress,

this Agreement will terminate upon written notice being given by the Department to the Contractor. The Department is not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are available is final. If the Department proposes an amendment to unilaterally reduce funding, the Contractor has the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) calendar days of receipt of the proposed amendment.

6. Confidentiality.

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

7. The Product of Service, Patents and Copyrights.

All documents and materials developed or acquired by the Contractor in the performance of this Agreement, which includes but is not limited to computer program elements, reports, tracings, drawings, estimates, field notes, investigations, design analysis, structural calculations, and studies, are the property of the Department. These products of service must not be used, released, patented, or copyrighted by the Contractor or by any other person except with the prior written approval of the Department. All the products of services are to be delivered to the Department no later than the termination date of this Agreement and before final payment. The Contractor is required to include this clause in all subcontracts.

8. Approval of Contractor Personnel.

Once work has started, changes of personnel may be made by the Contractor with the prior written consent of the Department. Replacement of any Contractor personnel, if approved, will be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their productivity to the project immediately upon receiving assignments. Approval of replacement personnel will not be unreasonably withheld.

9. Employment of Department Employees.

Unless approved by the Department in writing, the Contractor *shall not*:

- a. Employ any professional or technical employee(s) who are part time, full time, or who have been in the employment of the Department during the life of this project, or
- b. Directly or indirectly solicit, offer, promise, coerce, promote, or give anything of value to any such professional or technical employee as inducement to leave the employment of the Department for any reason whatsoever.

10. Status of Contractor.

The Contractor, its employees, agents, and subcontractors are independent contractors performing professional services for the Department and are not employees of the Department. The parties agree that no persons supplied by the Contractor are Department employees, and that no rights of a State of New Mexico employee, retirement, or personnel rules, or use of Department vehicles or property, accrue to such persons.

The Contractor shall not in any way exercise any portion of the authority or sovereign powers of the State of New Mexico or the Department and shall not make any agreements, commitments or represent itself as an agent of the State of New Mexico or the Department.

11. Permits and Licenses.

The Contractor represents that it is properly organized under the laws of the State of New Mexico, as applicable, and is in good standing to do business in the State of New Mexico. The Contractor shall procure all permits and licenses as required by law, pay all charges, fees and royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work.

12. Assignment.

The Contractor shall not assign or transfer any interest, right or obligation or assign any claims for money due or to become due without prior written approval of the Department.

13. Subcontracts.

The Contractor may subcontract for part of the services with prior written approval by the Department. A subcontract of \$10,000 or more must contain all the provisions of this Agreement.

The Contractor shall require the subcontractor to have insurance as required under Section 15 below and to name the Department as an additional insured on the subcontractor's policy. A certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and it must state that the coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Contractor shall require the subcontractor to defend, indemnify and hold harmless the Department and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the breach, or deriving from performance of this Agreement, including but not limited to breach of contract, unfair business practices, antitrust, RICO, fraud, or tort, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor has or is performing services pursuant to this Agreement.

14. Liability.

<<Choose one: private contractors: The Contractor shall defend, indemnify and hold harmless the Department and the State of New Mexico and their officers, employees and agents from all actions, proceedings, claims demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the breach, or deriving from performance of this Agreement, including but not limited to breach of contract, unfair business practices, antitrust, RICO, fraud, or tort, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent,

employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.>> or <<public entity: Neither party will be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. Sections 41-4-1, et seq. and any other applicable law.>>

In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall notify the legal counsel of the Department and the Risk Management Division of the New Mexico General Services Department by certified mail within two (2) business days of its receipt of notice.

The indemnification obligation is not limited by the existence of any insurance policy or by limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor, and survives the termination of this Agreement. Money due or to become due to the Contractor may be retained, as necessary, to satisfy any outstanding claim the Department may have against the Contractor.

The Contractor has total responsibility for the accuracy, completeness and correctness of plans and related data. Department review of the plans will be for conformity with Department procedures and state and federal standards and specifications. Review by the Department does not include a detailed review or checking of design components and related details or the accuracy with which such designs are depicted on the Contractor's plans and reports.

All documents and materials developed or acquired by the Contractor in the performance of this agreement is the property of the Department. The Contractor is liable for replacement, if these materials are destroyed or lost prior to transferring possession.

The Department does not waive its immunity and limitations of liability under the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-27., or any other applicable law.

15. Insurance.

The Contractor shall procure insurance, as detailed on **Appendix C, Insurance Requirements**, with an insurance company authorized to do business in New Mexico. Insurance must cover all operations under this Agreement, whether performed by the Contractor, the Contractor's agents or employees, or subcontractors and shall name the Department as an additional insured as set forth in **Appendix C** below. The insurance must be maintained until all obligations, including any warranty period, has been discharged. The Contractor shall provide the Department a certificate of insurance and endorsements listing the Department as an additional insured, to be attached to **Appendix C**.

16. Records and Audit.

If this Agreement is solely state funded, the Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available to the Department or the State Auditor at their respective offices during the Agreement period and for five (5) years from the date of final payment.

If this Agreement is federally funded in part or in whole, the Department, the Federal Highway Administration, and the United States Comptroller General must be provided access to any books, documents, papers, and records of the Contractor which are directly pertinent to the Agreement, for the purpose of making an audit, examination, excerpts, and transcriptions. The Contractor shall make such materials available at their respective offices during the Agreement period and for five (5) years from the date of final payment.

17. Release.

The Contractor, upon final payment, releases the Department, its officers, and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

18. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. The Contractor agrees to assure that no person will be excluded, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to not be in compliance with these requirements, the Contractor agrees to take appropriate steps to correct these deficiencies, subject to Section 4 above.

19. Civil Rights Laws and Regulations Compliance.

The Contractor shall comply with all federal, state, and local civil rights laws, regulations, and ordinances applicable to the work called for under this Agreement. These include, but are not limited to Title VI and Title VII of the Civil Rights Act of 1964, 49 CFR Part 21, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, Executive Order 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements the USDOT may issue.

20. New Mexico Employees Health Coverage.

- a. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the Agreement, Contractor certifies, by signing this Agreement, to have in place, and to maintain for the term of the Agreement, health insurance for those employees, and to offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the state exceeds \$250,000.
- b. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance, (b) declined health insurance due to other health insurance coverage

already in place, or (c) declined health insurance for other reasons. These records are subject to review and audit in accordance with Section 16 above.

- c. Contractor agrees to advise all employees of the availability of state publicly financed health care coverage programs.

21. Conflict of Interest.

The Contractor warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services. If the Contractor serves as a representative for other entities or agencies, public or private, within the project area during the term of this Agreement, Contractor shall immediately notify the Department for evaluation of potential conflict(s). The Contractor shall comply with the New Mexico Governmental Conduct Act, the New Mexico Financial Disclosures Act, and the campaign disclosure provisions of the New Mexico Procurement Code. The Contractor shall provide the Department a fully executed **Campaign Contributions Disclosure Form**, to be attached as **Appendix D**.

22. Certifications. (*Applicable to federally funded agreements*)

The Contractor shall provide the Department a fully executed **No Solicitation of Contract Certification of Contractor** (Certification), to be attached to this Agreement, along with the **No Solicitation of Contract Certification of the Department**, as **Appendix E**. The Contractor certifies by signing this Agreement that to the best of its knowledge and belief:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. In addition to the Certification, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "**Disclosure of Lobbying Activities**."
- c. The Certification is a material representation of fact upon which reliance was placed when this Agreement was executed. Submission of this Certification is a prerequisite for making or entering into this Agreement, as imposed by Title 31 U.S.C. Section 1352. Any person who fails to file the required Certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor agrees, by signing this Agreement/Amended Agreement, that it shall require that the language of this Certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall complete and submit certify

Standard Form-LLL, “**Disclosure of Lobbying Activities,**” in accordance with its instructions.

23. Disadvantaged Business Enterprise (DBE). *(Applicable to federal-funded agreements)*

In accordance with 49 CFR 26, or as may be amended, the Contractor agrees to abide by and take all necessary and reasonable steps to comply with the following:

- a. **DBE Policy:** It is the policy of the Department to implement the provisions of 49 CFR 26, other pertinent regulations, and source legislation. The objectives are to:
 1. ensure nondiscrimination in the award and administration of United States Department of Transportation (USDOT)-assisted contracts in the USDOT’s highway, transit, and airport financial assistance programs;
 2. create a level playing field on which DBEs can fairly compete for USDOT-assisted contracts;
 3. ensure that the Department’s DBE Program is narrowly tailored in accordance with applicable law;
 4. ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
 5. help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
 6. assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
- b. **DBE Goal:** The Department will establish the DBE goal on a triannual basis. The approved FFY 2021 DBE goal is established at 12.3% for federal-aid highway construction and design, of which 12.3% will be attained through race-neutral measures and 0% through race-conscious measures.
- c. **Record Keeping Responsibilities:** The Contractor is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department’s project manager or to the Department’s Construction and Civil Rights Bureau/DBE Program at the following address:

New Mexico Department of Transportation
Construction and Civil Rights Bureau
1570 Pacheco Street, Suite A10
Santa Fe, New Mexico 87505

- d. **Department’s DBE Program:** The Department’s DBE Program, as required by 49 CFR 26, and as approved by USDOT, is incorporated by reference and made part of this Agreement. If any provision of the DBE Program conflicts with 49 CFR 26, the provision of 49 CFR 26 will prevail. Implementation of this program is a legal obligation and failure to carry out its terms will be treated as a violation of this Agreement. Upon notification to the Contractor of its failure to carry out the terms and conditions of the DBE Program, the Department may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC Section 3801, et seq.). From time to time, the

Department might receive interpretations from USDOT, which will be binding on the Department and Contractors.

- e. **DBE Obligations:** The Department and the Contractor agree to ensure that DBEs, as defined in 49 CFR 26, will have the maximum opportunity to participate in the performance of services and work financed in whole and in part with federal funds under the Agreement. In this regard, the Contractor shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the award and performance of any USDOT-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of contract, which may result in the termination of the Agreement, or such other remedy as the Department deems appropriate, including but not limited to: (i) withholding monthly progress payments; (ii) assessing sanctions; (iii) liquidated damages; and/or (iv) disqualifying the Contractor from future bidding and non-responsive.

24. Applicable Law, Jurisdiction and Venue.

This Agreement is governed by the laws of the State of New Mexico, including but not limited to the Procurement Code, NMSA 1978 Sections 13-1-28 through 13-1-199. Civil and criminal penalties can be imposed regarding illegal bribes, gratuities, and kickbacks.

If federally funded, the laws of the United States of America, including but not limited to the regulations, policies, procedures, and directives of the USDOT. Violation of federal laws and regulations can result in the loss of federal funds, as well as penalties under 18 U.S.C. Section 1001.

The Contractor acknowledges the jurisdiction of the courts of the State of New Mexico over any adversarial proceedings arising out of this Agreement. Venue for any such proceeding will be in the First Judicial District Court for the County of Santa Fe, New Mexico.

25. Merger.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter, and supersedes all other agreements, whether written or oral, between the parties.

26. No Third-Party Beneficiary.

This Agreement does not confer any rights or remedies on anyone other than the Department and the Contractor.

27. Severability.

If any term or condition of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected and will be valid and enforceable.

28. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement will not waive that party's right thereafter to demand strict compliance with that or any other provision.

No waiver will be effective unless in writing, and no effective waiver by a party of any of its rights will be effective to waive any other rights.

29. Appendices.

The following are a part of this Agreement:

Appendix A, Scope of Work

Appendix B, Compensation/Rates

Appendix C, Insurance Requirements

Appendix D, Campaign Contributions Disclosure Form

Appendix E, Certifications (*Applicable to federally funded agreements*)

30. Amendment.

This Agreement may only be amended by an instrument in writing executed by the parties.

Subject to the Procurement Code, NMSA 1978 Sections 13-1-28 through 13-1-199, and other applicable laws and regulations, an amendment may include modifications to the **Scope of Work, Appendix A**, when unanticipated changes in the character of the work require a change in the nature of the design. The Scope of Work for project-specific agreements may involve up to three phases and take a phase-by-phase approach, requiring amendments to add new phases.

The remainder of this page is intentionally left blank.

In Witness Whereof, each party is signing this Agreement on the date stated opposite that party's signature. The execution of this Agreement is on the date of the last party to sign. Signatures are dated for reference purposes only. The start date, as defined above, shall guide the term and performance of services under this Agreement.

New Mexico Department of Transportation

By: _____ Date: _____
Cabinet Secretary or Designee

<<Insert Company Name >>

By: _____ Date: _____

Print Name: _____

Title: _____

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

By: _____ Date: _____
Assistant General Counsel

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

Taxation and Revenue Department

By: _____ Date: _____

Appendix A Scope of Work

On Call, (Enter Termini) Task Order Based

1. Services to be Performed:

Provide On-Call <<Insert type of services>> Services, as assigned by task order. The Contractor (also identified herein as Engineer or Consultant) shall not proceed with the work until it has received a **Notice to Proceed** and a copy of the task order authorization form signed by both parties.

2. The Contractor shall:

- a. Meet the standards, effective at the start date of this Agreement and as amended, in the:
 1. the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction;
 2. the Federal Highway Administration’s Manual on Uniform Traffic Control Device;
 3. Title 23 of the Code of Federal Regulations;
 4. standards established by the American Association of State Highway and Transportation Officials, the American Society for Testing and Materials; and
 5. Department infrastructure design directives.
- b. Comply with deadlines and/or completion dates in the task order.
- c. Fully perform the work detailed in the scope of work, including as supplemented by task order.
- d. Provide accurate, complete, and correct plans and related data.
- e. Attend field inspections, conferences, or public meetings as required by the project and the Department.
- e. Maintain a New Mexico office and New Mexico professional contractor registration, as applicable.

3. Department Review.

Department review of the plans will be for conformity with Department procedures and state and federal standards and specifications. Review by the Department does not include a detailed review or checking of design components and related details or the accuracy with which such designs are depicted on the Contractor’s plans and reports.

4. Scope of Work/Task Order Form:

The following describes the tasks and subtasks identified in Request for Proposal (RFP) No.: <<Insert number>> that the Contractor may be requested to perform and includes a task order authorization form.

<<Insert Scope of Work>>

Appendix B Compensation/Rates

On-Call Services, (Enter Termini) Task Order Based

Compensation: Up to \$ _____. This amount does not include gross receipts tax (GRT).

New Mexico GRT: The Department will pay GRT at the rate applicable at the time of service. Contractor shall include GRT in each invoice.

Rates: The Contractor's Unit Rate Schedule and Certification of Final Indirect Costs, if applicable, is attached to this **Appendix B**.

Task Order Based: The Department and Contractor shall agree on a task order that will contain the scope of work, compensation, applicable GRT, any completion dates, and whether liquidated damages and retainage will apply. The Contractor shall commence work upon receipt of a **Notice to Proceed**, which will include completion dates. See for reference, sample **New Mexico Department of Transportation Task Order Authorization Form** included below.

Method of Payment: As identified on each task order authorization form: <<Choose one: lump sum upon completion / monthly invoice / quarterly invoice>>.

Liquidated Damages: <<Choose one: Yes / No >>

- a. If the Contractor fails to meet completion dates in **Appendix A** on which liquidated damages apply, the Department will assess two hundred fifty dollars (\$250) for each day of delay or one-quarter of one percent (.25%) per day of the Contractor's sum fee, whichever is less. Liquidated damages will be withheld from final payment. If the liquidated damages exceed the retainage due, the Contractor shall be liable to pay the Department the amount of such excess.
- b. The terms "satisfactory completion" or "satisfactorily completed" for the purpose of assessing liquidated damages mean:
 1. return in satisfactory condition all of the Department's loaned documents and materials, including survey books and field notes;
 2. delivery of Contractor's work product including design information, standard drawings, field notes, and other pertinent documents, provided that such delivery means actual transfer of possession in the form approved by the Department incorporating all required plan corrections and clarifications; and
- c. written acceptance by the Department of the Contractor's work.

Extensions: If the Contractor is unable to meet completion dates for reasons beyond its control, the Contractor may request an extension. Such a request must be made in writing no later than thirty (30) days before the completion date. The Department may extend the completion dates, which will be done in writing.

Retainage: <<Choose one: Yes / No >>

If indicated above, the Department will hold as retainage 5%. The Department will pay for work performed until payments made equal 95% of the total amount for the applicable Phase. The remaining 5% retainage will be paid upon satisfactory completion of services, respectively. All amounts retained will be released to the Contractor upon project completion and acceptance.

End of Appendix B

**New Mexico Department of Transportation
Task Order Authorization Form**

On Call <<Insert type>> Services

Date Issued: <<Insert Date>>

Contract No. <<Insert No.>>

Task Order No.: <<Insert No.>>

Task Order Name: <<Insert Name>>

1. Task Description/Objectives:

<<Insert general description and objectives>>

The Scope of Work is attached to this Task Order and describes the required tasks and subtasks to be performed by the Contractor.

2. Cost

Compensation: Up to <<Insert total amount for this Task Order.>>

New Mexico GRT: The Department will pay the applicable GRT. Contractor shall include the GRT in each invoice.

Method of Payment: <<Choose one: Lump Sum upon completion / Monthly Invoice / Quarterly Invoice. >>

Liquidated Damages: <<Choose one: Yes, applied to Completion Dates with marked with * in Section 4 below. / No.>>

Retainage: <<Choose one: Yes / No >>

3. Personnel:

Names, job titles, and related qualifications of all personnel assigned to the task:

4. Completion Dates: <<Insert Dates and put * on dates in which liquidated damages will apply.>>

5. Termination Date: <<Insert Date>>

The Contractor agrees to begin the attached specified work upon receipt of Notice to Proceed that this task order has been fully executed, and to complete such work on or before <<Insert termination Date>> for up to <<Insert compensation for this task order.>>

The execution of this task order is on the date of the last party to sign. Signatures are dated for reference purposes only. The Contractor shall commence work only upon receipt of a **Notice to Proceed**.

By: Contractor

Date

By: Cabinet Secretary (or designee)

Date

Appendix C Insurance Requirements

The Contractor shall procure insurance, as detailed below, and provide a Certificate of Insurance and endorsements listing the Department as an additional insured, which will be attached to this **Appendix C**. The limits cited below are minimum limits. The Department does not intend that these limits define what constitutes adequate insurance coverage. The insurance coverage required in no way limits the Contractor's liability under this Agreement

The Contractor may purchase an umbrella or excess policy to secure these limits. Any umbrella or excess insurance must follow form equal to or broader in coverage than the underlying insurance requirements, including but not limited to additional insurance endorsement.

1. Minimum Scope and Limits:

a. General Liability – Occurrence Form:

The Policy must include the following (including coverage for drone usage as applicable):

1. Personal and Bodily Injury: \$1,000,000 each person; \$2,000,000 each occurrence (annual aggregate),
2. Property Damage: \$2,000,000 each occurrence (annual aggregate),
3. Products – Completed Operations Aggregate: \$1,000,000. Products and completed operations coverage must be maintained for three (3) years after completion of design,
4. Personal and Advertising Injury: \$1,000,000,
5. Blanket Contractual Liability – Written and Oral: \$1,000,000,
6. Damage to Rented Premises: \$50,000, and
7. Each Occurrence: \$1,000,000

b. Business Automobile Liability:

The Policy must cover all vehicles, owned, hired and/or non-owned used in the performance of this Agreement.

1. Personal and Bodily Injury: \$1,000,000 each person; \$2,000,000 each occurrence (annual aggregate) and
2. Property Damage: \$2,000,000 each occurrence (annual aggregate)

c. Professional Liability (Errors and Omissions):

1. Each Claim, \$1,000,000 and
2. Annual Aggregate, \$2,000,000

In the event that the professional liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date under the policy must precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

d. Workers Compensation and Employers Liability:

1. Workers Compensation: Comply with statutory requirements, as amended, under the

New Mexico Worker's Compensation Act (NMSA 1978, Sections 52-1-1 et seq.) and the New Mexico Occupational Disease Disablement Law (NMSA 1978, Sections 52-3-1 et seq.).

2. Employers' Liability:

- (a) Each Accident: \$1,000,000,
- (b) Disease – Each Employee: \$1,000,000, and
- (c) Disease – Policy Limit: \$1,000,000

e. **Aircraft Liability – Per Occurrence Form** (*if applicable*):

If the Contractor or its subcontractor will be using aircraft to perform any portion of this Agreement, then aircraft liability must be provided. The policy must include bodily injury, property damage, personal injury and broad form contractual liability.

- 1. Products – Completed Operations Aggregate: \$1,000,000,
- 2. Personal and Advertising Injury: \$1,000,000,
- 3. Hangarkeepers Liability: \$1,000,000,
- 4. Per Seat Limit: \$1,000,000,
- 5. Blanket Contractual Liability – written and oral: \$1,000,000,
- 6. Fire Legal Liability: \$50,000, and
- 7. Each Occurrence: \$5,000,000

f. **Valuable Papers Coverage:**

Valuable papers insurance must be included in the policy for a minimum of \$25,000 or in a higher amount sufficient assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Contractor in the completion of this Agreement.

2. **Additional Insured:**

The General, Automobile and Aircraft Liability policies must name the Department as an additional insured. The form must conform to the most current version of the Insurance Services Office's CG 2010, Additional Insured Endorsement Form. The Certificate of Insurance must state that the coverage provided under each policy is primary over any other valid and collectible insurance. Such additional insured must be covered to the full limits of liability purchased by the Contractor, even if those limits are in excess of those required by this Agreement.

3. **Certificate of Insurance and Endorsements:**

The Contractor shall provide a Certificate of Insurance and endorsements listing the Department as an additional insured evidencing the above insurance before the Department issues a Notice to Proceed. The Certificate of Insurance and endorsements listing the Department as an additional insured must be made part of this Agreement. The Contractor shall provide a Certificate of Insurance and endorsements listing the Department as an additional insured to the Department on renewal of a policy or policies as necessary during the term of the Agreement.

Appendix D
See attached, Completed Campaign Contribution Disclosure Forms
(Attach from proposal)

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, and NMSA 1978, Section 13-1-191.1, any prospective contractor (also identified as engineer or consultant) seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member, or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to NMSA 1978, Section 13-1-181 or a contract that is executed may be ratified or terminated pursuant to NMSA 1978, Section 13-1-182 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

To be read consistent with NMSA 1978, Section 13-1-191.1, the following definitions apply:

1. “Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.
2. “Campaign contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. Campaign contribution includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.
3. “Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.
4. “Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.
5. “Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.
6. “Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

— OR —

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX E OF THE CONTRACT

Contract No.:

Vendor No.:

Control No.:

**NO SOLICITATION OF CONTRACT
CERTIFICATION OF ENGINEER**

I hereby certify that I am the (title) _____ and duly authorized representative of the firm of _____, whose address is _____ and that neither I nor the above firm I represent has:

- a. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person, other than a bona fide employee working solely for me or the above Contractor (consultant, engineering firm or its representative), to solicit or secure this Agreement;
- b. agreed, as an express or implied condition for obtaining the Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
- c. paid, or agree to pay, to any firm, organization or person, other than a bona fide employee working solely for me or the above Contractor (consultant, engineering firm or its representative) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement.

As per OMB Circular A-133, Compliance Supplement 2020, or as amended, _____ certifies that the organization and its principals are not suspended or debarred.

Except as here expressly stated (if any): _____.

I acknowledge that this certificate is to be furnished to the New Mexico Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation (if applicable), in connection with this Agreement involving participation of federal-aid highway funds (if applicable), and is subject to applicable state and federal laws, both criminal and civil.

By: _____

Date: _____

Contract No.:

Vendor No.:

Control No.:

Engineering Firm: _____

**NO SOLICITATION OF CONTRACT
CERTIFICATION OF NEW MEXICO DEPARTMENT OF TRANSPORTATION**

I, _____, as Deputy Secretary or designee of the New Mexico Department of Transportation, do hereby certify that the above Contractor (consultant, engineering firm or its representative) has not been required directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- a. Employ or retain, or agree to employ or retain, any firm or person or
- b. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

Except as here expressly stated (if any): _____.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, U.S. Department of Transportation (if applicable), in connection with this Contract involving participation of Federal-Aid highway funds (if applicable), and is subject to applicable State and Federal laws, both criminal and civil.

By: _____ Date: _____

**APPENDIX C TO RFP 22-03
ACKNOWLEDGEMENT OF RECEIPT FORM**

Request for Proposals No. 22-03

CN: U900223

Environmental Services for MS4 Requirements On Call

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

The acknowledgement of receipt should be signed and returned to the Procurement and Facilities Management Division, NMDOT, by the close of business on **June 28, 2021**. Only potential Offerors who elect to return this completed form will receive copies of RFP amendments, if any are issued. The following information will be used for all correspondence related to this Request for Proposals.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

**APPENDIX D TO RFP 22-03
PROJECT/CONTRACT LISTING FORM**

Offerors shall list all current contracts with the NMDOT.

FIRM: _____ DATE: _____

Table A – Project Specific Contracts

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

Table B – On-call Contracts

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

Notes:

1. If any award is not proceeding in contract negotiations, please indicate the status in the "Remarks" below.
2. Fees do not include reimbursable expenses, which include: travel, per diem, printing, telephone or reproduction cost.
3. Federal funds shall be included in project calculations pursuant to NMSA 1978, Section 13-1-120B (6).
4. Any Award of Contract that has not resulted in a written contract offer to the Offeror, within 6 months of written notice, shall not be considered an award for the purposes of the Project Listing Form.
5. Contact the person designated in Section I, Paragraph D if there are ANY questions regarding the correct completion of this form. (Use additional sheets if necessary).

REMARKS:

APPENDIX E TO RFP 22-03 CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, and NMSA 1978, Section 13-1-191.1, any prospective contractor (also identified as engineer or consultant) seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to NMSA 1978, Section 13-1-181 or a contract that is executed may be ratified or terminated pursuant to NMSA 1978, Section 13-1-182 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

To be read consistent with NMSA 1978, Section 13-1-191.1, the following definitions apply:

1. "Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.
2. "Campaign contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made

to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. Campaign contribution includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

3. "Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.
4. "Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.
5. "Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.
6. "Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

— OR —

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX F TO RFP 22-03
NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

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

Signature of Offeror: _____ Date _____

**APPENDIX G TO RFP 22-03
PROPOSED WORK PARTICIPATION CHART**

Role	Firm Name	% of Project
Prime		
Sub		
Sub		
Sub		
Sub		
Sum		

APPENDIX H TO RFP 22-03

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

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

Consulting Firm: _____ **Project No.** _____

Contact Name: _____ **Control No.** _____

RFP Number: _____

Consulting Firm Address: _____

Telephone: _____ **Fax:** _____ **E-Mail:** _____

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

ALL SUB-CONSULTANTS:

NAME	ADDRESS	TELEPHONE	STATUS: DBE / NON-DBE

APPENDIX I TO RFP 22-03

Form No. A-1036
New 08/03

New Mexico Department of Transportation CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

OFFEROR NAME	
CONTROL NUMBER	
PROJECT NUMBER	
TERMINI	

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

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

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

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

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

Signed: _____ Date: _____

Title: _____

Printed Name: _____

Printed Title: _____