

**REQUEST FOR PROPOSALS  
FOR  
PROFESSIONAL SERVICES**

**RFP: 21-22-009**



Project Name:

**Engineering Services for Truth or Consequences Airport Improvements**

Contracting Agency:

**City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, New Mexico 87901**

Telephone: [575] 894 - 6673

FAX: [575] 894 - 0363

Funding Type: Federal, FAA, State, & Local

**NOTICE OF REQUEST FOR PROPOSALS**

Competitive sealed proposals for services will be received by the Contracting Agency, the City of Truth or Consequences for **RFP: 21-22-009**

The Contracting Agency is requesting qualifications-based proposals for **Professional Engineering Services for Truth or Consequences Airport Improvements.**

Proposals will be received at the **Office of the Procurement Officer, City Hall 505 Sims Street, Truth or Consequences, NM 87901 June 16, 2022 at 2:00 p.m.**

Copies of the project description, scope of work, qualifications, and method of selection are available at the of the Procurement Officer, City Hall 505 Sims Street, Truth or Consequences, NM 87901 or will be mailed upon written or telephone request at **575-894-6673 ext. 309**

**A Pre-Proposal Conference [X] will [ ] will not be held.**

Chief Procurement Officer

  
Kristin Saavedra

Date: May 09, 2022

[ for Contracting Agency's Use Only]

Newspaper: \_\_\_\_\_ Publish: \_\_\_\_\_ P.O. No. \_\_\_\_\_

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[Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 days prior to the date set for the receipt of proposals (§13-1-113) and published in a newspaper of general circulation in the area.]

**THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
REQUEST FOR PROPOSALS (RFP)  
PROFESSIONAL ENGINEERING SERVICES  
INSTRUCTIONS AND CONDITIONS TO OFFERORS**

**A. Project Description**

The City of Truth or Consequences is soliciting qualification and experience information to be used in selecting principal consultants to provide planning and/or engineering services for the following potential projects at the Truth or Consequences Municipal Airport.

The City of Truth or Consequences plans to award a one-year contract with possibly three (3) one Year renewals for the engineering services for any and all engineering projects subject to Federal Assistance under the Airport and Airway Improvement Act of 1892 as amended. Contemplated Projects under this contract may include:

Rehabilitate Taxiway A (RS TW IM) (Preservation)  
Environmental Assessment for Airfield Improvements  
BIL – Rehabilitate Apron (RS AP IM) (Preservation)  
Rehabilitate Runway 13/31 (RS RW IM) (Preservation)  
Airfield Pavement Maintenance  
Runway Safety Area Grading (SA RW SF)  
Replace ASOS with AWOS  
Update ALP/Action Plan or Master Plan  
Environmental documentation for projects  
Fuel Farm Improvement

The above-contemplated projects are dependent upon federal AIP funding and State Aviation Division funding and approval of the City of Truth or Consequences, so it shall be understood that some of the services related to the above-listed projects may be deleted and that the City of Truth or Consequences reserves the right to initiate additional services not included in the initial procurement. Services, as outlined in FAA Advisory Circular 150/5100-14E Chapter One, include engineering and planning services for all phases and required incidental services for some or all of the above projects which may be multiple FAA and/or NMDOT - Aviation Division grants funded.

**B. Scope of Work**

The engineering firm may perform professional services as hereafter stated:

1. To develop project plans and specifications for the Truth or Consequences Municipal Airport.
2. To apply for federal and state grants for the City of Truth or Consequences to help defray the cost of the engineering services and construction.
3. To advertise for bids, receipt of bids, and prepare recommendation of Award to the City of Truth or Consequences.

4. General engineering supervision and contract administration during construction.
5. Periodic or full-time on-site observation during construction.
6. Multi Agency Compliance with rules and regulations.

### **C. Criteria for Evaluation of Proposals**

Selection criteria will include: recent experience in airport projects, capability to perform all aspects of project, reputation, ability to meet schedules within budget, quality of previous airport projects undertaken, familiarity with the project location, understanding of the airport and proposed projects, approach to proposed projects, approach to communication with the owner, and firm personnel qualifications.

Selection criteria contained in FAA Advisory Circular 150/5100-14E Chapter Two and additional City criteria Evaluation Point Summary. The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals. Short listing - A maximum total of 100 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the proposals and may or may not conduct interviews with Offerors applying for selection. The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

1. Specialized Design and Technical Competence 25 Points  
Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required
2. Capacity and Capability 25 Points  
Capacity and capability of the business to perform the work, including any consultants, their representatives, qualifications and locations, to perform the work including any specialized services, within the time limitations.
3. Past Record of Performance 20 Points  
Past record of performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.
4. Familiarity with City of Truth or Consequences Airport 15 Points  
Proximity to or familiarity with the area in which the project is located. Firm and proposed key personnel's familiarity with the City of Truth or Consequences Airport and its setting. Firm's experience in New Mexico and in dealing with state and federal funding, administrative, and regulatory agencies.
5. Approach to Providing the Services 10 Points  
Evidence of understanding of scope of work, the site, and existing conditions. Firm should describe their approach to providing and managing the anticipated services and projects.

6. The amount of design work that will be produced by a New Mexico business within this state. 5 Points

#### **D. Contractual Terms**

The following contractual terms will be included in any contract entered into by the City of Truth or Consequences and the Engineering Firm Selected.

1. Fees  
A fee schedule for basic and other services will be negotiated with the engineering firm selected. Specific projects will be negotiated on a task order basis.
2. Funding  
This solicitation is subject to the availability of funds to accomplish the work.
3. Termination  
This contract may be terminated by either of the parties for upon written notice delivered to the other party at will.
4. Timeliness  
All work shall be performed in a timely manner, as requested.
5. Communication with the City of Truth or Consequences  
The Engineering Firm shall be required to continuously update the City of Truth or Consequences on the status of projects.
6. Work Stoppage  
The Engineering Firm shall not assign, sublet, or transfer their interest in this agreement without the written agreement. If such an assignment is allowed, the Engineering Firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.
7. Scope of Contract  
This contract incorporates all the agreements, covenants, and understanding between the parties concerning the subject matter of this contract, and all such agreements, covenants, and understandings have been merged into this written contract. No prior agreement, covenant, or understanding, oral or written, of the parties or their agents shall be valid or enforceable, unless embodied into this contract. The City shall not be bound to exclusive use of any contracted party.
8. Amendment  
The contract will not be altered, changed, or amended except by written document signed by the parties.

9. Registration

All work shall be under the direction of an Engineer registered by the State of New Mexico.

10. Professional Standards

The engineering firm agrees to abide by and perform its duties in accordance with the ethics of its profession and all federal and state municipal laws, regulations, and ordinances regulation the practice of engineering.

11. Authority to Bind the City

The engineering firm shall not have the authority to enter into any contract binding upon the City or to create any obligations on the part of the City, except such as shall be specifically authorized by the City's representative, acting pursuant to authority granted by the City.

12. Notices

Any notice required to be given under this agreement shall be deemed sufficient if given in writing by mail to the Procurement Officer's office or hand delivered to City Offices.

13. Subject to Other Documents

This agreement is subject to the terms and conditions of the statutes of the State of New Mexico and Ordinances of the City of Truth or Consequences, New Mexico, as they exist at the time this agreement is signed. All of these statutes and ordinances are incorporated by reference into this agreement.

14. Insurance

The engineering firm must hold errors and omissions liability insurance of at least \$1,000,000.

15. Conflict of Interest

The engineering firm warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.

16. Change Orders

The City of Truth or Consequences retains the unilateral right to order, in writing, changes in the work within the scope of projects.

A schedule of fees will be negotiated with the selected consultant for the services to be performed under the initial NMDOT - Aviation Division or FAA grant.

This contract is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation).

The consultant or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- A. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- C. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor (consultant) or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the government.

#### **E. Date and Location for Receipt of Proposals**

Proposals pursuant to this request for proposals must be received at;

Kristin Saavedra  
Chief Procurement Officer  
505 Sims Street  
Truth or Consequences, New Mexico 87901

Five copies of statements, limited to 25 pages, shall be submitted by **2:00 P.M. June 16, 2022**. The outside envelope shall be plainly marked in the bottom left-hand corner "Airport RFP: 21-22-009".

#### **F. Format for Engineering Services Proposals:**

1. Maximum of twenty (25) pages, excluding title, index, divider tabs, etc., cover or letter of transmittal.
2. Front cover with proposal title, date, and firm's name (cannot include any other text); not included in 25-page limitation.
3. Back cover without any text; not included in 25-page limitation.
4. Bound on left hand margin.
5. 8 1/2" x 11" paper.
6. Printed on one side of sheet only.
7. Five (5) copies of proposal are required.
8. Transmittal letter, if any, not to be included in twenty (25) page limit.
9. No other material to be included.

### **G. Envelopes**

Sealed proposal envelopes shall be clearly marked "Airport RFP 21-22-009" on outside of the envelope. This information shall be placed on the lower left-hand corner of the envelope. Failure to comply with this requirement shall result in rejection of the proposal.

### **H. Award of Contract**

The award shall be made to the responsible offeror or offerors whose proposals are most advantageous to the City of Truth or Consequences, taking into consideration the evaluation factors set forth in this request for proposal. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top two or three ranked firms to develop final rankings or may consider the rankings based on the proposals as being final. The City will undertake negotiations with any finalist firm and make recommendation to City Commission for approval. Selected firm fee negotiations will be completed at convenience of both parties. The City at its sole option may award engineering services contracts to multiple firms and issue task orders per project to the firm of its choice.

Approval will be at the next scheduled meeting of the City Commission of Truth or Consequences following conclusion of firm negotiations.

### **I. Contact with City Officials or Staff Members**

All correspondences regarding the RFP shall be directed solely to Kristin Saavedra, Chief Procurement Officer, 505 Sims, Truth or Consequences, New Mexico, 87901 who can be contacted at (575) 894-6673 ext. 309.

### **J. Bribery and Kickbacks**

As required by Section 13-1-191, N.M.S.A., 1978; it should be noted that it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employees (Section 30-4-1, N.M.S.A., 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or employee (Section 30-24-2, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-40-1, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-40-2, N.M.S.A., 1978).

### **K. Responsibility of Proposer**

At all times, it shall be the responsibility of the Proposer to see that their proposal is delivered to the City by the date and time set for the opening of bids or proposals. If the mail or delivery of said bid proposal is delayed beyond the deadline set for the bid or proposal opening, bids or proposals thus delayed will not be considered.

### **L. Costs of Preparing and Submitting Proposals**

The City will not pay for any costs associated with the preparation or submission of proposals.



## INSTRUCTIONS TO OFFERORS

### 1. DEFINITIONS AND TERMS

- 1.1 **Addendum:** a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.
- 1.2 **Consultant:** means the Successful Offeror awarded the Agreement/Contract.
- 1.3 **Determination:** means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).
- 1.4 **Offeror:** any person, corporation, or partnership legally licensed to provide design professional services in this state, who chooses to submit a proposal in response to this Request for Proposals.
- 1.5 **Procurement Manager:** means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.
- 1.6 **Request for Proposals:** or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals (§13-1-81 NMSA 1978).
- 1.7 **Responsible Offeror or Proposer:** means an offeror or proposer 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 described in the proposal (§13-1-83 NMSA 1978).
- 1.8 **Responsive Offer or Proposal:** means an offer or proposal 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 (§13-1-85 NMSA 1978)

- 1.9 The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror’s proposal.

- 1.10 The terms can, may, should preferable, or prefers identify a desirable or discretionary item or factor.

### 2. REQUEST FOR PROSAL DOCUMENTS

#### 2.1 COPIES OF REQUEST FOR PROPOSALS

- A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).
- B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.
- C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.
- D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

#### 2.2 INTERPRETATIONS

- A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager or the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the Requests for Proposals. Questions received less than five days prior to the date for opening of

proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

### 2.3 ADDENDA

- A. Addenda will be mailed by certified mail with return receipt requested, by facsimile, by electronic mail, or hand delivered to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.
- B. Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.
- C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.
- D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

## 3. PROPOSAL SUBMITTAL PROCEDURES

### 3.1 NUMBER, FOR AND STYLE OF PROPOSALS

- A. Offerors shall provide Five (5) copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8 ½ x 11 paper and bound on the left-hand margin. 11x17-size sheets, if used, shall count as two pages per 11x17 sheet.
- C. A maximum of twenty (25) pages, excluding title, index, etc., Letter of Transmittal or front and back covers.

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

- 1) Letter of Transmittal, if any;
- 2) Response to Background of Proponent Firm(s);
- 3) Response to Qualifications and Assignments of Key Personnel
- 4) Response to Project History
- 5) Response to Evidence of Financial Stability

- E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.
- F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.
- G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

### 3.2 SUBCONSULTANTS

- A. The Offeror shall list and state the qualifications for each Subconsultant the Offeror proposes to use for all subcontracted Work.
- B. The Offeror is specifically advised that any person or other party to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

### **3.3 PREQUALIFICATION PROCESS**

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such prequalified businesses (§13-1-134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

### **3.4 DEBARRED OR SUSPENDED CONTRACTORS**

A business (contractor, subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of §13-1-177 through §13-1-180, and §13-4-11 through §13-4-17 NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

### **3.5 SUBMITTAL OF PROPOSALS**

- A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.
- B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project Title, Project No., Request for Proposals number, date of opening, and time of opening. If the proposal is sent by mail, the sealed envelope shall have the notation "SEALED PROPOSAL ENCLOSED" on the face thereof.
- C. Proposals received after the date and time for receipt of Proposals will be returned unopened.
- D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the

Purchasing Agent or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

- E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses, and such other information as may be specified by the Purchasing Agent.
- F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

### **3.6 CORRECTION OR WITHDRAWAL OF PROPOSALS**

- A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.
- B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Requests for Proposals.

### **3.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR**

- A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state, and local requirements which are a part of these Request for Proposals.
- B. Laws and Regulations: The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

### **3.8 REJECTION OR CANCELLATION OF PROPOSALS**

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefore shall be made part of the project file (§13-1-131 NMSA 1978).

## **4. CONSIDERATION OF PROPOSALS**

### **4.1 RECEIPT, OPENING AND RECORDING**

- A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.
- B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§13-1-116 NMSA 1978).

### **4.2 PROPOSAL EVALUATION**

- A. Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:
  - 1) acceptable
  - 2) potentially acceptable, that is, reasonably assured of being made acceptable, or
  - 3) unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).
- B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality or quantity of the services (§13-1-132 NMSA 1978).

- C. If on Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the funding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§13-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty-one days after an award is made (§13-1-120 NMSA 1978).

- D. Selection Process: (§13-1-120 NMSA 1978).

- 1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.
- 2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:
  - a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or
  - b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to §13-1-104 NMSA 1978.

### **4.3 NEGOTIATIONS (§13-1-122 NMSA 1978)**

- A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at

compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

- B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
- C. The designee shall then undertake negotiations with the third most qualified business.
- D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.
- E. The Contracting Agency shall publicly announce the business selected for award.

#### **4.4 NOTICE OF AWARD**

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§13-1-100 and §13-1-108 NMSA 1978)

### **5. POST-PROPOSAL INFORMATION**

#### **5.1 PROTESTS**

- A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's

Procurement Regulations and the State Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§13-1-172 NMSA 1978).

- B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§13-1-173 NMSA 1978).
- C. The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorney's fees (§13-1-174 NMSA 1978).
- D. The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:
  - 1) state the reasons for the action taken; and
  - 2) inform the protestant of the right to judicial review of the determination pursuant to §13-1-183 NMSA 1978.
- E. A copy of the determination issued under §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§13-1-176 NMSA 1978).

#### **5.2 EXECUTION AND APPROVAL OF AGREEMENT**

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

### **5.3 NOTICE TO PROCEED**

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

### **5.4 OFFEROR'S QUALIFICATION STATEMENT**

Offeror to whom award of a Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§13-1-82 NMSA 1978).

6. **OTHER INSTRUCTIONS TO OFFERORS:**  
NONE

## **GENERAL TERMS AND CONDITIONS**

### **1. GOVERNING LAW**

The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exists.

### **2. INDEPENDENT CONTRACTORS**

The Consultant (design professionals) and his agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

### **3. BRIBES, GRATUITIES AND KICK-BACKS**

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2, and §30-41-1 through §30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§13-1-28 through §13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

### **4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)**

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

### **5. FEES**

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected. Construction Observation will be calculated on a Payroll Cost times a multiplier<sup>3</sup>. Additional Services will be calculated on a Payroll Cost times a multiplier<sup>3</sup>.

[Note: <sup>3</sup> Or as appropriate to agreed upon.]

### **6. FUNDING**

This solicitation is subject to the availability of funds to accomplish the work.

### **7. DESIGN PROFESSIONAL REGISTRATION**

All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

### **8. PROFESSIONAL LIABILITY INSURANCE**

The Offeror [**X**] will [ ] will not be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be [\$1,000,000]

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor 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 Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 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 FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.



**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Person”** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**“Prospective contractor”** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

**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) \_\_\_\_\_

(The above fields are unlimited in size)

\_\_\_\_\_  
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)

## Veterans Preference Certification

\_\_\_\_\_ (Name of Business) hereby certifies the following in regard to application of the resident veteran preference to this formal request for proposals process:

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$3M allowing me the 10% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 ending December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business’ application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such Veteran’s Preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.”

“I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.”

\_\_\_\_\_  
(signature of Business Representative) \*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business.

The representation made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven incorrect.