

NMDOT CONSULTANT SERVICES



01/04/2021

Handbook

NMDOT Consultant Services

HANDBOOK

Preface/Purpose

In 2020, the **New Mexico** Department of Transportation (Department) authorized an update to this handbook to address a new contract template and procedural changes in procuring engineering consultant services. This revision is a collaborative effort of Department Divisions - Procurement, Program Management, Regional Design and Functional Support Groups – the Federal Highway Administration and the Engineering Consultant Community.



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CHAPTER 1

INTRODUCTION

1.1 PURPOSE

This manual documents the procedures used by the New Mexico Department of Transportation (Department) for engaging Quality Based Professional Service Contracts. The entire process, from the project planning process (development of the Statewide Transportation Improvement Plan (STIP), availability of resources, needs assessment, development of the consultant design program, preparatory activities, etc.), initial selection of a consultant and the evaluation of the completed work, is addressed. The manual is intended as a management contracting process guide and, as such, does not cover technical details of the project development process.

The procedures contained in this manual are intended to supplement and assist in the implementation of various Department policies, not to supersede them. Any conflicts that may exist between this manual and official Department policies documented elsewhere are unintentional and, should any be found, the official Department policy should prevail.

1.2 OBJECTIVE

The objective of this procedures manual is to:

“Improve the efficiency, cost effectiveness, and timeliness of the overall process of selecting, negotiating, contracting, and managing quality based Professional Services contracts for the New Mexico Department of Transportation.”

1.3 MANUAL ORGANIZATION

The manual is organized according to the normal sequence of events involved in a consulting services engagement. The remaining chapters of the manual are arranged in the following order, as identified by chapter number :

2. Preparatory Actions,
3. Consultant Selection,
4. Contracting,
5. Work Monitoring
6. Contract Close-Out,
7. Performance Evaluation, and
8. Disadvantage Business Enterprise (DBE) Program.

The Appendices contain copies of Federal regulations and Department Administrative Memoranda.

For convenience, when the term “Consultant” or “Consulting Engineer” is used in this manual, it should be taken to mean the more inclusive phrase “Consulting Engineers, Land Surveyors and/or others performing Professional Services (i.e. Environmental Investigations, Hazardous Materials Investigations, Subsurface Utility Engineering, etc.)”.

1.4 ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES

Several organizational sections have a key role in procuring consultant services and in supervising and evaluating consultant’s work performance. It is the responsibility of the members of each section to abide by Federal and State laws and regulations on conflict of interest and development of selection committees, which include 2 CFR 200.112, 23 CFR 1.33, NMSA 1978, Section 10-16-13 and 18.28.3 NMAC (see Appendix G). These units are briefly described below:

- a. Deputy Secretary for Operations (DS)
- b. Chief Engineer or Designee (CE)
- c. Procurement Division (PD)
- d. Project Oversight Division (POD)
- e. Regional Design Divisions (North/Central/South) (RM)
- f. Technical Group Managers (TGM)
- g. Project Development Engineer or Employee in Responsible Charge of Contract (PDE)
- h. Construction and Civil Rights Bureau (CCRB)
- i. Office of General Counsel (OGC)
- j. Taxation and Revenue Department (TRD)
- k. Department of Finance Administration (DFA)
- l. General Service Department (GSD) and its State Purchasing Division (SPD)

The procedural aspects of the responsibilities of these units are addressed in later chapters of this manual.

1.4.1 Deputy Secretary of Operations (DS)

The Deputy Secretary of Operations (DS) is responsible for the overall authority of the consultant services program in consultation with the CE.

1.4.2 Chief Engineer (CE)

The Chief Engineer or Designee (CE), within the Office of Infrastructure Divisions under the Deputy Secretary for Operations (DS), has the following responsibilities in connection with consultant management:

- a. Review the proposed annual consultant services program prior to submittal to the DS for final approval.
- b. Review and approve recommended specific projects for which consultant services will be required.
- c. Develop an annual consultant services work program in conjunction with the Regional Design Managers, Functional Group Managers and District Engineers.
- d. Provide final approval of the consultant's monthly progress reports and monthly invoices. The Program and Infrastructure administrators receives invoices via an email and approves each invoice with respect to content and documentation. The Regional Managers and Technical Group Managers approve the invoice with respect to delivery of the work product.
- e. Through the Infrastructure Division, the CE is responsible for the overall preparation of the Statewide Transportation Improvement Program (STIP) with input from the Regional Design Divisions, District Offices, Traffic Asset Management Plan (TAMP), Planning Division, Regional Planning Organizations (RPO), Municipal Planning Organizations (MPO) and the FHWA. The CE reports directly to the DS.

1.4.3 Procurement Division (PD)

The PD has the following responsibilities in connection with consultant services:

- a. Assist in creating, preparing and maintaining the updated RFP schedule.
- b. Work with the PDE or PM in developing the RFP, the advertisement and planning the procurement process. The scope of work for each procurement must be prepared by the PDE or qualified Department employee (Engineer). A consultant that assists in the development of a scope will be ineligible as a primary or a subcontractor pursuant to NMSA 1978, Section 10-16-13.
- c. For every project listed on the RFP schedule, coordinate all communications between the consultant and the Department. This starts from first appearance on the schedule to the conclusion of the procurement process, including brief absences from the schedule.
- d. Maintain an up-to-date advertising mailing list of consultants who request to receive legal notices for professional services contract advertisements. Any consultant that wants to be on the distribution list may make a request by contacting the PD Director or send an email to ENG.DesignRFP@state.nm.us

- e. E-Mail legal notices for project-specific professional services to newspapers and to consultants on the advertisement mailing list.
- f. Provide copies of Requests for Qualifications (RFQ), Requests for Proposals (RFP), or if applicable, Requests for Letters of Interest (LOI) to consultants who are on the advertisement mailing list.
- g. Based on the chosen procurement process, conduct Pre-proposal Conferences and/or post power point presentations/slide shows on the Department website.
- h. Log all Statements of Qualifications (SOQ), Proposals or if applicable, Letters of Interest (LOI's) received. Maintain a hard copy of the Consultant's SOQ's proposal and, if applicable, LOI.

- i. Verify, with the Office of Inspector General, the consultant eligibility to submit a proposal based on its compliance with overhead rates. An eligibility list is posted on the Department's website. See the following link for general information and the list:
https://dot.state.nm.us/content/nmdot/en/Program_Management.html#d
- j. Facilitate the Professional Services Selection Committee (PSSC) and serve as an advisory non-voting member and assist the Chairman in assembling and summarizing proposal evaluations.
- k. Incorporate the scope of work and schedule into the contract template as well as the appendices that address compensation, insurance and lobbying certifications, per Internal Design Directive (IDD in Appendix F and flow chart (Figure 1) on Page 11.
- l. Prepare Contract Administration Section (CAS) briefs at the appropriate step of the contract process and obtain the required signatures for each contract.
- m. When necessary funding has been encumbered, send Notice to Proceed to the successful consultant and to Regional Manager/District per IDD.
- n. Notify the unsuccessful consultants.
- o. Schedule and conduct procurement debriefings as requested by unsuccessful consultants.
- p. Maintain the Application where Consultant work performances, conducted by the PDE or PM, are held for five years. These evaluations are used to assist in evaluation of qualifications on future project proposals.
- q. Foster communication with consultants and internal personnel regarding processing of contracts.

1.4.4 Statewide Transportation Improvement Program (STIP)

The Statewide Transportation Improvement Program (STIP) has the following responsibilities in connection with consultant services:

- a. Develop and maintain the budget for the Consultant Design Program.
- b. Coordinate with PD with the tracking and processing of design contracts.
- c. Prepare required funding forms for FHWA/ POD for processing such as requests for obligation of funds.
- d. STIP prepares purchase orders based on the reconciliations and obligation of funds provided from POD.

1.4.5. Regional Design Managers (North/Central/South)(RM) and Technical Group Managers (TGM)

The Regional Design Managers (RM) and Technical Group Managers (TGM), within the Infrastructure Division, are responsible for the following items:

- a. Review STIP to assess program and identify resource needs.
- b. Develop an annual consultant services work program in-conjunction with the CE and STIP Manager.
- c. Review and provide input to the advertisement of assigned projects.
- d. Identify specific projects for which consultant services will be required.
- e. Review and evaluate submitted proposals for assigned projects within their respective region or technical area and participate in the selection process as a voting member of the Professional Services Selection Committee (PSSC).
- f. Participate in proposal de-briefings, at the discretion of the Department, with consultant(s) who were unsuccessful on being selected.
- g. Assign projects to Project Development Engineers (PDE) in their regions.
- h. Participate in or lead the negotiations with selected consultant(s) in their regions according to 18.28.3 NMAC.
- i. Provide oversight of all assigned projects to PDEs in their regions.
- j. Review, monitor and process monthly vouchers on all contracts within 30 days of accepted invoice date.
- k. Review and concur that all required work is complete and all deliverables have been provided by the consultant prior to approval of the final payment and release of all retention amounts.
- l. The duties and responsibilities described for the Regional Design and Technical Group Managers is also extended to the Planning Division, Aviation Division and Transit & Rail Division that use quality based Professional Services.

1.4.5 Project Development Engineer (PDE)

The Project Development Engineer (PDE) is the Department's primary agent in the consultant project management process and has the following responsibilities in connection with consultant services.

- a. Participate with other members of the Department in the identification, planning and programming of projects for the STIP.
- b. Provide an independent cost estimate for the contract scope of work for major projects that are Lump sum price or tasks for On-Call Contracts to establish a

measure of cost baseline for negotiating a fair and reasonable price in the contracting process.

- c Prepare the scope of work and pre-advertisement information for assigned projects and send to PD.
- d Review and provide input to the advertisement of assigned projects.
- e Prepare and present appropriate information on the assigned projects at Pre-proposal meetings and respond to specific inquiries as required.
- f Review and evaluate all submitted proposals for assigned projects.
- g Coordinate with the selected consultant and appropriate internal Department Sections in preparation for negotiating the contract.
- h Work with PD and STIP to insure all contract provisions including the scope of work, schedules and fees are accurate.
- i Provide supervision of the consultant's work, conduct quality control inspections, and complete the consultant evaluation forms at each stage or phase of the project.
- j Review and recommend approval of the consultant's monthly progress reports and monthly invoices.
- k Determine that all required work is complete and all deliverables have been provided by the consultant prior to approval of the final payment and release of all retention amounts.
- l Ensure that all drawings, calculations, correspondence, notes, and other records are placed in the permanent project file.
- m Notify PD when each phase of a project is final, to ensure evaluation link will be provided for consultant evaluation.
- n Provide a written evaluation of the consultant's performance at the conclusion of the contract and include that evaluation with the approval of the final invoice and release of retainage.

1.4.6 Construction and Civil Rights Bureau (CCRB)

The Construction and Civil Rights Bureau (CCRB) has the following responsibilities in connection with consultant services:

- a Review all submitted Federal-aid project proposals for compliance with all applicable DBE form requirements.
- b Coordinate with the PD to insure all required DBE related records are kept up-to-date on all Federal-aid consultant projects.

- c Provide assistance to consultants as needed on any and all aspects of the DBE Program.

1.4.7 Office of General Counsel (OGC)

The Office of General Counsel (OGC), located within the Office of the Secretary, has the following responsibilities in processing contracts for the Department:

- a Review RFP scope of work and consult with PD and the PDE as needed.
- b Review contracts as to form and legal sufficiency and other material drafting problems (i.e. scope of work).
- c Collaborate with the PD and appropriate PDE in resolving issues posed by contracts subject to review.

1.4.8 Taxation and Revenue Department (TRD)

TRD is responsible for verifying the Consultant's New Mexico Tax Identification number and certifying that the Consultant is duly registered for payments of gross receipts taxes to New Mexico.

1.4.9 General Services Department (GSD) and the Department of Finance and Administration (DFA)

GSD and DFA have shared responsibilities over state procurement. GSD through the State Purchasing Division is responsible for administering the Procurement Code and regulations, NMSA 1978, Section 13-1-95. Sole Source procurements are posted on SPD's sole source website for 30 days. PD receives communication from SPD on whether the Department can move forward and award a sole source contract. DFA oversees emergency procurements, which are posted on SPD's website, and term extensions exceeding four (4) years, provided under NMSA 1978, Section 13-1-150B(6).

CHAPTER 2

PREPARATORY ACTIONS

2.1 OVERVIEW

This chapter covers a number of actions that are necessary to prepare and facilitate the consultant selection process. Topics covered include development of the annual consultant services work program, the Request for Proposals (RFP) process, PSSC composition, contracting and payment methods, and the pre-advertisement checklist.

2.2 ANNUAL CONSULTANT SERVICES WORK PROGRAM

The Department generally performs most of its planning, aviation, transit and transportation design and technical studies with in-house forces. However, due to limitations in staff availability, the need for special skills, or the relative urgency of projects, the Department routinely engages consulting engineers or other professional services to assist in carrying out its annual work program. To ensure a balanced workload, an orderly consultant selection process, and a sufficiently large volume of work to attract consultants to seek contracts, some consideration must be given to how much and what kind of work should be done by consultants. The following identifies the decision making process on the need for consultant services.

2.2.1 Responsibility

Each year, the Statewide Transportation Improvement Program (STIP) must be reviewed by the CE, in consultation with the Regional Design Divisions, Technical Group Managers, and Districts Engineers to determine the Department's in-house capacity to perform the work. Projects that cannot be accomplished in-house in a timely and effective manner for whatever reason will be specifically identified. Other Divisions in the Programs and Infrastructure Division that desire to use consultant services to advance a project should submit a written request to the CE. A Consultant Services Work Program is then developed for concurrence by the CE and approval by the DS. The Consultant Services Work Program is then included in the STIP through the STIP amendment process.

Once the projects are included in the STIP, the CE, will coordinate with the PD to develop an annual Request for Proposal (RFP) schedule. This schedule will identify the projects that will be advertised for consultant services and when they will be advertised.

2.2.2 Project Selection Considerations

In selecting projects for which consultant services will be procured, consideration is given to the following factors:

- a. Number of projects in the program, size of the program, consultant budget availability, and letting schedule requirements,
- b. Types of projects (including size and scope) in the program and the skills required, in-house staffing levels and skills available, and
- c. Relative urgency of specific projects.

2.3 **SELECTION COMMITTEE**

A Professional Services Selection Committee (PSSC) is chosen for each procurement as described under 18.28.3 NMAC, Selection Committee for Qualifications Based Proposals, see Appendix B. The CE names the chairman. The PSSC evaluates, ranks, and makes recommendations for awarding contracts. Each member is required to sign a Declaration of No Conflict form, see Appendix G.

2.4 **TYPES OF CONTRACTS**

Through the RFP process, the Department may award contracts for stand-alone projects, which may include one to all three phases, or for on-call services. Other contracting methods provided under the New Mexico Procurement Code and Federal Regulations (23 CFR 172) include small purchase, sole source and emergency procurement. The CE, in consultation with PD, is responsible for determining the type of contract and procurement method. The New Mexico Procurement Code requires a written determination and a justification letter for each contract/procurement. Payments for services is based on the requirements specified in the New Mexico Procurement Code and Code of Federal Regulations (23 CFR 172).

2.5 **PRE-ADVERTISEMENT CHECKLIST**

The CE in conjunction with the Regional Design and Technical Group Managers are responsible for ensuring that projects requiring consultant services are processed according to Figure 1 so that desired project completion schedules can be met. However, prior to advertising a project, certain preparatory steps should be taken so that unnecessary delays are avoided. These steps should include the following items:

- a. Identify funding, the PDE, and program the project in the STIP.
- b. Discussion with consultants prior to advertisement :

Interested consultants can schedule an individual Q/A meeting with the Department. Working through PD consultants will be able to schedule a Q/A meeting to occur up to 30 days before the RFP is advertised, otherwise known as Q/A deadline. This meeting will be accommodated prior to advertisement for each interested consultant firm. Interested consultants should allow PD at least 45 working days prior to Q/A deadline to coordinate the meeting schedule.

- Organization of Q/A Meeting

The PD will be responsible for organizing the meeting room or tele/video conference and obtaining an attendance record.

The agenda for the Q/A Meetings should include the following topics:

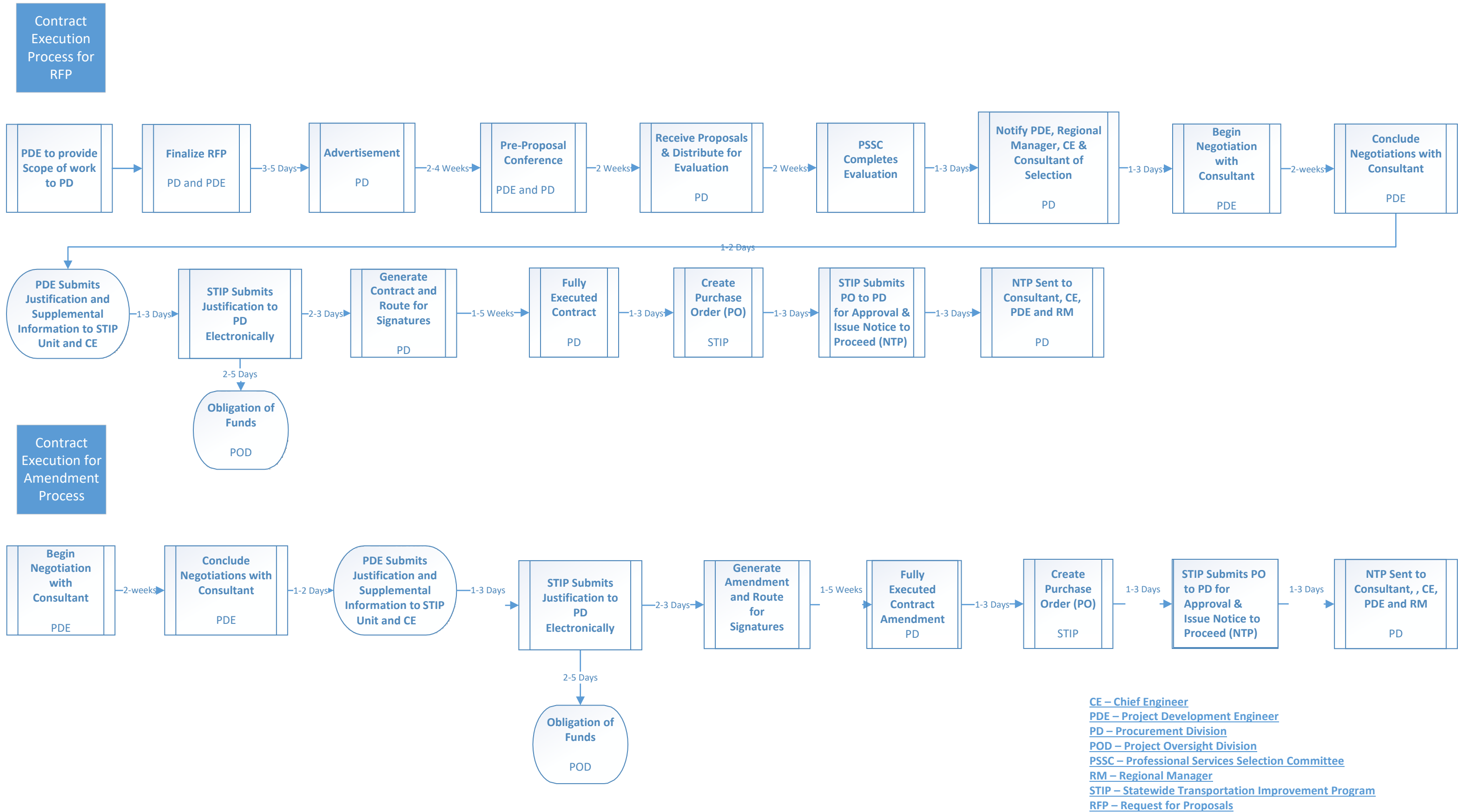
- Opening statement by the Department describing the purpose of the meeting, the agenda that will be followed, and the anticipated sequence of events for the remainder of the procurement process after the meeting will be provided by PD.
- Technical description of the project by the Department, including project objectives, schedule and/or critical dates to be held, special requirements or features, and any critical design issues and environmental concerns will be provided by the Department.
- Question and answer meeting will be summarized, published and made part of the procurement file.

After the Q/A meeting; additional questions or correspondence will be referred through the PD and can be emailed to ENG.DesignRFP@state.nm.us. If needed, a formal response will be issued to clarify the Departments' understanding of the consultants request for clarification in the RFP and also to clarify the Departments' intent. The response will be issued to all consulting firms who have requested the RFP and who are on file with the PD for that specific RFP. The answers will be published on the Department website.

- c. Obtain a clear description, scope, and conceptual construction cost estimate for the project.
- d. Obtain a draft project completion schedule.
- e. Determine what services and/or supplemental phases may be added as an addendum to the contract.
- f. Determine the method of payment.
- g. PDE completes and files an Independent Agency Estimate for man hours and/or costs of design services.

Depending on funding source, certain aspects of the process may vary slightly. The process is shown for project oversight, as well as for processing amendments. Please refer to Figure 1 on the following page.

Figure 1
State and Federal Consultant Services Contract and Amendment Process



CHAPTER 3

CONSULTANT SELECTION

3.1 OVERVIEW

This chapter covers the procedures for selecting Professional Services consultants, from advertisement of the project to final selection. The Department process for consultant selection is based on the New Mexico Procurement Code, 23 CFR 172 and The Brooks Act.

3.2 PROJECT ADVERTISEMENT

Upon approval by the Cabinet Secretary or designee, the PD will announce a project-specific RFQ, RFP or other solicitation for Engineering Consultant Services. The announcement is posted on the Department's website and will be sent to all firms on the Department's advertising mailing list. This list is maintained by PD, that have expressed interest in receiving the advertisement notices. The notice will provide a brief explanation of the procedure for requesting a written copy of the RFQ, RFP or other request for professional services. Any new consultants that desire to be added to the distribution list may do so via the NMDOT website by contacting the PD Director or emailing ENG.DesignRFP@state.nm.us

3.2.1 Public Notices

In addition to the announcement, public notices will be published at least once in at least three newspapers of general circulation in this state (typically the Santa Fe New Mexican, Albuquerque Journal, and the Las Cruces Sun) as well as the Department website. The Department may also choose to advertise in regional (Denver, Phoenix, Dallas, etc.) or national newspapers (Washington D.C., New York, Chicago, Los Angeles, etc) for high profile projects. The notices will have a heading that indicates the type of request being made. The notice will include:

- a. Procurement title;
- b. A brief explanation of the procedure for requesting a written copy of the Request for Qualifications/Request for Proposal;
- c. The due date for submittals. The due date should be as early as possible to avoid delay of the project, but should not be earlier than three weeks from the date of the published announcement;
- d. If a Pre-proposal meeting is to be held, the time, date and location will be scheduled by PD;
- e. The name and number of the procurement manager and instructions for requesting project information or clarifications.

An example of a Public Notice for soliciting consultant services is shown in Appendix E.

3.2.2 RFP/RFQ Formats

The Request for Qualifications (RFQ) or Request for Proposals (RFP) document will include:

- a. A description of the project and scope of services sought. For on-call contracts, the types of services that may be needed will be described.
- b. A statement of whether the contract is state or federally funded.
- c. The name, address, telephone number, and e-mail address of the person who may be contacted for additional information. State the last date when inquiries will be accepted. If a Pre-proposal meeting is scheduled, it will be reiterated that contact with voting members of the PSSC is not allowed.
- d. A description of the format to be used (see Section 3.5) and topics to be covered in the proposals, including page limits, if applicable.
- e. Description of the selection process, based on either a one-step page-limited qualifications statement evaluation or a two-step qualifications statement and technical proposal evaluation.
- f. A description of the evaluation criteria.
- g. The anticipated schedule of events associated with the procurement.
- h. A statement indicating the availability of the standard contract, on request, showing all anticipated contractual requirements.
- i. A copy of each required form that must be submitted.
- j. Date, time, and location of pre-proposal meeting, if needed, and when the attendance is mandatory or optional.
- k. A description of the eligibility requirements for providing design and surveying services to the Department, which are:
 1. All design and surveying work must be performed under the responsible charge of a registered New Mexico Professional Engineer (and/or Land Surveyor, if applicable) and as described in the Department's Design Directives.
 2. On state-funded projects, the Consultant must establish and maintain a New Mexico office with full-time staff during the life of the contract. This requirement may be waived if the skills required are not likely to be

available within the State. This requirement is not applicable to Consultants on Federal-aid projects.

3. With the exception of specialized work such as photogrammetry, and major structural design, all work must be performed within New Mexico. This requirement is not applicable to Federal-aid projects.
 - l. The number of copies to be submitted in the RFQ/RFP – will be one electronic PDF copy through bidexpress.com. The PSSC will receive a link of the proposals from PD.
 - m. Proposal due date, time, and place of delivery. The due date should not be less than three weeks from the date of advertisement. All proposals must be submitted through Bid Express, which may be accessed at the following website: www.bidexpress.com. The time shall be shown as the “local prevailing time”.

3.3 SCOPE OF WORK PREPARATION

The scope of work statement, in the RFQ/RFP, should be as project specific and as detailed as possible. The PDE shall review and edit the RFQ/RFP to make sure all standard provisions and specifications are accurate and consistent with the desired scope of services requested. The scope of work must include all pertinent issues and concerns known about the project. All available project information should be identified and made available for review.

Upon completion of the “initial” scope of work, the PDE should solicit input from other Department Sections and Bureaus that have a vested interest in the project’s development. This may include, but not limited to, the District Offices, Bridge Design Bureau, Drainage Design Bureau, Traffic Technical Support Bureau, Environmental Development Bureau, Survey and Lands Engineering Division, Right-of-Way, Utilities, Rail Road, Geotech, or others whose specialization comprises a significant effort on the project. Once comments have been returned by these other Sections/Bureaus, the PDE can revise the scope of work for inclusion in the RFQ/RFP.

3.4 PRE-PROPOSAL MEETING

Pre-proposal meeting may be held in conjunction with the RFP Schedule at the request of the PDE, CE and the District. A decision to make certain meetings mandatory is dependent on the complexity of project, where the scope of work or critical design issues may need further clarification. This determination should be made prior to release of the RFQ/RFP. If the Department does not choose to have a Pre-Proposal meeting, an electronic presentation will be published on the Department website along with the RFP/RFQ.

The Pre-Proposal meeting can be held in person or via electronic methods such as teleconference/videoconference etc. If the meeting is to be held in person, it will be held at the respective Region Design Center. The PD will be responsible for notifying appropriate Department staff of the date and time for each respective Meeting. Department representatives at the meeting will include people who are:

- a. Knowledgeable about the details of the project;
- b. Knowledgeable of the Department’s contracting procedures.

- c. Not a member of the PSSC
- d. From the Design Region, District, appropriate functional groups and PD

3.4.1 Organization of Pre-Proposal Meeting

The PD will be responsible for organizing the meeting, reserving the room or arranging a teleconference/videoconference and obtaining an attendance record. An attendance roster should be placed at each entrance to the meeting room. If the pre-proposal is mandatory, attendees must sign the roster in order to submit an RFQ/RFP.

The agenda for the Pre-proposal Meeting should include the following topics:

- a. Opening statement by the Department describing the purpose of the meeting, the agenda that will be followed, and the anticipated sequence of events for the remainder of the procurement process after the meeting.
- b. Technical description of the project, including project objectives, scope, schedule and/or critical dates, special requirements or features, and any critical design issues and environmental concerns. This will include a visual presentation that describes key elements of the requested services and scope in the RFP.
- c. Question and answer period of sufficient duration to allow all attendees the opportunity to ask questions and take notes on answers. If a question cannot be answered, the PD will research the question after the meeting and determine an appropriate answer to be included with the meeting transcript. If additional or different information becomes available during the advertisement period, the PD will send out an amendment to consultants addressing the new information. All questions addressed in the pre-proposal meeting are not legally binding and are subject for correction on an addendum following the pre-proposal conference. All questions shall be submitted to the Procurement Manager in writing for an official response.
- d. The PDE/Contract Manager, who is a member of the PSSC, will not be present at the Pre-proposal meeting to avoid conflict of interest. The PDE will be responsible for developing the presentation and working with the person who will present the RFP and project.

Answers to questions that could not be answered at the meeting will be published on the Department's website. Any questions or correspondence after the meeting will be referred through PD. If needed, a formal amendment will be issued to clarify the Departments' understanding of the consultants request for clarification in the RFP and also to clarify the Department's intent. The amendment will be issued to all consulting firms who have requested the RFP and who are on file with the PD for that specific RFP. Amendments and addenda will also be published on the Department's website.

3.5 REQUESTS FOR PROPOSAL ORGANIZATION

Consultant submittals for RFP's are outlined in the following paragraphs.

3.5.1 Number of Copies

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

3.5.2 Request for Proposals

- a. Offerors must utilize page indicators within their PDF document that clearly identifies the different sections of the proposal 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, etc. however 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 will be the letter of introduction, table of contents, covers, proposal summary, dividers, other information, i.e., letters of appreciation, etc., and acknowledgement of amendments (if applicable). 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:

- Letter of Transmittal
- Table of Contents
- Proposal Summary
- Response to Contract Terms and Conditions
- Response to Mandatory Specifications and Forms
- Offeror's Additional Terms and Conditions
- Other Supporting Material

Within each section of the proposal, Offerors should address the items in the order in which they appear in the 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.

- b. Electronic proposals must be submitted through Bid-Express, which may be accessed at the following website: www.bidexpress.com. Offers' must register prior to the submission deadline and create 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, by facsimile, or email will not be accepted.

3.6 EVALUATION OF PROPOSALS

This section describes procedures for processing and evaluating Proposals

3.6.1 Proposal Submittal Procedure

The following are the major steps required for processing Proposal Submittals, which may be supplemented with more detailed steps by the individual units involved, as needed:

- a. Proposals will be received by Bid Express. PD will download proposals that were received by RFP deadline. The PDF proposal will be downloaded and have name of consultant firm and time proposal was submitted. Bid Express will not accept proposals after the designated deadline.
- b. Overhead Audit Rates and Audit Requirements – Each consultant under contract with the Department must comply with the policies as it relates to Overhead Audit Rates and Audit thresholds. A summary of the policy can be found at: https://dot.state.nm.us/content/nmdot/en/Program_Management.html#d
- c. The PD will review for mandatory requirements set forth in the RFP and distribute copies to the voting of the PSSC. A cover letter prepared in conjunction with the Chairman of the PSSC will be included with the distribution, stating the date, time and location of the PSSC meeting to review the proposals. This review meeting should be scheduled not later than two weeks after the submittal due date.
- d. PD shall perform a check of the prime consultant engineer in responsible charge to ensure that no suspensions or debarment actions are pending via the New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors website: <http://verification.rld.state.nm.us/>. In addition, PD will consult the System for Award Management (SAM) Federal database to ensure eligibility of the prime consultant according to the FHWA records at the following website: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf> A contract will not be executed until these checks have been completed.
- e. The PSSC members will review and evaluate the proposals prior to the PSSC Review Meeting (see guidelines in Section 3.6.2, Evaluation Criteria for Proposals). Performance evaluations of the consultants on previous projects are a part of the evaluation process.

- f. If, during the review process, a PSSC member finds that a proposal does not include the mandatory specifications or forms outlined in the RFP, the member will immediately notify the PD of this finding. The PD will consult with the Department's Chief Procurement Office (CPO) for a determination regarding the responsiveness of the proposal. Three courses of action may be taken:
 - 1. If a determination is made that the proposal is not responsive, the CPO, or designee, will immediately notify the PSSC members that the proposal is not responsive and should not be given further consideration. Also, the CPO, or designee will give written notification to the consultant that the proposal has been eliminated from further consideration.

2. If a determination is made that a clarification of the proposal is needed, the CPO, or designee, will request additional information from the consultant to clarify the area of uncertainty, with a deadline for re-submittal. The additional material will be distributed to committee members as soon as it is received.
 3. If a determination is made that the proposal is sufficient as originally received, the CPO will notify the member who raised the issue and explain the rationale for proceeding with the evaluation.
- g. The PSSC Review Meeting will be held to discuss the views of the selection committee members and review their individual proposal evaluations. Each PSSC member must sign a Declaration of No Conflict form, which acknowledges that as a member of the committee, they have not been influenced directly or indirectly by any of the firms that are being evaluated (see Appendix G). Scoring will not be discussed at this meeting. The meeting is an opportunity for members to discuss and share their independent assessment of each proposal.
- h. Upon the completion of the PSSC Review Meeting, the selection committee member scores will be due to the PD by the close of business on the following business day. The PD will create a tabulation sheet showing the results of the scoring with order of ranking.
1. Upon approval of the final scoring by the CPO, DS, and CE, PD will notify the top ranked consultant, PDE, and Regional Manager/District Engineer of the selection. The PD will also notify the unsuccessful consultants that they were not selected. For design/build projects, proposals and cost estimates will be returned to all unsuccessful bidders. If the unsuccessful bidders do not pick up their packets, they will be shredded.
 2. In the event of a tie, scores are too close, or based on the size and complexity of the project, the CE will determine whether to conduct oral presentations. The consultants that are identified to conduct oral presentations will prepare a presentation and present to all PSSC members at a given time and location identified by the Department.
- i. The PDE will arrange a date with the selected consultant to begin contract negotiations (see Section 4.2 and 4.3 for guidelines).

3.6.2 Evaluation Criteria for Proposals

Each member of the Professional Services Selection Committee (PSSC) will rate all Proposal submittals using the following evaluation criteria for Federal and State funded projects:

EVALUATION CRITERIA POINTS AVAILABLE

1. General Information	5
2. Specialized Design and Technical Competence	25
3. Capacity and Capability of the Offeror to Perform the Work	30
4. Past Record of Performance	25
5. Proximity to or Familiarity with Site Location	15
6. New Mexico Produced Work (state funded projects)	
7. Volume of Work Currently Being Performed	(Up to 4 Points Deduction)
8. New Mexico Preference Advantage (state funded projects)	(5-10 Points Preference)

Total Maximum Allowable Points 100-110 Points

3.6.3 Evaluations of Oral Presentations

In the Event of Oral Presentation, the PDE will establish the evaluation criteria. The total evaluation points will be 40. The PSSC will rate the oral presentations based on the new criteria. The oral presentation points will be added to the points received from the original proposals. The highest ranked will receive the awarded contract.

3.6.4 Summarizing Evaluations

Copies of the scoring sheets are made available to each member of the PSSC prior to the date and time set for the review meeting for proposals and for oral presentations. Voting members shall provide comments and justification for all scores. Following the meeting and calculation of scoring, the PD will distribute the committee's ranking to the CPO, CE and DS.

3.7 DE-BRIEFING

Unsuccessful consultants may request a de-briefing meeting or a video/tele conference de-briefing for a period of up to three months following the selection. The main objective of the de-briefing is to help unsuccessful proposers understand any areas where they need to take action as a result of the PSSC feedback and learn their standing in the evaluations in order to be successful on future proposals. These meetings shall be in accordance with the New Mexico Procurement Code.

The PD, along with members of the PSSC involved in the selection process, shall be responsible for conducting the debriefing. It must be noted that de-briefs are not statutorily required and will be given at the discretion of the Department.

3.7.1 Right to Protest

Any bidder or offeror who is aggrieved in connection with a solicitation or the award of a contract, including a sole source procurement, may protest to the state purchasing agent or central purchasing office at the following website:

www.generalservices.state.nm.us/statepurchasing.

CHAPTER 4

CONTRACTING

4.1 OVERVIEW

This chapter presents contracting procedures for consultant services, including negotiations, insurance, contracting, notices to proceed and task assignments for on-calls.

The Department follows The Brooks Act also known as Quality Based Selection (QBS) and the state Procurement Code and regulations on quality-based procurement of services from Architects, Engineers and Land Surveyors.

4.2 PROJECT SCOPING MEETING (PRE-NEGOTIATION)

A team headed by the Regional Design Manager or PDE, and other bureau representatives as required, is responsible for negotiating the contract scope, work schedule and fee for all professional engineering and land surveying services contracts. The CE will be included on the Project Scoping team at the request of the Regional Manager

The general sequence of events during scope negotiations is outlined below:

- a. Schedule Project Scoping (Pre-Negotiation) Meeting – After the selection is approved by the DS, the selected consultant is contacted by the PDE to set up a time and location for a Project Scoping Meeting. The project pre-negotiation meeting should be held no later than two weeks after selection.
- b. Project Scoping Meeting – A Project Scoping Meeting is held to review the objectives, scope and complexity of the project with the consultant. The purpose of the meeting is to clarify and agree on the scope of services to be provided so that the consultant can prepare an accurate fee proposal. When feasible, the project pre-negotiation meeting should include a visit to the project site by the PDE, design bureaus, district and consultant team. The final scope of work will later become an attachment to the contract. Additionally, a copy of the standard contract should be provided to the consultant, because the terms of the contract can affect the cost estimate.

4.3 CONTRACT NEGOTIATIONS

As with the scope negotiations, the contract fee is negotiated by a team headed by the Regional Design Manager or PDE, and other bureau representatives as required. The CE will be included on the Project Negotiation team at the request of the Regional Manager, and or the PDE.

It is the goal of the Department that the time to complete contract negotiations from the Notice to Selection issued to the Consultant to an executed contract not exceed 60 calendar days. Every effort by both the Consultant and the Department should be made to meet this goal.

The general sequence of events during contract negotiations is outlined below:

- a. Independent Estimate – Prior to entering into negotiations, the PDE will update the independent agency estimate, with input from appropriate sections in the Department, to determine a reasonable cost for the services to be provided by the consultant.
- b. Wage and Labor Rates – Approved wage and labor rates will be determined at the time of negotiation based on certified wage and labor rates supplied by the consultant firm. The wage and labor rates approved at the time of negotiations will remain in effect for the consultant contract lump sum fee through the tenure of the phase negotiated. If supplemental phases are negotiated as part of the contract, the consultant may adjust the wage and labor rates at the time of negotiations for the supplemental phase. Supplemental phases must be included in the original RFP or justified through a Sole Source procurement.
- c. Negotiations for all federally funded contracts including statewide on-calls and/or unit rate (indefinite quantity) contracts require:
 1. approved overhead audit rate (see section 3.6.1.b)
 2. approved wage and labor rates as determined during negotiations
 3. gross receipts tax and other applicable taxes.
 4. the use of incentive/disincentive clauses will be project specific and will be indicated in a specific RFP.
- d. Agreement – If both the Department and Consultant come to an agreement, contract processing can begin (see section 4.5).
- e. Failure to Reach Agreement – In the event that a satisfactory agreement cannot be reached with the top-ranked consultant, the CE will contact the Deputy Secretary for direction regarding further negotiations with the top-ranked

consultant or initiate negotiations with the second-ranked consultant. Negotiations will continue in this manner until an agreement is reached or until the supply of qualified consultants is exhausted, in which case consideration will be given to re-advertising or performing the work in-house.

- f. All negotiations will be documented and submitted to the PD for the procurement file. (Figure 3- Sample Contract Negotiation Checklist)

Figure 3

Contract Negotiation Checklist/Documentation

RFP# _____

Control Number _____

Termini _____

Consultant _____

Consultant Contact _____

Preliminary Award Letter Sent

Date _____

PDE's Independent Analysis of Man hours and/or Cost

Date _____

Consultant Documentation Received

Certificate of Insurance _____

Date _____

Unit Rate Schedule _____

Date _____

Certificate of Indirect Cost _____

Date _____

PDE Contacted Consultant: (document negotiation process)

****When negotiations are complete: Send the following documents to the Procurement Division to start contract process:**

Livecycle Justiciation Memo A-1326

Final Scope of Work

Schedule/final negotiated amount for contract

Contract Negotiation Checklist/Documentation

4.4 INSURANCE REQUIREMENTS

Insurance requirements, in generally, follow those listed Division 100 of the Department's Standard Specifications for Highway and Bridge Construction, current edition (Standard Specifications). They will also be listed in the resulting Engineering Services Agreement, Appendix C. Prior to processing the contract, the consultant must provide proof of insurance to PD. This proof is a Certificate of Insurance that must name the Department, its officers, employees and any other designated third party as additional insureds. The Certificate of Insurance must state that the coverage provided under the general liability policy is primary over any other valid and collectible insurance. In general, below are the minimum scope and limits.

- a. General Liability:
 - 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)
- b. Business Automobile Liability:
 - 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)
- c. Professional Liability (Errors and Omissions)
 - 1. Each Claim, \$1,000,000
 - 2. Annual Aggregate, \$2,000,000
- d. Workman's Comp Insurance
 - 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
 - i. Each Accident: \$1,000,000
 - ii. Disease – Each Employee: \$1,000,000
 - iii. Disease – Policy Limit: \$1,000,000

4.5 CONTRACT PROCESSING

If the Department and Consultant come to an agreement, a contract is prepared using the Department's template, and including the scope of work and compensation with the Unit Rate Schedule. The PD is responsible for processing the contract. The consultant is responsible for complying with all terms of the contract, including the conflict of interest clause at Section 21. Several major steps are required for execution of a contract. Below are some of the steps:

- a. Assembly – The contract will consist of the Department's "Engineering Services Agreement" with the following material appended:
 - 1. Appendix A, "Scope of Work" which includes:

- Tasks to be Performed;
 - Completion Dates;
 - Deliverables;
 - Design Criteria;
 - Location of Work
 - Project Schedule (listed in body of contract)
2. Appendix B, Compensation, which includes:
 - Total compensation
 - Method of Payment
 - Unit Rate Schedule
 - Certification of Final Indirect Costs, if applicable
 - Liquidated Damages, if applicable
 - Retainage, if applicable.
 3. Appendix C, Insurance Requirements
 4. Appendix D, Campaign Contribution Disclosure Form
 5. Appendix E, Certifications, (applicable to federally funded agreements), which includes
 - No Solicitation of Contract, Certification of Engineer
 - No Solicitation of Contract, Certification of the New Mexico Department of Transportation
 - Disclosure of Lobbying Activities, Standard Form-LLL, as required by 31 U.S.C. 1352
- b. Signature Process—Several reviews and approvals are required to complete and begin services under the contract. This process is overseen by PD.
1. PD assembles and reviews the contract jointly with the PDE.
 2. Contract is forwarded to Office of General Counsel (OGC) and the Consultant for e-review. Any questions raised are discussed with PD and the PDE.
 3. Upon approval of PD, PDE, OGC and the Consultant, the agreement is uploaded into the Department's currently used electronic signature program and circulated for signature. This process includes signature from the Taxation and Revenue Department for one original, one original is kept with the PD and a copy is sent to the program. verification of the Consultant's Tax I.D. number. The Cabinet Secretary or his designee is the final signature.
 4. Although the agreement is fully executed, the term of the agreement does not start running until a Notice to Proceed is sent by PD to the Consultant. If the agreement is federally funded, the Notice to Proceed is issued after federal funds are appropriated.
 5. When federal funding is involved, FHWA in conjunction with STIP

processes the Federal forms.

6. The PD approves the final Purchase Order and issues the Notice to Proceed after the funds have been obligated and encumbered by STIP.

4.6 ON-CALL SERVICES CONTRACT – TASK ORDER ASSIGNMENT

After a Notice to Proceed is issued to the Contractor under an On-Call Services Contract, services will start when a task order assignment has been agreed upon between the Department and the consultant. Below is the task order assignment process now effective under the new engineering contract template.

- a. The PDE/Contract manager will make a request to a consultant(s) for service(s) based on those listed in the contract. The consultant will provide a scope of work, technical approach and costs based on the Unit Rate Schedule.

PDE/Contract Manager negotiates, as needed the task order and quote. When an agreement is reached, the PDE will provide the information to PD.
- b. PD, in working with the PDE, will put together a A Task Order Authorization Form, which includes adding the scope of work, compensation, personnel and start and completion dates.
- c. PD will forward The Task Order Authorization Form to the consultant and the Cabinet Secretary or designate for review and signature.
- d. PD will send executed Task Order Authorization back to PDE/Contract Manager to issue the Notice to Proceed.
- e. PDE/contract manager will send PD a copy of the NTP for the contract file

CHAPTER 5

WORK MONITORING AND CONTROL

5.1 OVERVIEW

This chapter covers activities related to management of project documentation, dispute resolution, consultant services contracts, including project initiation, contract time, quality control, progress monitoring, technical reviews, contract changes during the progress of the work, and payment procedures for consultant services contracts.

The Department follows the State Procurement Code and the Administrative Code for the selection of Architects and Engineers.

5.2 PROJECT INITIATION

After the contract is negotiated and executed, a written Notice to Proceed (NTP) is issued by P D . The NTP gives the consultant the authority to begin work on the project and the term of the agreement starts to run. The PDE, depending on the project and the need to review the scope of work and the Department procedures, may hold a kick-off meeting with the consultant.

The kick-off meeting should be scheduled, as needed, by the PDE after the NTP is issued. The meeting should be attended by the PDE and Regional Manager assigned to the project, other Department staff with an interest in the project, and the consultant's project manager and key staff members.

Objectives of the kick-off Meeting are to:

- a. introduce the Department and consultant project team members;
- b. set the proper tone for the project team working relationships, lines of communication, and information exchanges, e.g., clearly establish the principal contacts for both the Department and the consultant regarding technical and administrative issues;
- c. review project objectives, critical design issues, and any Federal, State, or local requirements that will govern or affect the services to be provided;
- d. review the Department's requirements for technical reviews, quality control, progress reporting, and invoicing;
- e. review the Department's performance evaluation program, including timing and content of evaluations and consultant's method for responding to the evaluations;
- f. discuss the procedures for conflict resolution; and

- g. review the consultant's detailed work plan, schedule, and any key dates that affect Department or consultant actions such as providing completion dates, delivering plans, or attending review meetings and public hearings.

5.3 CONTRACT TIME

The executed contract contains a completion date(s) based on a total number of days to complete the work described in the scope of work. The consultant will be subject to liquidated damages if certain completion dates or project milestones in the contract have not been met. These completion dates shall be established during contract negotiations for the project between the consultant and the PDE. If the Department determines project urgency, the Department may elect to use incentive dates. The incentive dates will be placed on specific activities which drive the overall project schedule. Incentive and disincentive dates and conditions will be described in the RFP. Extensions to deliverable deadlines may be requested by the PDE or the consultant; however, extensions will only be considered when justified by the addition of extra work, or when a change in the conditions related to execution of the contract necessitates additional time to complete the work.

If a contract is placed on hold for reasons beyond the consultant's or the Department's control, the consultant shall stop all work on the contract and the contract time will stop elapsing. Upon the Department's release of the contract from hold status, the consultant may resume work on the contract. The PDE along with consultation from PD, will re-calculate the completion date based on the remaining contract time, and will officially notify the consultant of the new completion date(s). If the hold status is required due to the consultant's activities or lack of performance, the contract time may or may not be adjusted upon release of the hold status based on the discretion of the PDE.

5.4 QUALITY CONTROL REQUIREMENTS

In order to certify that the Consultant has an acceptable Quality Control/Quality Assurance Plan in effect, they must submit a project specific version of this plan in report form within fifteen (15) working days of the NTP. The report should include, at a minimum, the following information:

5.4.1 Overview

- a. Use of the corporate QA/QC plan tailored to the individual project.
- b. Demonstrate training of team members in QA/QC process.
- c. Show clear understanding of the Department's standards and objectives for the project.
- d. Distribute a copy of this QA/QC Report to all team members as outlined in chapter 140.7.2.3 of the Department's Design Manual.
- e. Provide department with QA/QC Report at completion of the project.

5.4.2 Responsibility for QA/QC Plan Implementation

- a. Identify the consultants primary person responsible for implementing the QA/QC Plan.
- b. Identify the consultants primary person responsible for coordinating interdisciplinary technical reviews and quality/constructability reviews.
- c. Identify the consultants primary person responsible for auditing the QA/QC plan implementation.

5.4.3 Procedures to be documented in the QA/QC plan

- a. Method by which designers and technicians check each other's work.
- b. Provisions for independent design checks.
- c. Design computation procedures to check all design work.
- d. Business Practices for performing QA/QC process on all project documents.
- e. Project Specific Items (In this section the consultant should tailor the elements of the QA/QC Plan specifically to the project by addressing special design features, coordination issues, documents or computer programs expected to be used, etc.)
- e.

5.5 **PROGRESS MONITORING**

To effectively monitor project progress, there must initially be a clear definition of the project scope. The project scoping meeting with the consultant should result in a realistic and detailed work plan and schedule to guide the project development process for both the Department and the consultant. With this initial schedule as a baseline, monthly progress can be monitored and compared with the baseline. There will be unforeseen circumstances that will cause current progress to move ahead or fall behind the original plan, but routine delays that are often encountered on certain types of projects should be anticipated, with some float built into the schedule to accommodate them. Also, with a well developed initial schedule, the overall project impact caused by a delay on one activity can be more readily assessed. Refer to Chapter 7 for additional information.

5.5.1 Schedule Preparation

There are numerous computer-based project scheduling packages on the market, ranging from relatively simple and inexpensive models to highly sophisticated, powerful, and expensive models. The Department may require that schedules be prepared in Primavera Project Planner (P3) using departmental activity codes for all key activities. If the use of this program is a requirement of the project, the Department will clearly state it in the RFP. PDE's should evaluate the benefit of requiring the consultants to use a computer-based project scheduling system on a project specific basis. If they determine use of a P3 based schedule is advantageous, the consultant shall be required to provide critical path method activity networks and project schedules in a Gantt Chart format. For complex projects, a resource loaded schedule showing manpower projections and key task assignments may also be required. If so, this will be a part of the RFP

If the contract requires, the consultant should prepare the detailed schedule for the project using the agreed upon contract dates for key events as the control points for the schedule. The schedule should clearly define activities and events to be performed by the Department and the consultant. If reviews or activities by other agencies are required, these should be anticipated and scheduled as well. The schedule should be presented for review and approval at the kick-off meeting, discussed above. Once approved, the schedule shall be set as a baseline schedule against which progress can be measured. Progress Reports

The consultant is required to submit a progress report when submitting an invoice for payment. The invoice and the progress report will be reviewed for consistency and effort.

The progress report should be clearly identified as such and should contain:

- a. Project Identification – Include Project Name, Project Number, Project Control Number, Contract Number, Contract Expiration date
- b. Reporting Period – The month or period covered by the report.
- c. Narrative of Project Status – Include the following:
 1. discussion of work accomplished since the last progress report,
 2. discussion of work planned to be accomplished before the next progress report,
 3. description of any outstanding issues or concerns, and
 4. statement of overall percentage of project completion;

5.5.2 Progress Meetings

At the option of the PDE, a progress review meeting may be held independently, on a monthly or as-needed basis, or in conjunction with a technical review meeting. If the project is progressing well and the project is of long duration (e.g., nine months or more), a regular monthly progress

review meeting may not be required. However, if the project duration is less than nine months, or if the schedule appears to be slipping for reasons within the consultant's control, then monthly review meetings should be held to keep attention focused on the project. On projects with short time frames, small delays can be difficult to make up unless extraordinary effort is made to keep the project on schedule. On very complex projects, or those that require extensive coordination with multiple outside agencies, monthly coordination meetings may be held to facilitate the ongoing coordination of activities and to reduce the likelihood of those entities outside the control of the Department or the consultant from adversely impacting the schedule.

The PDE will be responsible for ensuring that the QA/QC plan developed by the consultant is followed.

5.5.3 Schedule Delay

If the PDE determines that the project is falling behind schedule, the reason for the delay should be determined. If the delay is determined to be within the consultant's control, a request should be made in writing to the consultant for a plan to get the project back on schedule. It should also be stated in the request that if the consultant does not make every attempt to get the project on schedule that liquidated damages will be imposed. Please refer to Section 5.12 for discussion of liquidated damages. If the delay is being caused by the Department or by circumstances beyond the consultant's control, the PDE should determine what, if anything can be done to expedite the project.

A schedule delay can have an adverse effect on the project letting date and, in turn, adversely affect the Department's use of construction funds. If recovery from a schedule delay is not likely and if the delay will likely move the project completion date into a new quarter or new fiscal year, the PDE should immediately notify the Regional Design Manager and, in turn, other Department units that may be concerned with fund management.

If the schedule delay is of sufficient magnitude that the contract completion date is not likely to be met, the responsible party (Department or consultant) should request a time extension with an explanation of the circumstances necessitating the extension.

5.6 TECHNICAL REVIEWS

This section addresses general requirements and stages of technical reviews for projects that are underway.

5.6.1 General Requirements

The consultant has total responsibility for the correctness, accuracy, quality control, and completeness of all project documents prepared under their contract with the Department, and shall check all materials accordingly.

If errors and omissions are not caught by the consultant during the design phase, then the consultant will be responsible for any damages or delays resulting from the errors and omissions during construction, through the consultant's professional liability or errors and omissions insurance.

Also, the consultant's performance will be reviewed at key points throughout the design process. Failure to perform the work satisfactorily will result in a low rating, which in turn will reduce the consultant's chances for obtaining additional work with the Department in the future. Performance evaluations are further discussed in Chapter 7.

Each sheet of each plan submittal by the consultant will bear the seal of the New Mexico Registered Professional Engineer or other appropriate registered professional in responsible charge of the work. In addition, the plans will be accompanied by a written certification, signed by the Engineer, stating that the plans are complete (as appropriate for each phase of work), accurate, and in compliance with all applicable standards and specifications.

5.6.2 Technical Review Milestones

Technical reviews of work completed by the consultant will be held at key milestones of the design process. At each review, the consultant's performance in terms of quality and timeliness of the work will be reviewed. During pre-construction, the reviews leading up to the PS&E stage (100% construction plans) will be done by the PDE, with input from other specialists in the Department, and sent to the PD for filing. The PS&E assembly will be reviewed by the P.S. & E. Section.

The milestones at which technical reviews are to be done on typical design projects are listed below:

- a. Preliminary Design
- b. Grade and Drain
- c. Plan-in-Hand
- d. Plans, Specifications, and Estimates (PS&E)
- e. PDE and Construction Project Manager Site Visit Review (occurs when construction is 50% complete)

When construction has been completed, a final evaluation of the consultant's plans will be done by the Construction Project Manager, CCRB and PDE from the viewpoint of the construction operation, and sent to the PD for final tabulation and filing.

5.6.3 Level of Detail

The Department will not provide an extensive check of any plans submitted by the consultant. The Department will review these materials only for conformity with Department procedures and terms of the contract. Review by the Department does not include detailed review or checking of project

design or details, or the accuracy of those items included in the project documents. Acceptance of the plans by the Department does not mean that the consultant is relieved of responsibility for errors and omissions. Any errors or omissions in the plans, specifications, and estimates is the responsibility of the consultant. Corrections will be made by the consultant at no additional cost to the Department. Specific requirements will be included in each consultant agreement document.

The Department's review of the project documents submitted will be limited to the following:

- a. basic design concepts at field reviews,
- b. proper format of the plan sets,
- c. completeness of the plan sets,
- d. incorporation of required information,
- e. incorporation of design recommendations made at previous reviews,
- f. conformance with established design standards,
- g. use of proper quantity bid items/tabulations, and
- h. conformance with approved environmental documentation and mitigation measures.

5.7 PROJECT DOCUMENTATION

In general, the PDE and Consultant are responsible for maintaining a consultant project management file with all pertinent records related to the execution of the contract and progress of the project. These files shall be kept at each District and/or Infrastructure Division and Consultant office at all times. At a minimum, the project file should contain the following items:

- a. copy of the contract and all amendments (originals maintained by PD and Infrastructure Administrators);
- b. documentation of the negotiation history;
- c. copy of consultants QA/QC plan;
- d. copies of monthly progress reports and schedule updates;
- e. copies of performance evaluations (originals maintained by PD);
- f. copies of all meeting minutes;

- g. copies of all correspondence generated by the project;
- h. copies of all submittals;
- i. copies of all review comments and their resolution; and
- j. any other pertinent documents.

5.8 DISPUTE RESOLUTION PROCESS

It is the Department's desire that disputes be resolved at the lowest possible level. In the event that a conflict on project-related issues should arise between the consultant and the PDE or another member of the design team and a satisfactory resolution cannot be reached, the Dispute Resolution Process should be initiated. The Dispute Resolution Process involves bringing the matter to the attention of successively higher levels of authority until a settlement can be reached. As a last resort, the Claims Review Board will make the final decision on the proper resolution of the issue. The hierarchy of authority for Dispute Resolution is:

- a. Regional Design Manager or District Engineer
- b. Program Management Manager
- c. Office of Infrastructure Chief Engineer, and
- d. Department's Claims Review Board

If the conflict cannot be resolved by the design team, the PDE will notify the Director of PD and Regional Design Manager/District Engineer of the dispute and the issues involved. If the Director of PD and Regional Design Manager/District Engineer cannot reach agreement with the consultant, the Program Management Manager will be notified of the dispute and issues involved. The Program Management Manager will review the issues and make a recommendation. If an agreement cannot be reached at this level, the CE will be notified of the dispute and the issues involved. The Chief Engineer will review the issues and make a decision regarding the need to have a review by the Department's Claims Review Board or to terminate the contract for cause. The Chief Engineer will obtain the concurrence of the Secretary for either course of action and proceed accordingly.

5.9 SCOPE CHANGES

When significant changes occur in the scope, or character, of the work, a supplemental or amended agreement may be negotiated if it is mutually agreed that such changes are necessary. The consultant will prepare a revised scope of work, updated schedule, and labor and cost estimate for review and approval by the Department. If the change in scope is approved, a supplemental or amended agreement will be processed, following normal Department contracting procedures.

No claim for extra work done can be made prior to receipt of a duly executed supplemental or amended agreement and Notice-to-Proceed.

5.10 KEY PERSONNEL CHANGES

Consultant firms are selected for contracts based in part on the team of personnel presented in their proposal. Any changes to the key personnel identified in the consultant's proposal must be submitted in writing for the approval or denial by the Department.

5.11 PAYMENTS AND INVOICES

The Consultant may invoice the Department for work performed or partially completed under a valid contract, but not more frequently than once each month. Invoices may not be submitted for any month in which no work was done. Invoices should only reflect monies due for services performed during the reported billing period.

5.11.1 Routine Processing

The invoice will be submitted on the consultant's letterhead, and shall follow the Department's standard billing form indicating the amount due based on percent complete. The invoice must be consistent with the progress stated in the progress report. A sample invoice layout is shown in Figure 2. Additionally, a notarized copy of Form for Race Conscious and Certified Payment (Form No. A-644) must accompany each invoice and a progress report. A copy of Form A-664 is included in Appendix D.

Invoices shall be submitted directly by the consultant to the Infrastructure Administrative staff via email at NMDOTConsultantInvoice@state.nm.us. The Infrastructure Administrative Staff will confirm accuracy and compliance with contract limitations, determine retention, ensure invoice date is correct, and ensure Form A-644 and progress report is attached. Once all is accepted by the Administrative Staff, the invoice including all attachments will be forwarded to the PDE to review the invoice amount in relation to the consultant's progress. If the invoice is consistent with consultant's progress and progress report, the invoice will be approved for payment and forwarded to the appropriate Manager within Infrastructure or the District. The Infrastructure Administrative Staff will confirm all parties' approval of the payment invoice and forward for processing. The Infrastructure Administrative Staff then prepares a payment voucher for the invoice, and obtains the proper approvals.

5.11.2 Overpayment Precaution

The Department is not responsible for any additional work performed by the consultant prior to receipt of a duly executed amended agreement and notice to proceed. Any extra work performed by the consultant without an executed written agreement is done at the consultant's risk.

5.11.3 Discrepancies on Invoices

If the PDE or Infrastructure Administrative Staff finds an invoice to be inaccurate or inappropriate based on the work performed by the Consultant, the invoice will not be approved, the consultant will be informed of the discrepancy and will be required to provide remedial action. If the invoice is missing required progress report or Form A-644 upon receipt, the consultant will be notified for remedial action and asked to re-submit with a new invoice date. Upon re- submittal of a corrected invoice by the consultant, routine processing may proceed.

5.11.4 Amended Agreements/Invoices

When a contract is amended for a fee amount and associated work, the consultants request for payments shall reflect the addition of amended services and fees. The amended services and fees shall institute a separate work description and fee sub-total in the consultant request for payment.

5.12 LIQUIDATED DAMAGES

Should the Consultant fail to satisfactorily complete the work and services on or before the completion date(s) as provided for in the contract, liquidated damages shall be assessed and withheld from final payment. Liquidated Damages and Termination for Default shall be assessed as reflective in the consultant contract. The consultant must adhere to the current version of the Errors and Omissions (E&O) Policy and Procedures which can be found on the Departments website.

The Department reserves the right to award incentive fees when a consultant completes assignments prior to the contract completion date(s) or key milestone date(s) during the progress of the project. The pre-set amount shall be based on the complexity of the project.

If included in the RFP, the amount of the incentive fees shall be negotiated into the contract in the same manner as liquidated damages. Liquidated damages is addressed in the Engineering Services Agreement in Sections 2 and 4 and in Appendix B, Compensation/Rates. .

Figure 2

SAMPLE INVOICE LAYOUT

Consultant Name _____

Address _____

Phone/Fax _____

ATTENTION New Mexico Department of Transportation
P.O. Box 1149
1120 Cerrillos Rd.,
Santa Fe, NM 87504-1153

DOT Project Development Engineer (PDE) _____

Date: _____

Invoice # _____

Billing Period: _____

Contract # _____

Contract Expiration Date: _____

Control Number _____

Consultant Project Manager _____

Contact Name and Phone _____

Phase I

Amendment # Task #	Description	Approved Estimate Amount	% Task Complete	Total Amt of Services Completed	% of Total Contract Billed	Amount Previously Billed	Amount Due This Billing Period
1		\$69,891.06	100.00%	\$69,891.06	12.59%	\$69,891.06	\$0.00
2		\$3,021.57	100.00%	\$3,021.57	0.54%	\$3,021.57	\$0.00
3		\$78,243.82	100.00%	\$78,243.82	14.10%	\$78,243.82	\$0.00
4		\$178,176.37	50.00%	\$89,088.19	16.05%	\$41,247.83	\$47,840.36
	TOTALS	\$329,332.82		\$240,244.64	43.29%	\$192,404.28	\$47,840.36
	TAX	5.8125%					\$2,780.72

Phase II

Amendment # Task #	Description	Approved Estimate Amount	% Task Complete	Total Amt of Services Completed	% of Total Contract Billed	Amount Previously Billed	Amount Due This Billing Period
5		\$16,163.29	100.00%	\$16,163.29	2.91%	\$16,163.29	\$0.00
6		\$148,279.26	5.46%	\$8,096.05	1.46%	\$442.04	\$7,654.01
	TOTALS	\$164,442.55		\$24,259.34	4.37%	\$16,605.33	\$7,654.01
	TAX	5.8125%					\$444.89

Phase III

Amendment # Task #	Description	Approved Estimate Amount	% Task Complete	Total Amt of Services Completed	% of Total Contract Billed	Amount Previously Billed	Amount Due This Billing Period
7		\$16,093.99	0.00%	\$0.00	0.00%	\$0.00	\$0.00
	TOTALS	\$16,093.99		\$0.00	0.00%	\$0.00	\$0.00
	TAX	5.8125%					\$0.00

Total Contract \$555,000.00
Total Billable Amt (95% of approved contract amt) \$527,250.00
5% Unassigned (N/A for On-Call) \$27,750.00

Total Billed Amount 47.66% \$ 264,503.97
Less Retainage (N/A for On-Call) \$ -
Subtotal \$ 264,503.97
Previous Payments \$ 209,009.61

Professional Services Due \$ 55,494.36

Gross Receipts Tax Due \$ 3,225.61

Total Due \$ 58,719.97

CHAPTER 6

CONTRACT CLOSE OUT

6.1 OVERVIEW

This chapter of the manual provides guidelines for close-out of the contract and making the final payment to the consultant.

6.2 CLOSE-OUT CHECKLIST

Prior to releasing the payment retention and making the final payment to the consultant, the PDE will make a determination that the consultant has completed all required work and has submitted all required deliverables.

The following checklist assembled by the PDE, is a general guideline for most projects and should be amended, if necessary, to meet the requirements of a specific project:

- a. Request for Proposal;
- b. Contract Negotiation Documentation;
- c. Contract (including amendments);
- d. Progress Payment Documentation;
- e. Contract Deliverables (Reports, Plans, Studies)
- f. Liquidated Damages Assessment Report
- g. Contract Closeout Documentation (Final Invoice, Notice to Close)

6.3 FINAL PAYMENT

When all project work and required submittals have been completed, the consultant may submit the final progress report and final invoice. The final submittal will be accompanied by a letter signed by the person in responsible charge, stating that all contract requirements have been fulfilled and that the enclosed invoice is the final invoice for the project and that no further charges are pending with the exception of retention. A separate invoice will be submitted for release of all retention.

The PDE will check the final invoice and verify that all work has been completed, once this has been completed the PDE shall fill out the Liquidated Damages Assessment Form and submit to Infrastructure Administrative Staff. When satisfied that all requirements have been met, the PDE will approve the final invoice. A separate invoice for the release of retention request will then be processed and forward the document for final payment as per the flow chart on Figure 1.

6.4 RECORD RETENTION

The PDE will make sure that all drawings, calculations, correspondence, notes and other records associated with the project are placed in the Department's permanent project file. The consultant shall provide a CD or jump drive to the PDE for the project records. The consultant shall maintain a copy of all books, documents, drawings, financial records and other documents pertaining to a project for a period of no less than five (5) years after the acceptance of the final invoice.

6.5 OWNERSHIP OF MATERIALS

All documents developed by a consultant engineering or surveying firm under a contract with the Department are the property of the State. This includes drawings, tracings, reports, field notes, specifications, design calculations, quantity calculations, cost estimates, computer file data and other deliverables. Unless otherwise specified by the PDE, these materials are to be delivered to the Department prior to closing out the contract and making final payment to the consultant. The consultant is fully responsible for these items prior to their delivery to the Department, and shall replace any item lost or destroyed prior to final delivery at no additional cost to the Department.

6.6 PATENTS AND COPYRIGHTS

Any documents or deliverables described in Section 6.5 above that may be patented or copyrighted are the property of the Department and shall not be used or released by the consultant or any other person unless prior written approval is granted by the Department. In addition, the following restrictions apply:

6.6.1 COPYRIGHTS

In the event permission is granted to obtain a copyright, the Department, and if applicable the FHWA, shall be granted the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the material, and to authorize others to use the material for government purposes. Publication by either party shall give credit to the other party and the FHWA, if applicable.

6.6.2 PATENTS

If a patentable invention occurs under a Federal-aid contract, the U.S. Government may reserve the right to acquire the principal or exclusive rights to the invention. The rights and responsibilities of all parties are specified in 41 CFR 1 – 9.1.

6.6.3 RECORD KEEPING AND DOCUMENTATION

The consultant will be fully responsible for establishing and maintaining effective identification procedures for any patentable invention or discovery. These procedures shall include maintenance of records necessary to document the conception or first application of the invention or discovery.

The consultant shall provide the Department with the following information:

- a. A complete technical disclosure for each patentable invention or discovery within 6 months after the conception or first application. The disclosure should identify the contract and the inventor, and include a sufficiently detailed description to understand the purpose, nature and operation of the invention or discovery.
- b. Patent agreements to effectuate the provisions of this clause obtained from all persons employed by the consultant who performed any part of the work under the contract, except for clerical or manual labor.

6.6.4 ASSIGNMENT OF RIGHTS

The Department shall have all rights accrued from any patentable invention or discovery made by a consultant under contract to the State, with the exception of those rights claimed by the U.S. Government under item 6.6.2 above. The Department will grant the consultant an irrevocable, non-transferable and royalty-free license to use each invention or discovery in any lawful manner in any location in which the consultant conducts business.

6.7 DISPUTE RESOLUTION

In the event that any disputes should arise during final close-out of the project, the standard Dispute Resolution process should be followed (See Section 5.8).

CHAPTER 7

PERFORMANCE EVALUATION

7.1 OVERVIEW

This chapter describes procedures for evaluating consultant performance, and maintaining the data for future use in the consultant selection process.

Consultant performance evaluation is important for two reasons. First, it provides a means of monitoring the quality of work done on a specific project. If done properly, in stages as the project progresses, performance evaluations can result in a better product than if the evaluation is done only at the end of the project. Second, the cumulative record of performance on previous projects is a key element in evaluation of the consultant's qualifications for future work.

The current practice of staged performance evaluations provides the consultant an opportunity to improve performance as the work progresses. Additionally, the staged approach to performance evaluations provides an opportunity to open lines of communication between the Department and the Consultant to ensure that appropriate measures are being undertaken to meet the schedule, cost and quality goals of the project to all parties' satisfaction.

7.2 EVALUATION PROCEDURE

After the review of each major phase of a project, the PDE will rate the consultant's performance. Where necessary, the PDE will obtain input from other members of the project team in specialty areas such as bridge, design, traffic, drainage, utility, and geotechnical.

Sample evaluation forms for design projects that may be used for this purpose are shown in Appendix C. Each item is rated on a scale of unsatisfactory to exceeds expectations. All evaluations should be entered via the Consultant Evaluation Application. When evaluating the consultant, the PDE shall consider all factors included any and all amendments associated with time and/or additional compensation. If the amendment is associated with additional scope/compensation or time that was requested by the Department as additional services, the consultant should not be negatively rated. If the consultant was requesting additional time and/or compensation due to the schedule going beyond the agreed upon completion date or lack of understanding of the scope, the consultant shall be rated accordingly.

Not all items will apply to every job. If not applicable, the designation of N/A should be noted.

The PDE will notify the PD when a phase of a project is done. PD will enter the complete date into the Consultant Evaluation Application and will send the electronic link for the PDE to complete the consultant's evaluation form. Once the PDE has completed the form and hit the submit button it will be forwarded to PD for filing in the project file until the design services have been completed. A copy of the evaluation form will be submitted to the consultant and the other shall be retained in the project file.

PD will keep the consultant evaluation application current and will maintain the evaluations in the application. The evaluation form should be complete for each phase completed (i.e. Phase I, Phase II, etc.). The only remaining evaluation to be performed is at completion of construction.

Once the project is substantially complete, the Project Manager (PM) of the construction project will inform PD. PD will enter the final date into the consultant evaluation application for Phase III services and will forward the link for the evaluation to the PM. The PM, Construction Liaison Engineer (CLE), and PDE will evaluate the consultant from the viewpoint of the quality of the plans for construction purposes. The completed form will be routed back to PD..

The consultant evaluation application will notify the PM for three days via email that an evaluation needs to be completed. If the evaluation is not completed after the three days have passed, it will be sent to the Chief Engineer. The Chief Engineer will receive the notification daily until the evaluation is completed.

A copy of the performance evaluation form will be sent to the consultant by PD after the completion of each review. A cover letter will accompany the form, and if applicable, will summarize the areas in which the consultant needs improvement. This is done so that the consultant will know the areas in which improvement is needed in a timely manner, allowing those improvements to be made during the progress of the contract.

In the event the Consultant disagrees with any portion of the performance evaluation, they may prepare a response letter to address the areas of disagreement. Response letters should be addressed to the PDE/PM and PD, and will become a part of the Consultants project file .

If a Consultant's performance is rated as "needs improvement" or "unsatisfactory" in three (3) or more areas, the Consultant may be requested by PD to meet with PD and the PDE to propose a method to remedy the performance shortcomings. Documentation of the meeting, proposed remedy and the outcome of the corrective time period will be placed in the Consultant project file.

Each time a consultant completes a project, a completed evaluation form will be added to the Consultants project file. PD shall retain all completed evaluation forms on record for a period of five (5) years following the completion of each of the phases that they are under contract for including the Construction Phase evaluation. A Consultant Rating Report (CRR) can be obtained through the consultant evaluation application that will provide a dash board of the past five years for a consultant's evaluations and a link to each evaluation that PD has on file.

The final rating of the evaluations for each consultant shall be summarized in the CRR. The CRR and the project specific evaluations shall be made available to the PSSC for rating the past performance of the Consultant's qualifications. Although no specific point value is assigned to the CRR, the PSSC shall use this in the scoring of the past performance rating category in conjunction with materials provided in the Consultant's proposal.

CHAPTER 8

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

8.1 OVERVIEW

This chapter briefly covers the Disadvantaged Business Enterprise (DBE) Program that is required under Federal law for New Mexico to be eligible to receive Federal-aid highway funds, Federal transit funds, and Federal airport funds. Detailed up-to-date information on this program should be obtained from the Department's Construction and Civil Rights Bureau. The DBE Program does not apply to non-Federal-aid projects or programs.

8.2 PROGRAM REQUIREMENTS

It is the policy of the Departments to implement the provisions of 49 CFR 26, the Disadvantaged Business Enterprise program (DBE), in compliance with the US Department of Transportation (USDOT) Regulations. The objectives of the DBE program are:

- a. To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the connection with USDOT's highway, transit, and airport financial assistance programs;
- b. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- c. To ensure that the 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 Part 26 are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in USDOT assisted contracts;
- f. To assist the development of firms that compete successfully in the marketplace outside the DBE program;
- g. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Federal regulations observe a national aspiration goal of 10% DBE participation in Federal-aid public works construction and require the primary recipients to establish triennial overall goals based upon the local availability of DBEs ready, willing and able to participate. The Department, with approval of the State Transportation Commission, will establish the triennial state goal and

submit to the FHWA by August 1 every three years. The Department is committed to strive to meet the DBE goal in both the Federal-aid construction and the consultant design programs.

In order to ensure that all recipients of USDOT assisted contracts do not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program, all consultant contractors, local government, and all other consultants/contractors are required to submit the following pre-award DBE form requirements:

- a. Form No. A-1013: Design or Other Consultant Offeror's List. This is to be submitted by all design or other consultants at the time of submittal of the proposal. Failure to submit this form at the time of submittal of the consultant proposal will render the proposal non-responsive. Upon review of the A-1013, CCRB shall verify that a "Participating Contractor or Consultant Annual Profile Registration" form has been received from all listed. CCRB will assure that this form is submitted by the design consultant, sub design consultant or other consultant to the CCRB once a year between October 1 and September 30.

Each contract the Department enters into with a construction contractor, design consultant and other consultants or recipient on a USDOT assisted project shall ensure that such contract and subcontracts shall include the following DBE assurances:

- a. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Department shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and the administration of DOT assisted contracts. The Department's DBE Program, as required by CFR 49 Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Department of its failure to carry out its approved program, the US DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases,

refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- b. The contractor/sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- c. Notice to Contractors - regarding Prompt Payment, Retainage, and Overconcentration program changes.
- d. The DBE provisions of 49 CFR 26 is incorporated is made part of this agreement. Implementation of the DBE 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/Consultant 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 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- e. From time to time the Department shall receive interpretations from US DOT, which shall be binding on Department, sub-recipients and contractors.

The design consultant/offeror or other consultants shall keep such records as necessary to ensure compliance with its DBE utilization obligations. As requested, the design consultant/offeror or other consultants will submit all subcontracts and other financial transaction documentation executed with DBEs in such form, manner and content as prescribed by the Department. All such records must be retained by the design consultant/offeror or other consultants for at least five (5) years after project acceptance by the FHWA following the completion of the contract. These records shall be available for inspection by the Department, the FHWA, the US DOT or other appropriately sanctioned New Mexico state agencies or Federal agencies or departments. The following forms are required to be submitted by the design consultant/offeror or other consultant:

- a. Participating Contractor's or Consultants Annual Profile Registration. This data is collected electronically by NMDOT's CCRB. The data is to be submitted by the contractor, subcontractor, design consultant, sub design consultant or other consultant to the CCRB once a year between October 1 and September 30.
- b. Form No. A-644: Monthly Prime Contractor or Prime Consultant Payment Information. Upon award of project, the top half is to be completed by the consultant/offeror and submitted to the Consultant Management Unit on a monthly basis. Incomplete submission of Form No. A-644 with the monthly estimates will result in delay of payment.

APPENDIX A

FHWA REGULATIONS

TITLE 23 – HIGHWAYS

PART 172 – ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

A copy of the Code of Federal Regulations policy for the titled subject can be found at the following website:

<https://www.gpo.gov/fdsys/pkg/CFR-2017-title23-vol1/pdf/CFR-2017-title23-vol1-part172.pdf>

APPENDIX B

NMDOT ADMISTRATIVE

POLICIES AND MEMORANDA

TITLE 18: TRANSPORTATION AND HIGHWAYS

CHAPTER 28: HIGHWAY CONTRACTING AND BIDDING

PART 3: SELECTION COMMITTEE FOR QUALIFICATION BASED PROPOSALS

A copy of the above referenced policy can be found at the following website:

<http://164.64.110.239/nmac/parts/title18/18.028.0003.htm>

APPENDIX C

PERFORMANCE EVALUATIONS

Explanation of Evaluation Form

The Project Development/Consultant Section is responsible for preparing performance evaluations for each project developed by outside consultants. The purpose of the evaluation is to provide feedback to the Consultant as well as the Department to improve the quality of the highway program. The evaluations will be used as input for the selection of consultants in future projects.

The Consultant's performance on a professional service is evaluated after each phase of the contract. The evaluation for each phase of the contract is prepared after the work required by that phase of the contract has been completed and generally follows the outline of the work performed in the phase. The work elements have been broken down into two parts. Part I, Project Administration, evaluates how the project was managed and the interaction between the Consultant and the Department. Part II, Project Submittals, evaluates the quality of the final products required by the contract.

Explanation of Terms

Rating	= Letter value describing the Consultant's performance on a particular work element.
General Rating	= Letter value given for this part of the evaluation based on a weighted average for these elements.
Overall Rating	= Letter value given based on all elements pertaining to this project.
E	= Performance that consistently exceeds expectations. Examples include substantial design and construction cost and time savings, complete and error free work products well beyond the average work product typically submitted to meet satisfactory expectations.
G	= Performance that exceeds expectations. Performance on these elements is above the average expected for this project.
S	= Performance that met the requirements as described in the contract. Some comments made by the Department on the work products required resolution.
N/A	= Items that are not applicable to the specific contract/ task
NI	= Expectations were occasionally met and a significant amount of comments made by the Department required resolution.
U	= Performance consistently failed to meet expectations. Significant amount of rework was required to meet the requirements of the contract.

The Consultant may provide a response letter to the performance evaluation

which shall be sent to: New Mexico Department of
Transportation

Procurement Division Room 113
P. O. Box 114
Santa Fe, New Mexico 87504-1149

Phase I Services																																																	
Control Number: Project Description: Consultant: Project Development Engineer: Sub-Consultants: Surveying: Environmental: Right-of-Way:	Project Number: Project Manager: Contract Amount: Other: Other: Other:																																																
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; padding: 5px;">Elements</th> <th style="width: 50%; padding: 5px;">Rating</th> </tr> </thead> <tbody> <tr> <td colspan="2" style="padding: 5px;"> I. Project Administration – 50% </td> </tr> <tr> <td style="padding: 5px;">A. Communication</td> <td></td> </tr> <tr> <td style="padding: 5px;">B. Responsiveness</td> <td></td> </tr> <tr> <td style="padding: 5px;">C. Schedule Adherence</td> <td></td> </tr> <tr> <td style="padding: 5px;">D. Cooperation</td> <td></td> </tr> <tr> <td style="padding: 5px;">E. Coordination</td> <td></td> </tr> <tr> <td style="padding: 5px; text-align: right;">General Rating Part I:</td> <td style="padding: 5px;">Ratings:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> II. Project Activities - 50% </td> </tr> <tr> <td style="padding: 5px;">A. Alignment Study</td> <td style="padding: 5px;">E = Exceeds Expectations*</td> </tr> <tr> <td style="padding: 5px;">B. Location Survey & Mapping</td> <td style="padding: 5px;">G = Good, Above Average</td> </tr> <tr> <td style="padding: 5px;">C. Preliminary Property Ownership Maps</td> <td style="padding: 5px;">S = Meets Expectations</td> </tr> <tr> <td style="padding: 5px;">D. Traffic Studies</td> <td style="padding: 5px;">NI = Needs Improvement*</td> </tr> <tr> <td style="padding: 5px;">E. Environmental Process & Documents</td> <td style="padding: 5px;">U = Unsatisfactory*</td> </tr> <tr> <td style="padding: 5px;">F. Utility Designation, Location & Mapping</td> <td></td> </tr> <tr> <td style="padding: 5px;">G. Drainage Reports</td> <td style="padding: 5px;">* Provide Explanation</td> </tr> <tr> <td style="padding: 5px;">H. Preliminary Roadway & Bridge Plans</td> <td></td> </tr> <tr> <td style="padding: 5px;">I. Preliminary Right-of-Way Needs</td> <td></td> </tr> <tr> <td style="padding: 5px;">I. Quality Assurance and Quality check on deliverables.</td> <td></td> </tr> <tr> <td style="padding: 5px; text-align: right;">General Rating Part II:</td> <td></td> </tr> <tr> <td colspan="2" style="padding: 5px;"> III. Overall Rating </td> </tr> <tr> <td colspan="2" style="padding: 5px;"> IV. Remarks (Attach additional sheets as necessary): </td> </tr> <tr> <td colspan="2" style="height: 80px;"></td> </tr> <tr> <td style="padding: 5px;"> Evaluation By: </td> <td style="padding: 5px;"> Date: </td> </tr> </tbody> </table>		Elements	Rating	I. Project Administration – 50%		A. Communication		B. Responsiveness		C. Schedule Adherence		D. Cooperation		E. Coordination		General Rating Part I:	Ratings:	II. Project Activities - 50%		A. Alignment Study	E = Exceeds Expectations*	B. Location Survey & Mapping	G = Good, Above Average	C. Preliminary Property Ownership Maps	S = Meets Expectations	D. Traffic Studies	NI = Needs Improvement*	E. Environmental Process & Documents	U = Unsatisfactory*	F. Utility Designation, Location & Mapping		G. Drainage Reports	* Provide Explanation	H. Preliminary Roadway & Bridge Plans		I. Preliminary Right-of-Way Needs		I. Quality Assurance and Quality check on deliverables.		General Rating Part II:		III. Overall Rating		IV. Remarks (Attach additional sheets as necessary):				Evaluation By:	Date:
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APPENDIX D

FORM A-644

NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

MONTHLY PRIME CONTRACTOR OR PRIME CONSULTANT PAYMENT INFORMATION

To be completed by Prime Contractor/Consultant: Project Phase One: ☐ Project Phase Two: ☐ Project Phase Three: ☐ Project Phasing does not apply to Construction ☐

[illegible]

IF ANY FIRM LISTED ABOVE IS A MATERIAL SUPPLIER, BUT NOT THE MANUFACTURER, THE CONTRACTOR MAY CREDIT ONLY 60% OF THE EXPENDITURE TO THE SUPPLIER FOR FINAL PAYMENT.

3. Project No. _____ Date Let (NTP)/Proposal: _____
 4. Contractor or Consultant: _____ Project Control No. _____
 5. Reporting Period _____ THRU _____ Monthly Estimate No. _____
 4. Original Contract Amount: \$ _____
 5. Contract Dollars paid to date \$ _____ %Time used _____
 6. DBE Participation Annual Goal: _____

SUMMARY OF PAYMENT INFORMATION

a. PREVIOUS ACTUAL PAYMENTS TO DBES		g. PREVIOUS ACTUAL PAYMENTS TO NON DBES	
b. ACTUAL PAYMENT TO DBES THIS PERIOD		h. ACTUAL PAYMENT TO NON DBES THIS PERIOD	
c. TOTAL ACTUAL PAYMENTS TO DBES TO DATE		i. TOTAL ACTUAL PAYMENTS TO NON DBES TO DATE	
d. TOTAL ACTUAL PAYMENTS TO PRIME TO DATE		j. TOTAL ACTUAL PAYMENTS TO PRIME THIS PERIOD	
e. TOTAL % of ACTUAL PAYMENTS PAID TO DBES TO DATE		k. TOTAL % of ACTUAL PAYMENTS PAID TO NON DBES TO DATE	
f. TOTAL ACTUAL PAYMENTS TO PRIME LESS SUBS TO DATE		l. TOTAL ACTUAL PAYMENTS TO ALL SUBS	

Name: _____ Project Telephone No. _____

Title: _____

I certify that the above amount has been paid to the DBE Sub/Supplier: _____

Subscribed and sworn to before me this _____ day of _____, YEAR _____.

My Commission Expires: _____ NOTARY PUBLIC

APPENDIX E

SAMPLE OF ADVERTISEMENT FOR RFP

New Mexico Department of
Transportation Engineering Consultant
Services

The New Mexico Department of Transportation (NMDOT or Department) is requesting proposals from qualified firms or Offerors for the purpose of hiring a Consultant for Engineering Consultant Services for the following project:

RFP No. 21-29

NM 475 Hyde Park Rd., Phase IA Feasibility Study MP 0.00 to MP 16.00

CN: 5101630

Proposals shall be valid for one hundred twenty (120) days subject to all action by the New Mexico Department of Transportation (NMDOT or Department). NMDOT reserves the right to reject any or all proposals in part or in whole. **Proposals shall be submitted to the NMDOT electronically. Proposals submitted by hard copy, email or facsimile will not be accepted.**

Electronic proposals must be submitted 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 **no later 2:00 P.M. (Mountain Standard Time) on January 5, 2021.**

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

Request for Proposals will be available by contacting the Procurement Manager Listed below for each RFP:

RFP No. 21-29: Juanita Sanchez by telephone at (505) 629-8790, or by email at juanita.sanchez@state.nm.us or by accessing NMDOT's website at: http://dot.state.nm.us/content/nmdot/en/RFP_Listings.html.

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

APPENDIX F
INFRASTRUCTURE DESIGN
DIRECTIVE (IDD)
PREPARATION OF CONTRACT
DOCUMENTS



SUBJECT: Infrastructure Design Directive
IDD-2021-01
Preparation of Contract Documents

DATE: January 4, 2021

TO: Office of Infrastructure Divisions
District Offices
Transportation Design Community

FROM: David D. Quintana, P.E.
Chief Engineer
Programs & Infrastructure Division

FILE REFERENCE:
PSESHARE: Design Directives

The following IDD shall be used to ensure consistency in the development of all projects to be let by NMDOT in relation to preparation of Contract Documents. The attached guidelines establish the Contract Document, its application and staff who has the primary responsibility in the preparation of the Contract Document.

Contract documents are defined as the following:

- Addenda
- Required Documents for Bid Submittal
- Notice(s) to Contractors
- Invitation for Bids
- Special Provisions
- Plans other than Standard Drawings
- Supplemental Specifications
- Standard Specifications
- Standard Drawings

Conforming to the above guidelines ensures that proper contract document is used.

DELINES FOR PREPARATION OF CONTRACT DOCUMENTS

w Mexico Department of Transportation

CONTR ACT	APPLICATION	PRIMARY RESPONSIB	GUIDANCE AND	COMMENTS
Addenda	A change to the Plans or Specifications issued after the advertisement and before the opening of the Bid.	PDE/District/P SE Bureau	PSE Bureau	Overrides any Contract document indicated below. Can be initiated by Contractor questions in accordance with Subsection 102.7 of the Standard Specifications. When initiated by Contractor, PSE Bureau will request supporting information from PDE/District.
Required Documents for Bid Submittal	Those documents specified in the Bid Package Required for Bid Submittal. The Bid Package includes the Bid1 Documents submitted by a Bidder in accordance with Section 102 of the Standard Specifications.	PSE Bureau	Federal (applicable CFR's) and State Statute requirements	Required Documents are dependent on funding types. Federally funded Projects may include additional Documents that are not required on State funded Projects.
Notice to Contractors	Specific issues related to the Contract that are not included in a Special Provision and are of significance in the governing order of documents as indicated in Section 105.4 of Standard Specifications)Examples are: Time-related clauses; Utility relocations/installations; Specific R/W	PDE/District	Office of Infrastructure Functional Groups Management PS&E Bureau Office of General Counsel	Do not use to override other conflicting data in Contract documents; conflicting data should be avoided/corrected. Do not use to avoid need for a Special Provision. Bid Item related information should be placed in a Special Provision.
Special Provisions (Project Specific)	Project specific additions or revisions to the Standard or Supplemental Specifications. Can alter or describe in greater detail materials, construction approach, method of measurement, basis of payment or other general conditions.	PDE/Design Team District/Design Team Consultants	Office of Infrastructure Functional Groups Management PS&E Bureau Office of	District/PDE/Consultant to initiate, not initiated by PS&E Bureau. Need to be addressed at Pre-Final/Final Design stages.
Special Provisions (Standard)	Additions or revisions to the Standard Specifications. Can alter or describe in greater detail materials, construction approach, method of measurement, basis of payment or other general conditions.	CCRB PS&E Bureau	Office of Infrastructure Functional Groups Management PS&E Bureau Office of	Included in all Contracts.
Plans (General Notes)	Instructions to the Contractor, highlighting critical information by reference. Can include data related to quantities, rates of application, calculations, etc. Can only	PDE/Design Team District/Design Team Consultants	Design team via inspection/review meetings	Do not use to introduce and define new pay items, nor as a substitute for Special Provisions; do not duplicate information provided in Standard Specifications.
Supplemental Specifications	Adopted additions or revisions to Standard Specifications that are used state wide. Revisions of current Standard Specifications to be incorporated into	CCRB PS&E Bureau	Specification Committees (applicable per division)	Typically issued on an annual basis.
Standard Specifications	Approved for general application and repetitive use. Provides Description, Materials, Construction Requirements, Method of Measurement and Basis of Payment for Work.	CCRB PS&E Bureau	Specification Committees	Do not assume that specifications are completely adequate to describe all Project conditions as is.
Standard Drawings (Refers to Selection of Applicable Drawing	Commonly used details for various construction features, developed into standards for general use and formally adopted. Detailed drawings for specific items of Work approved for repetitive use.	Engineering Coordinators// PDE Consultant/PD E) District	PS&E Bureau and Functional Groups	Do not use when project specific details are needed.

Note: Although the PS&E Bureau is responsible for final assembly of bidding and construction contract documents, the content of these documents is the responsibility of parties as shown above.

APPENDIX G

DECLARATION OF NO CONFLICT

Declaration of No Conflict
NMDOT Professional Services Selection Committee

RFP Number: _____

State of New Mexico

**CERTIFICATION OF NEW MEXICO DEPARTMENT OF
TRANSPORTATION**

I, _____, as a voting/advisor member of the NMDOT Professional Services Selection Committee or Designee of Voting Member of the New Mexico Department of Transportation of the State of New Mexico do hereby certify, that the recommended selections for the above referenced RFP or its representative has not been required directly or indirectly as an express or implied condition in connection with obtaining or carrying out this professional services recommendation 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):

- (a) Disclosure of nature of contacts if any (if no contacts have occurred, none is an appropriate disclosure):
 - Entertainment: _____
 - Meals/Gifts: _____
 - Trips: _____
 - Other: _____

I acknowledge that this certificate may be furnished to the U.S. Department of Transportation, in connection with this professional services recommended selection involving participation of Federal-Aid transportation funds (if applicable) or state funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date: _____

By: _____

APPENDIX H

Engineering

SERVICE

AGREEMENT

Contract No.
Vendor No.
Control No.

ENGINEERING SERVICES AGREEMENT

This Engineering Service Agreement (Agreement or Contract) is between the **New Mexico Department of Transportation** (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. The terms Agreement and Contract are used interchangeably in this Agreement.

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) business 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 Default effective immediately.

Upon acceptance of the services, payment will be made to the Contractor within thirty (30) days. If payment is made by mail, the payment will be deemed tendered on the date it is postmarked. However, 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. Start Date and Term.

The Start Date of this Agreement is the date of the Notice to Proceed to the Contractor, which is after the Agreement has been fully executed, which will take effect on the last signature date of the required approval authorities below, and funding has been obligated for the project described in Section 1, above. This Agreement will terminate four (4) years from the date of the Notice to Proceed unless terminated pursuant to Section 4, Termination, Suspension and Delays, or Section 5, Appropriations. 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) 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 the letter, the Contractor has ten (10) business days to correct the deficiency. 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 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 Default 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 by **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 Department employees 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) 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 contract – 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 being productive to the project immediately upon receiving assignments. Approval of replacement personnel will not be unreasonably withheld. The Department retains the right to request the removal of any of the Contractor's personnel at any time.

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 intended to be 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 and pay all charges, fees, 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 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, proceeding, 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 of this Agreement — including but not limited to breach of contract, unfair business practices, antitrust, RICO, fraud — or performance of this Agreement, 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.

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, proceeding, 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 of this Agreement — including but not limited to breach of contract, unfair business practices, antitrust, RICO, fraud — or performance of this Agreement, 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.

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, as soon as practicable but no later than two (2) days after it receives notice, notify the legal counsel of the Department and the Risk

Management Division of the New Mexico General Services Department by certified mail.

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 that 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 contract 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 New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

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 a Certificate of Insurance, 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 at their respective offices at all reasonable times during the Agreement period and for five (5) years from the date of final payment.

If this Agreement is federal 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 at all reasonable times 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.

19. Civil Rights Laws and Regulations Compliance.

The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement. The Contractor further agrees to comply with 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 contract, Contractor certifies, by signing this Agreement, to have in place, and agrees 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 by a representative of the state.
- 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 has

completed the **Campaign Contributions Disclosure Form, Appendix D.**

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

Attached to this Agreement as **Appendix E, Certifications** are: the No Solicitation of Contract Certification of Contractor and the No Solicitation of Contract Certification of the Department. 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 in paragraph a above, 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. This Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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 also 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 shall agree 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 DBE's 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 DBE's;
 5. Help remove barriers to the participation of DBE's 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 tri annual 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 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

may include, but is 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 and, 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.

The New Mexico Procurement Code, NMSA 1978 Sections 13-1-28, et seq., the state's criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Violation of federal laws and regulations could result with 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 and that 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 be amended by an instrument in writing executed by the parties. 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. Signatures are dated for reference purposes only.

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, Insert Termini Task Order Based

1. Services to be Performed:

Provide On-Call <<Insert type of services>> Services, as assigned by Task Order. The Contractor may proceed with the work after it receives a **Notice to Proceed** with a copy of the Task Order 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.
 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 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 a 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 No.: <<Insert number>> that the Contractor (also identified herein as Engineer and Consultant) may be requested to perform and includes a task order form.

<<Insert Scope of Work>>

Appendix B

Compensation/Rates

On-Call Services, **Insert Termini**, Task Order Based

Compensation: Up to \$------. This amount does not include 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, and if any completion dates, liquidated damages and retainage will apply. The Contractor shall commence work upon receipt of a **Notice to Proceed**, which will include any completion dates. See for reference, **New Mexico Department of Transportation Task Order Authorization Form** below.

Method of Payment: <<Choose one: As identified on each Task Order / Lump Sum upon completion / Monthly Invoice / Quarterly Invoice. >> Authorization Form.

Liquidated Damages: <<Choose one and underline as appropriate: Yes / No >>

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, which ever 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.

The terms "satisfactory completion" or "satisfactorily completed" for the purpose of assessing liquidated damages mean:

- a. Return in satisfactory condition all of the Department's loaned documents and materials, including survey books and field notes; and
- b. Delivery of Contractor's work product including, the design information, standard drawings, field notes and other pertinent documents, such delivery means actual transfer of possession in the form approved by the Department incorporating all required plan corrections and clarifications; and
- c. Acceptance, in writing, by the Department of the Contractor's work.

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 and underline as appropriate: 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 and underline as appropriate: Yes, applied to

Completion Dates with marked with * in Section 4 below. / No.>>

Retainage: <<Choose one: and underline as appropriate 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 a 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.>>

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, which is 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:

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
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)
2. Property Damage: \$2,000,000 each occurrence (annual aggregate)

c. Professional Liability (Errors and Omissions)

1. Each Claim, \$1,000,000
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
 - i. Each Accident: \$1,000,000
 - ii. Disease – Each Employee: \$1,000,000
 - iii. 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
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

The Contractor shall provide a Certificate of Insurance evidencing the above insurance before the Department issues a Notice to Proceed. The Certificate of Insurance must be made part of this Agreement. The Contractor shall provide a Certificate of Insurance 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 New Mexico 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 Engineer 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 Engineer must disclose whether they, a family member or a representative of the prospective Engineer 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 Engineer submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the Engineer signs the contract, if the aggregate total of contributions given by the prospective Engineer, a family member or a representative of the prospective Engineer 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 Engineer, a family member of the prospective Engineer, or a representative of the prospective Engineer 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 Engineer 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 Engineer.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE ENGINEER 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 Engineer 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 statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective Engineer, if the prospective Engineer is a natural person; or (b) an owner of a prospective Engineer.

“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.

“Prospective Engineer” 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.

“Representative of a prospective Engineer” 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 Engineer.

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE ENGINEER:

Contribution Made By: _____

Relation to Prospective Engineer: _____

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

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

NO SOLICITATION OF CONTRACT

CERTIFICATION OF ENGINEER

I certify that I am the (title) _____ and authorized representative 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 consultant) to solicit or secure this Contract.
- b. Agreed, as an express or implied condition for obtaining the contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, 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 consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Contract.
- d. As Per OMB Circular A-133 Compliance Supplement, 2015, or as amended, _____ certifies that the organization and its principals are (FIRM) not suspended or debarred.

Except as here expressly stated (if any):

I acknowledge that this certification 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 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: _____

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

Engineering Firm: _____

NO SOLITITATION OF CONTRACT

CERTIFICATION OF NEW MEXICO DEPARTMENT OF TRANSPORTATION

I, _____, as Deputy Secretary or Designee of the Department of Transportation of the State of New Mexico certify, that the above 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 Contract 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: _____









Consultant Handbook 2021 Final

Final Audit Report

2021-01-05

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