

Commodity Code(s): 96864, Response and Recovery Services, Roadway Incident. 92544, General Construction: Management, Scheduling, Cost Estimation – Engineering, 95826, Construction Management Services.

**EDDY COUNTY
STATE OF NEW MEXICO**

REQUEST FOR PROPOSALS

**Public Works, Recovery, and Infrastructure
Construction**



RFP B-17-04

**EDDY COUNTY PURCHASING
101 W. GREENE STREET
CARLSBAD, NEW MEXICO 88220**

**Issued: May 16, 2017
Proposal Due: June 9, 2017 by 4:30 p.m.**

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ENGINEERING CERTIFICATION

All Municipal Public Works Projects estimated \$100,000 or more shall be stamped by a Registered Professional Engineer

This is to certify that I am a Registered Professional Engineer in the State of New Mexico, that these documents were prepared by me, or directly under my supervision, and that the same are true and correct to the best of my knowledge and belief.



A handwritten signature in cursive script that reads "Debra P. Hicks".

Debra P. Hicks
Number 10871
State of New Mexico

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I. OVERVIEW OF RFP AND PROJECT REQUIREMENTS

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The County intends to enter into an agreement with successful Proposers for the accomplishment of repair, alteration, modernization, rehabilitation, demolition and construction of Public Works, Recovery and Infrastructure Construction projects. Work will be accomplished by issuing Task Orders with negotiated pricing. The awarded contractors shall furnish all management, documentation, labor, materials and equipment needed to perform the work. The term of this contract shall be one (1) year with an option to renew by mutual consent for three (3) additional one (1) year periods. The County may add to or delete from the Scope of Work set forth in this RFP. No purchases are obligated by this request for proposals.

All potential Offerors are to read, understand and accept the requirements of this Request for Proposals (RFP), especially the mandatory requirements.

This is a qualifications-based selection. The Offeror is required to provide, as part of the Proposal, the qualifications and other documents requested in this RFP.

The award of a contract for contractor services shall take into consideration certain contractor qualification and performance factors that add value to a procurement contract. Factors such as contractor past performance, technical expertise and experience, management capabilities and resources, will form the basis for the criteria to be considered. Award shall be made in accordance with the terms, conditions, and requirements stated herein.

Eddy County intends to award multiple projects to the highest ranked Proposers in accordance with the Request for Proposals. Eddy County reserves the right to reject any and all proposals, to waive technical irregularities, and to award the contracts to the Proposers who's Proposal deems to be in the best interest for Eddy County.

B. PROJECT FUNDING

Eddy County has funds to administer various projects and will be referred to throughout the contract documents as the "Owner".

C. PROPOSAL SECURITY

The Offeror will provide, with the proposal, a notarized declaration from a bonding company licensed to do business in the State of New Mexico confirming the Offeror's

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ability to obtain Performance; Labor, and Materials Payment Bond for projects which exceed \$125,000.00.

D. CONTRACT TIME

The number of days for completion of work (the Contract Time) will be set forth in each Task Order. Any provisions for liquidated damages will be set forth in the Contract Documents.

E. SUBCONTRACTORS

The use of subcontractors is allowed. If utilized, the prime contractor shall be solely responsible for the entire performance of the contract. Additionally, the prime contractor must receive approval, in writing, from the Owner before any subcontractor is used during the term of this agreement.

Any Contractor who has been suspended or debarred from bidding on Eddy County construction projects shall not be used as a subcontractor during the time such suspension or debarment is in effect.

F. NEW MEXICO PREVAILING WAGE RATES

The Proposer's attention is directed to the fact that wages to be paid on this project shall not be less than the prevailing wage rates as listed by the New Mexico State Office of Labor Commission. It shall be the successful Proposer's responsibility to inform himself thoroughly of all state, federal, and local laws and statutes pertaining to the employment of labor, the freedom of organization, and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin, or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

State of New Mexico Wage Rates shall apply to all work under the assigned task orders. Wage Rates will be updated by the New Mexico Department of Workforce Solutions in Santa Fe every calendar year for the duration of the contract. The Contractor shall be subject to any changes in wage rates during the duration of the Contract. Wage Rate interviews may be carried out at any time during the Contract with Contractor's employees.

G. PUBLIC WORKS APPRENTICE AND TRAINING ACT

Any proposer on an Eddy County Project shall comply with Section 13-40-1 of the New Mexico State Statutes, known as the "Public Works Apprentice and Training Act."

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Eddy County shall verify that the proposer is not out of compliance with this Act by contacting the New Mexico Construction Industries Division prior to awarding of the contract.

The Owner may prematurely terminate this Contract if the Public Works Director judges that the Contractor has inadequately or unsatisfactorily met its obligation under this Contract. This agreement may be terminated by any party for cause upon 30-days written notice to the other participants in the contract. As used herein, the term "cause" will mean a material breach of the Agreement by a non-terminating party, or acts or conduct by a non-terminating party that substantially alters the terminating party's ability to benefit from this Agreement, which breach, acts, or conduct are not cured or remedied within the 30-day period following the giving of notice by the terminating party (which notice shall detail the nature of the breach, acts, or conduct constituting the case for termination and specify the effective date of termination in the event such breach, acts, or conduct are not cured or remedied within 30 days following the giving of such notice).

H. Title VI OF THE CIVIL RIGHTS ACT

Any contractor on an Eddy County project shall comply with Title VI of the Civil Rights Act of 1964, 49 CFR, part 2, and all related regulations and directives. Eddy County assures that no person shall on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity under any Eddy County program, activity or service. Refer to Exhibit A and Exhibit E of this RFP.

I. PERMITS, PLAN CHECKING FEES, OTHER CHARGES

The Owner will not pay for business licenses, professional affiliations and similar costs of doing business which are the Offeror's obligation to secure and maintain. The cost of all bonding will be paid by the Offeror and will not be paid by the Owner. These costs are to be included in Offeror's Price Proposal.

J. PROPOSAL EVALUATIONS:

A. Proposals will be evaluated on the basis of the criteria enumerated within the Request for Proposals. The top Offerors receiving the highest evaluation will be recommended by said committee to the Board of County Commissioners for award. The Owner reserves the right to assign Task Orders to any qualified Contractor awarded in this RFP, regardless of the ranking of position. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) Acceptable,
- 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or

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- 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).
- B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror, which do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).
- C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror; a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in writing immediately.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section lists the major events of the Selection Process and specifies general requirements.

A. SEQUENCE OF SELECTION PROCESS EVENTS

| | Event | Responsible Party | Date | Location |
|----|--|---|------------------------------------|--|
| 1. | Advertisement | Eddy County Procurement | May 16, 2017 | Public Advertisement |
| 2. | RFP Documents Made Available to Potential Offerors on the procurement website: | Eddy County Procurement, www.eddycounty.org | May 16, 2017 | Eddy County Website: |
| 3. | Pre-Proposal Conference | Eddy County/Potential Offerors | May 23, 2017 – 8:00 a.m.-6:00 p.m. | Eddy County Fairgrounds 3402 South 13 th Road |
| 4. | Submission of Proposals | Offerors | June 9, 2017 4:30 pm deadline | Eddy County 101 W. Greene Street Carlsbad, New Mexico 88220 |
| 5. | Proposal Evaluation | Evaluation Committee | June 12-16, 2017 | Eddy County 101 W. Greene Street |

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| | | | | |
|----|-----------------|----------------------------------|---------------|--|
| | | | | Carlsbad, New Mexico 88220 |
| 6. | Board Approval | Board of County Commissioners | June 27, 2017 | Eddy County 101 W. Greene Street Carlsbad, New Mexico 88220 |
| 7. | Notice of Award | | July 11, 2017 | Eddy County 101 W. Greene Street Carlsbad, New Mexico 88220 |

NOTICE: Eddy County reserves the sole right, without incurring any liability, to change any aspect of the proposed procurement described above, including the right not to proceed with the procurement and/or the right to proceed in a different manner or on a different timeline than as described above.

B. EXPLANATION OF SELECTION PROCESS EVENTS

1. Issue RFP

This RFP is issued by Eddy County in accordance with the provisions of Sections 1.4.8 NMAC, and General Government Administration Procurement Code Regulations for Use of Competitive Sealed Proposals for Construction and Facility Maintenance, Services and Repairs.

The Request for Proposals (RFP) documents consist of all the documents listed in the Table of Contents and all documents incorporated in this RFP.

2. Submission of Proposal

a) Receipt of Proposals:

Offerors shall provide one (1) original and four (4) copies of your proposal. Proposals shall be typewritten on standard 8 1/2 " x 11" paper and bound on the left-hand margin. Submittal of proposals are due by June 9th, 2017 at 4:30 pm. Clearly label each envelope or package with the RFP number, Offeror's name, address and date of submittal.

Offeror shall deliver proposals to:

Bob Fabian, CPO
Eddy County Procurement Manager
101 W. Greene Street
Carlsbad, NM 88220
Telephone: (575) 887-9511, Ext 2501

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The Procurement Manager will time-stamp proposals upon arrival at the Procurement Manager's office and hold in a secure location. A public log will be kept of the names and submittal times of all proposals. Proposals delivered after the deadline will be deemed non-responsive, and will be returned unopened to the Offeror. It is solely the Offeror's responsibility to ensure that Proposals arrive at the appointed date, time and location. Proposals may be delivered early to avoid any possible delay of the submission.

Proposals may be hand carried/delivered or shipped/mailed by common carrier, courier of US Postal Service. No other method of delivery will be allowed. Telephone, telegraphic, facsimile offers will NOT be accepted.

b) Opening of Proposals:

Proposals shall not be opened publically or open to public inspection until after the contract is signed. Eddy County's Procurement Manager or his designee will designate one or more witnesses to be present during the opening of the proposals. The witness(es) and the Procurement Manager will sign an affidavit identifying the offeror's proposal contents for the procurement file.

c) Collusion

No proposer shall be interested in more than one proposal. Collusion among proposers or submission of more than one proposal under different names by any firm or individual shall be cause for rejection of all proposals without consideration.

3. MANDATORY Pre-Proposal Conference

A Pre-Proposal Conference will be held on the date indicated in Section II.A (Sequence of Events), above from 8:00 a.m-6:00 p.m.. MDT at 3402 South 13th Road, Eddy County Fairgrounds. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (See Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential Offerors that attended the Pre-Proposal Conference.

4. Proposal Evaluation Committee

The Evaluation Committee will meet to review all proposals. The Evaluation Committee may decide to hold interviews with the highest-ranked Offerors. The Evaluation Committee reserves the right to award the contracts without interviews. If fewer than three proposals are received, the Evaluation Committee may recommend award or may reissue the RFP.

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5. Board Approval
The Office of the Procurement Manager shall present the selected Offeror's proposal to the Board of County Commissioners for approval, at their next regularly scheduled meetings.
6. Notice of Award
The Office of the Procurement Manager shall prepare the Notice of Award and send it to the selected Offerors.
7. Award of this proposal incorporates all agreements and understandings between the Owner and the Contractor regarding the provision of services to Eddy County. No prior agreements or understandings, verbal or otherwise between the parties, will be valid or enforceable unless set forth herein.
8. Award of the proposal will not be altered, changed or amended except by an instrument in writing executed by the parties hereto.
9. Upon award, the agreement between Contractor and the County will be governed by the laws of the State of New Mexico and enforced in the District Court of Eddy County.

C. STANDARD CONDITIONS GOVERNING THE PROCUREMENT

This section contains guidelines under which this RFP is issued, and conditions concerning how the project will be completed.

The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project, should the need arise. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Offeror.

1. Protests
In accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with a solicitation or the award of a contract may protest to the Procurement Manager. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest. Protests must be submitted in written form to:

Eddy County
ATTN: Bob Fabian, CPO
101 W. Greene Street
Carlsbad, NM 88220

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(Note: Protests received after deadline will not be accepted)

The protest letter shall include the name and address of the protestant, the solicitation number, and a statement of the grounds for protest, including appropriate supporting exhibits.

2. Incurring Cost
Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
3. Third-Party or Subcontracting Contractor Contract Responsibilities
Direction of all work that may result from this procurement must be performed by the Offeror and payments will only be made to the Offeror. Use of consultants identified in the proposal is permitted, but since the award is made on a quality-based evaluation process, reassignment of Contractor duties and responsibilities to a third party is not acceptable
4. Amendments or Modifications to a Proposal by Offeror
Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that Proposal must be executed) and delivered to the place where proposals are to be submitted at any time prior to the opening of proposals.
5. Offeror's Rights to Withdraw Proposal
No Offeror may withdraw their proposal for 45 days after the actual date of the receipt thereof (Proposal Due Date).
6. Disclosure of Proposal Contents
Proposals shall not be opened publically or open to public inspection until after the contract is signed. At that time, all proposals will be open to the public, except for the material which has clearly been noted and determined by the Procurement Manager to be proprietary or confidential as noted by the Offeror.
7. Confidential Data
Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret under the Uniform Trade Secrets Act, Sections NMSA 1978 § 57-3A-7. Any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" must be readily separable from the proposal in order to facilitate public inspection for the non-confidential portion of the qualifications-based proposal.
8. Termination of RFP

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This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Owner determines such action to be in the best interest of Owner. The RFP process may be terminated at any time if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Offeror.

9. Sufficient Appropriation

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

If the determination is made that there is insufficient funding to continue or finalize a project, the successful Offeror will be compensated to the level of effort performed, as authorized by the Owner prior to that determination.

10. Offeror Qualifications

The Evaluation Committee may consider any relevant information or data, from any reliable source (references) relating to the RFP evaluation factors and the Offeror's ability to successfully perform.

Such information may be obtained from the Offeror's prior customers, commercial and public databases or other reliable sources. The Offeror shall furnish to Owner all such information and data for this purpose as Owner may request including but not limited to proof of financial resources, production or service facilities, personnel and experience adequate to complete the project. Owner reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy Owner that such Offeror is qualified to carry out the obligations of the Contract and to complete the work described therein.

The Evaluation Committee may reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

11. Right to Waive Technical Irregularities

The Evaluation Committee reserves the right to waive technical irregularities per state code 13-1-132, (see "Technical Irregularities" in Definitions and Terminology section below). The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

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12. Potential Civil and Criminal Penalties

Eddy County Purchasing Policy R-15-15 and the New Mexico Procurement Code, 13-1-28 through 199, NMSA, 1978, shall apply to this procurement and prevail over any inconsistent terms and govern all interpretations of contract documentation. In addition, criminal laws prohibit bribes, gratuities and kickbacks.

13. Indemnity by Contractor

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless; the County, its officials, employees, agents, successors, and assigns from and against any and all liabilities, penalties, fines forfeitures, demands, claims, causes of action, suits, and costs and expenses incidental thereto, including cost of defense, settlement, and reasonable attorney fees, which any or all of them may hereinafter suffer, incur, be responsible for or pay out as a result of bodily injuries, including death, to any person, damage, including loss of use, to any property, public or private, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulation of any governmental entity or agency, directly or indirectly, or arising out of or resulting from the acts, or failure to act, of the Contractor, its employees, agents, Subcontractors, or other persons engaged by or under the control, supervision or direction of the Contractor, or its Subcontractors, in the performance of this agreement. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable, the duty of the Contractor to indemnify the County shall not extend to liability, claims, damages, losses or expenses, including fees of lawyers and costs, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the County, or by its agents or employees; or (ii) the giving or the failure to give directions or instructions by the County or by its agent or employees, where the giving or failure to give directions or instruction is the primary cause of bodily injury, wrongful death or damage to property. This paragraph shall survive after the completion or the termination of the contract.

14. Release of Information

Only the Owner is authorized to release information covered by this RFP. The Offerors must refer to the Owner any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.

15. Interpretations

All questions about the meaning or intent of the Contract Documents shall be submitted to Engineer in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the proposal documents. Questions received less than five (5) days prior to the date for opening of proposals will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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16. Licensing Requirements

The Contractor and subcontractors shall comply with all licensing laws and regulations. The Contractor shall, as part of the proposal, provide copies of all of the Contractor's valid licenses necessary to perform the work in the State of New Mexico. Copies of the subcontractors' licenses need be provided only if requested of the Owner.

17. Subcontractors

The Subcontractors Fair Practices Act, 13-4-31 et. seq. per NMAC 1.4.8.13, paragraph C applies to this procurement. Therefore, any request for substitution on the part of the Owner or the Offeror shall comply with this section.

Since the award is made on a qualification-based evaluation process, replacement of subcontractors after award and prior to contract execution may cause the Offeror to be disqualified.

18. Non-Conforming Proposals

Proposals will be reviewed, for completeness, format and compliance with the requirements of the RFP. Incomplete proposals will be considered non-responsive and subject to rejection.

Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the Owner, at its option.

If any proposal is deemed non-responsive by the Evaluation Committee, the Offeror will be notified in writing of such determination.

19. It is expressly agreed and understood that the Contractor is not authorized to act as an agent of the Owner or to enter into any contract on behalf of the Owner. It is also acknowledged that the Contractor, its agents and employees, by virtue of award of this proposal, are not entitled to any fringe benefits available to the employees of Eddy County.

20. The Proposer agrees that the products or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer. Proposer agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

21. Proposal specifications indicate the minimum standard of quality, performance or other pertinent characteristics required. All services equal or exceeding these specifications will be considered.

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22. Each proposer is to submit its proposal on the form provided. The form must be fully completed.
23. In signing this proposal, the Proposer certifies that there has been no direct or indirect action in restraint of free competitive proposal in connection with this proposal submitted to Eddy County.
24. In submitting this proposal, the proposer represents the proposer has familiarized himself with the nature and extent of the Request for Proposals dealing with Federal, State and local requirements which are part of this Request for Proposals.

D. DEFINITIONS AND TERMINOLOGY

This section contains definitions that are used throughout this Request for Proposals (RFP), including appropriate abbreviations.

"Architect" means a member of the project team who is a New Mexico licensed architect and is responsible for the architectural services.

"Award of Contract" shall mean a formal written notice by Eddy County that a firm has been selected to enter into negotiations for a contract for construction services.

"Contract" means an agreement between Eddy County and a New Mexico licensed contractor for the work covered by this RFP.

"Contract Documents" means any one, or combination, of the following documents: Request for Proposal, Addenda, Agreement between the Owner and the Contractor for General Conditions of the Contract, and the drawings and specifications.

"Contractor" means any person, corporation, or partnership that has entered into a contract with a state agency or a local public body.

"Design Professional" means architect or engineer.

"Determination" The written documentation of a decision made by the Evaluation Committee including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"Engineer" means a member of the project design team who is a New Mexico licensed engineer and is responsible for the engineering services.

"Evaluation Committee" A body constituted in accordance with Section 1.4.8.16 NMAC 2005 to evaluate proposals and make selection recommendation and or selection. The Evaluation Committee consists of at least three members appointed by Eddy County. The

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committee should collectively possess expertise in the technical requirements of the project, construction, design and contracting.

"Firm" means the company or other business entity referenced under 1.4.8 NMAC for the purpose of identifying, individually or collectively: a general contractor, a prime contractor or a subcontractor, of any tier, whether basic trade subcontractor, specialty subcontractor or other.

"General Conditions" - The terms "can", "may", "should", "preferably", or "prefers" identifies a desirable or discretionary item of the RFP. Failure to comply with such an item will not result in the rejection of the Offerors proposal.

"Mandatory Requirements" - The terms "must," "shall," "will," "is required," or "are required" identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor may result in the rejection of the Offeror's proposal. Rejection of the proposal will be subject to review by the Evaluation Committee.

"Offeror/Proposer" is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing construction services for this project.

"Owner", as defined in the Agreement between the Owner and Contractor, shall be Eddy County.

"Pre-listed subcontractors" means the subcontractors, of any tier, that the Offeror is required to list, pursuant to 1.4.8.13 NMAC of 1.4.8 NMAC, at the time it submits a proposal in response to this request for proposals.

"Prime Contractor" means the New Mexico licensed contractor selected.

"Project Architect, Project Engineer, Contract Engineer or Contract Architect" means architect/engineer.

"Project Design Team or Contract Architect or Engineer Design Team" means all members of the Design Professional's firm, including its consultants, who are responsible for the design of and who will be participating in the construction and completion of the project.

"Proposal" is the Offeror's response to this RFP.

"Reckless" shall mean the submission or omission of a false or misleading material fact in connection with a request for proposals under 1.4.8 NMAC that the submitting firm and/or person knew or should have known was false or misleading;

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"Request for Proposals" or "RFP" means this document, any attachments incorporated by reference, and any amendments issued for use in soliciting proposals for construction of this project.

"Resident Business" or "Resident Contractor" means an entity that has a valid resident certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-1-21 NMSA 1978.

"RFP documents" means any one or any combination of the following documents: Request for Proposals, technical proposal; price proposal; financial proposal; contractor's qualifications statement.

"Responsive Offer" or "Responsive Proposal" An offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the Evaluation Committee/Procurement Manager. Material respects of an RFP include, but are not limited to quality, quantity or delivery requirements.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.

"Selection" A formal written notice by the Procurement Manager's office that a firm has been selected to enter into a contract to provide this service.

"Statement of Qualifications Forms" means the forms included as a part of this RFP, which all Offerors shall complete, including the qualifications for the Team member.

"Technical Irregularities" Are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. The Evaluation Committee/Procurement Manager may waive such irregularities, or allow an Offeror to correct them, if either is in the best interest of Eddy County. Examples include the failure of an Offeror to:

"User" means the Eddy County staff occupying the facility or facilities, for which a project is being designed.

"User Contact" is the person designated by Eddy County to speak on behalf of the staff concerning the scope of work and programming requirements for the project.

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“Veteran Resident Contractor” - is a contractor that has applied to the NM Taxation and Revenue Department, qualified, and been issued a valid Veteran Resident Preference Certificate pursuant to Section 13-1-22 NMSA 1978.

III. CONTRACTUAL AGREEMENT AND BONDS

A. Performance, Labor, and Materials Payment Bonds (Projects in excess of \$125,000.00)

A 100% Performance Bond and a 100% Payment and Materials Bond executed by a surety company authorized to do business in the State of New Mexico will be required from the successful Offerors prior to award of Task Orders. The Performance and Labor and Materials Payment Bonds shall be AIA Document A312 or approved equivalent.

B. Time of Delivery and Form of Bonds

The Offeror will, prior to commencement of Work, furnish such bonds.

The bonds will be written on the AIA Document A312, form included, or approved equivalent, Performance Bond and Labor and Material Payment Bond.

The AIA A312, form included, or approved equivalent, 1984 Labor and Materials Payment Bond shall in effect, limit the time line Surety has to respond. The bond shall be modified as follows:

Paragraph 6 of this Payment Bond is deleted in its entirety and replaced with the following provision: Within 45 days (1) after the claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has received at its home office all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety’s or the Contractor’s defenses under this Bond or their right to dispute such claim. However in such event the claimant may bring suit against the surety as provided under this bond.

C. Subcontractor Bonding

Each subcontractor shall provide a performance and payment bond on a public works construction project if the subcontractor’s contract (to the Contractor) for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more. Failure of a Subcontractor to provide required bond shall not subject the Owner to any increase in cost due to approved substitution of Subcontractor.

IV. PROPOSAL RESPONSE FORMAT AND ORGANIZATION

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A. Proposal

1. By the date and time of Submission of Proposals, Offeror shall submit one (1) original copy and four (4) copies of the Proposal, each to include the following documents:
 - ___Tab 1 Letter of Submittal
 - ___Tab 2 Contractor Statement of Qualifications and Attachments
 - ___Tab 3 Past Performance
 - ___Tab 4 Management Plan
 - ___Tab 5 Project Staffing
 - ___Tab 6 Health and Safety

2. Detailed Requirements for Proposal

- a) Proposal Format

Proposals shall be submitted in a spiral or three-ring binder. Page format shall be 8-1/2" x 11" with foldout sheets (if any) allowed up to 11" x 17" in size. Foldout pages shall be counted as two pages and shall be numbered as such. Text will be no smaller than 10 point.

Proposals shall not exceed 30 pages total for all of the tabbed sections listed below. Each sheet face that is printed with text or graphics counts as one page. Contents of Tab 6 – Health and Safety are not to be counted towards the 30 page maximum total. Tab Dividers do not count as pages provided the only text or graphics on the dividers are the tab numbers and section titles:

Tab 1 – Letter of Submittal

Tab 2 – Contractor's Statement of Qualifications & Attachments

Tab 3 – Past Performance

Tab 4 –Management Plan

Tab 5 –Project Staffing

Tab 6 – Health and Safety

Any response that exceeds the referenced page limitation shall BE DEEMED NON-RESPONSIVE AND THE PROPOSAL WILL NOT BE EVALUATED. If there are any questions regarding format requirements, please contact Bob Fabian, Procurement Manager, prior to submission of Documents.

Tabs/Evaluation Categories:

All sections shall be separated by numbered tabs that correspond to the Submission Requirements and Evaluation Categories, 1 through 6, as shown below. Pages within shall be numbered consecutively.

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TAB 1 - LETTER OF SUBMITTAL

Each proposal must be accompanied by a submittal letter. Any submittal letter that omits any of the following information may be deemed 'non-responsive'. The submittal letter shall include acknowledgment and, where appropriate, certification of the following:

1. Identify the name(s), title(s), telephone number(s), fax number(s) and e-mail address(es) of the person or persons who have authority to contractually obligate the Offeror for the purpose of this RFP and who has sufficient knowledge to fully address all matters and respond to all inquiries included in the RFP submittal. The Letter of Submittal shall be signed by one of the persons so identified.
2. If a joint proposal is being submitted, identify the firms, and disclose the percentage of the work/services to be executed by each firm, based on the dollar amount of the fee proposed in the Price Proposal, so that the resident contractor preference or veteran resident contractor preference can be applied in proportion to the work done by each contractor.
3. Acknowledge acceptance of all conditions that govern the procurement. Acknowledge that the information provided in the proposal is truthful, accurate and complete, and that the firm is bound by all information, data, certifications, disclosures and attachments submitted.
4. Acknowledge that, the omission of any material fact concerning requested information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may lead to the disqualification of the proposal as 'non-responsive'.
5. Acknowledge that the Owner has a right to obtain relevant information from other sources (references) to determine that the Offeror is 'responsible'.
6. Acknowledge that if awarded the contract, the RFP documents, and all terms and conditions stated therein, and all information, data, certifications, disclosures and addendum shall be incorporated as part of the Contract.
7. Acknowledge the receipt of all addenda to this RFP and list them by number.
8. Provide certification and/or documentation that the firm possesses the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors.

TAB 2 – CONTRACTOR STATEMENT OF QUALIFICATIONS & ATTACHMENTS

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Completely fill out the attached General Contractor Statement of Qualifications form and its associated attachments, providing all requested information.

TAB 3 – PAST PERFORMANCE

Provide the following information through written narrative and documentation:

- a. Past performance summary and past capability to meet schedules, budgets, and project administration requirements for comparable Government projects. Provide five (5) examples of prior projects. The documentation shall include:
 1. Was the project completed early? If yes, how was that accomplished?
 2. Was the project completed late? If yes, how many days and why?
 3. Were you or your subcontractors called back to the job for any reason during the warranty period? After the warranty period?
 4. Were there any outstanding issues remaining after the warranty inspection?
 5. Did your firm refuse to do additional work requested by the owner? If yes, why?
- b. Evidence of past performance quality and overall customer satisfaction.
- c. Record of compliance with applicable laws and regulations on past projects.
- d. Past record of achievement of health and safety targets.
- e. Control of Cost
- f. List of references

Offers are cautioned that the Evaluation Committee will use data provided by teaming partners as well as data obtained from other sources in the evaluation of past performance.

TAB 4 – MANAGEMENT PLAN

Provide the following information:

- a. Management Team: provide an organization chart of the Management Team.
- b. Describe the technical approach to project that is intended to ensure that tasks are executed within cost, schedule, and quality goals.
- c. Safety plan/program

TAB 5 – PROJECT STAFFING

Provide the following information:

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- a. Brief resume (education, professional certification(s), years with firm, total years of experience, and a brief description of experience supporting the proposed role) for each key project personnel.
- b. Describe Contractor's participation in skill training.
- c. Address reliable staffing sources/project staffing.

TAB 6 – HEALTH AND SAFETY

Provide the following information:

- a. Provide a summary description of the Contractor's Health and Safety program. (One copy only of the full Contractor's Written Safety Program)
- b. Identify the competent person responsible for, and capable of, implementing the safety and health program/plan.
- c. Address project specific health and safety risks that have been identified by the RFP and additional risks that the Offeror's team has identified. Describe processes to minimize risk and to ensure that health and safety issues are clearly communicated with the contractors, subs, and the owner.
- d. Offerors shall provide their Experience Modification Rate (EMR), Total Case Rate (TCR), and Days Away, Restricted, and Transfer (DART) for the past three years with the proposal.
- e. Offerors shall provide with proposal a copy of their OSHA 300 Log (current and previous two years)

(See Section V. Proposal Evaluation, B. Evaluation Criteria, below, for detailed scoring guidelines for the "Health and Safety" category)

IMPORTANT NOTE ON THE PROPOSAL'S CONTENTS:

Regarding the apparent duplication of required information between certain Attachments of the Contractor's Statement of Qualifications and the other sections of the Proposal:

The intention of Tabs 4, 5, and 6 of the Proposal is to provide a place for the proposer to make a concise presentation of the strengths of the proposed team in the exact categories that the committee will be scoring, unencumbered by the format of the Statement of Qualifications Forms. If the proposer so chooses, other sections of the Proposal may be referenced within these Tabs, without wholly duplicating that information. Also, information presented elsewhere may be summarized or condensed within these Tab sections to make the proposer's presentation more clear.

All proposals must include the following:

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ITEM 1 OFFEROR INFORMATION WHICH INCLUDED THE INFORMATION LISTED IMMEDIATELY BELOW

- Resident Contractor Preference Number (In-state Certification No.) on Proposal Form and a copy of certificate.
- Resident Veteran Contractor Preference Number (In-state Certification No.) on Proposal Form and a copy of certificate
- NM DOL (Workforce Solutions) Certificate Number
- Contractor's New Mexico Gross Receipts Tax Number
- Contractor's Federal Employee Identification Number
- Acknowledgment of Receipt of Addenda (If applicable)
- Signature and Corporate Seal (if applicable)
- Campaign Contribution Form

ITEM 2 – CERTIFICATE OF INSURANCE:

The offeror will be required to carry:

General liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Auto liability insurance in the amount of \$1,000,000.00.

Workers Compensation insurance as required by New Mexico State Statute.

Eddy County will be listed as an additional insured on all policies and proof of coverage must be provided before work begins. Award will be contingent upon receipt of proof of insurance.

ITEM 3 - RESIDENT CONTRACTOR (OR VETERAN RESIDENT CONTRACTOR) PREFERENCE CERTIFICATE:

It will be the sole responsibility of any Proposer claiming a Resident Contractor Preference or Veteran Resident Contractor Preference to apply to the State of New Mexico Department of Taxation and Revenue for the proper certification and to receive approval, a certification number, and a certificate prior to the date and time for receipt of Proposals. Requests for qualification as a Resident Contractor or a Veteran Resident Contractor after receipt of Proposals will not be considered.

To receive a resident business preference, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the NM Taxation and Revenue Department.

When a public body awards a contract using a formal request for proposals process, a resident contractor shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident contractor possessing a valid resident contractor certificate.

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To receive a veteran resident contractor preference, a contractor shall submit with its bid or proposal a copy of a valid veteran resident contractor certificate issued by the NM Taxation and Revenue Department.

Through an RFP process the qualified veteran resident contractor shall receive:

- a) 10% preference of the total possible points to be awarded if their annual revenues are less than \$1,000,000;
- b) 8% preference of the total possible points to be awarded if their annual revenues are less than \$5,000,000 but more than \$1,000,000
- c) 7% preference of the total possible points to be awarded if their annual revenues are more than \$5,000,000

The preference is limited in any calendar year, to an aggregate of \$10,000,000 in purchases by public bodies from all resident veteran businesses receiving preferences.

The preferences do not apply when the expenditure includes federal funds for a specific purchase.

In addition to the veteran resident preference certificate, the veteran resident contractor shall provide any addition documentation required to validate the percentage of preference to be awarded.

If there is a joint bid or joint proposal by a combination of resident veteran, resident or nonresident businesses, the preference shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

ITEM 4 – CONTRACTOR’S STATE OF NM W-9 FORM:

Each Offeror shall complete and provide a State of New Mexico W-9 Form.

ITEM 5 – OFFEROR’S CONTRACTOR’S LICENSE(S)

Each Offeror shall provide a photocopy of their Contractor’s License or Licenses.

NOTE: After award of a contract, all Offerors of record may make arrangements with Eddy County to have their proposal copies returned or picked up. Eddy County shall not be responsible for any shipping or mailing costs to return proposals. If Offeror does not request the return of proposals within a reasonable period of time, Eddy County will shred and destroy them. Proposals stamped “original” will be kept on file for a period of three (3) years.

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V. PROPOSAL EVALUATION

A. EVALUATION PROCESS AND SCORING METHODOLOGY

1. Receipt and Opening of Proposals

Proposals, and modifications to proposals, received prior to or at the submission deadline shall be time-stamped upon receipt and held in a secure place until the Evaluation Committee has scored the Proposal. Proposals shall not be opened publically or open to public inspection until after the contract is signed.

2. Proposal Discussions

Per 1.4.1.39 NMAC 2005, if mistakes are discovered after receipt of the proposal, The Evaluation Committee may request clarifications of information submitted by any or all Offerors in a written format with a specified deadline for response.

3. Evaluation Committee

The Evaluation Committee shall consist of five (5) persons appointed by County Management and the Public Works Director. The team shall collectively possess expertise in the technical requirements of the project, construction design and contracting. The Owner may use independent consultants or agents to support the Committee, provided appropriate precautions are taken to avoid potential conflicts of interest.

4. Proposal Evaluation

The Procurement Manager shall review each proposal to determine if it meets all of the mandatory requirements. Proposals that do not meet the mandatory requirements shall be considered "nonresponsive". The Offeror shall be notified in writing of the determination. The Procurement Manager will then distribute the proposals and individual score sheets to the Evaluation Committee, and will review how the proposals shall be scored. The Evaluation Committee members shall score the proposals individually as required by the §1.4.8.12.B NMSA.

5. Combining Scores, Preference Adjustments and Ranking of Proposals

The scores on the proposals will then be adjusted for Resident Contractor Preference or Veteran Resident Contractor Preference.

Per 13-1-21 and 13-1-22 NMSA 1978 (SB 1, 2011 Special Legislative Session, effective 10/5/2011) a resident contractor who holds a valid certificate issued by the NM Taxation and Revenue Department shall be awarded the equivalent of five percent of the total possible points assigned to the procurement.

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A veteran resident contractor who holds a valid certificate issued by the NM Taxation and Revenue Department shall be awarded the equivalent of between zero and ten percent of the total possible points assigned to the procurement, depending on the annual revenues of the firm and the aggregate annual veteran preference awards, as described in detail in Item 5, Section IV above.

When a joint proposal is submitted by a combination of resident veteran, resident or nonresident businesses, the preference shall be calculated in proportion to the percentage of the contract, (based on the dollar amount of the goods or services provided under the contract), that will be performed by each business as specified in the joint bid or proposal.

The adjusted point subtotals will be converted to a numeric ranking of all proposals per committee member. The individual member rankings per Offeror will then be totaled together to determine the overall ranking of the proposals.

B. EVALUATION CRITERIA

A maximum total of 100 points are possible in scoring each proposal for the evaluation. The Evaluation Committee will evaluate the proposals and may conduct interviews with Offerors.

The Proposal shall consist of 100 points total.

The evaluation criteria to be used by the Evaluation Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

PROPOSAL

| | |
|---|-------------------|
| Qualifications | 20 points |
| Past Performance | 20 points |
| Management Plan | 20 points |
| Project Staffing | 20 points |
| Health and Safety (see detailed scoring guidelines below) | 20 points |
| Subtotal of Technical Proposal | 100 points |

Eddy County intends to award multiple projects to the highest ranked Proposers in accordance with the Request for Proposals. Eddy County reserves the right to reject any and all proposals, to waive technical irregularities, and to award the contracts to the Proposers who's Proposal deems to be in the best interest for Eddy County.

Detailed Scoring Guidelines for "Health and Safety" criterion:

| | |
|--|-----|
| A. Summary Description of Health and Safety Plan | 1.0 |
|--|-----|

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| | |
|--|-------------|
| A1. One Full Copy of Written Safety Program | 1.0 |
| B. Competent Person Responsible/Capable of Implementing | |
| 1.0 | |
| C. Project Specific Health/Safety Risks | |
| 4.0 | |
| C1. Describe Processes to Clearly Communicate Health/Safety Issues | 1.0 |
| D. Written Safety Program Compliant; Provide One Copy | 3.0 |
| E. List of Key Safety Personnel/Safety Manager for This Project | 1.0 |
| F. Experience Modification Rate Past 5 Years (Equal to, or Better Than Average) | 3.0 |
| G. Recordable Incident Rate for current and previous two (2) years OSHA 300 Log | |
| 3.0 | |
| H. <u>Free of Committing Serious/Willful Violations of Federal/State Safety Laws</u> | <u>2.0</u> |
| Total Possible Points | 20.0 |

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Tab 2: Contractor Statement of Qualifications

Name of Offeror (firm): _____

Does the firm have a current contractor registration? _____

Does the firm have all applicable business and/or contractor licenses required by state or local law?

Does the firm possess the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract?

Has the firm had any business, trade or contracting license suspended or revoked? If yes, explain

Has the firm been debarred by any government agency? If yes, explain

Has firm entered into any contracted that has defaulted or has been terminated on any project? If yes, explain.

Has the firm committed willful or repeated violations of federal or state wage laws as determined by a final non-appealable decision of a court or government agency? If yes, explain.

Has the firm committed serious or willful violations of federal state safety laws as determined by a final non-appealable decision of a court or government agency? If yes, explain

List most recent Experience Modification Rating (EMR). _____

List most recent Total Lost Workday Incident Rates (number of lost time injuries and illnesses x 200,000 ÷ total hours worked) _____

Recordable incident rates (number of injuries x 2000,000 ÷ total hours worked) _____

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Name of Offeror: _____

Previous Project Experience: _____

List all projects, minimum of three (3), Offeror has performed work on in the five (5) years immediately preceding the submission of its proposal that are similar in size and scope. The Offeror must have been the prime contractor and performed at least 50 percent of the work value with their own forces. Use additional sheets as necessary.

Project Information

Project Name: _____

Location of Project: _____

Owner: _____

Original Contract Value: _____ Completed Value: _____

Knowledgeable Owner Contact Person:

Knowledgeable Owner Contact Person _____

Role on Project: _____

E-mail Address: _____

Telephone Number: _____

Description of Project:

Attach any types of performance evaluation reports prepared in connection with the project.

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SUBCONTRACTOR'S QUALIFICATION STATEMENTS

Name of Subcontractor (firm): _____

Address: _____

Category of work: _____

Does the firm have a current contractor registration? _____

Does the firm have all applicable business and/or contractor licenses required by state or local law?

Does the firm possess the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract?

Has the firm had any business, trade or contracting license suspended or revoked? If yes, explain

Has the firm been debarred by any government agency? If yes, explain

Has the firm defaulted on any project? _____ If yes, explain.

Has the firm committed willful or repeated violations of federal or state wage laws as determined by a final non-appealable decision of a court or government agency? If yes, explain.

Has the firm committed serious or willful violations of federal state safety laws as determined by a final non-appealable decision of a court or government agency? If yes, explain

List most recent Experience Modification Rating (EMR). _____

List most recent Total Lost Workday Incident Rates
(number of lost time injuries and illnesses x 200,000 ÷ total
hours worked) _____

Recordable incident rates (number of injuries x 2000,000 ÷ total hours worked) _____

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Name of Offeror: _____

Previous Project Experience: _____

List all projects, minimum of three (3), Offeror has performed work on in the five (5) years immediately preceding the submission of its proposal that are similar in size and scope. The Offeror must have been the prime contractor and performed at least 50 percent of the work value with their own forces. Use additional sheets as necessary.

Project Information

Project Name: _____

Location of Project: _____

Owner: _____

Original Contract Value: _____ Completed Value: _____

Knowledgeable Owner Contact Person:

Knowledgeable Owner Contact Person _____

Role on Project: _____

E-mail Address: _____

Telephone Number: _____

Description of Project:

Attach any types of performance evaluation reports prepared in connection with the project.

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State Contractor License No. _____.

State Types of licenses applicable to this project

New Mexico Workforce Solutions Registration No. _____. (If applicable)

New Mexico Resident Preference Number . _____. (If applicable)

Include necessary Certifications

New Mexico Resident Veteran Preference Number . _____. (If applicable)

Include necessary Certifications and determined preference percentage.

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LIST OF SUBCONTRACTORS

1. To be fully executed and included with proposal as a condition of the proposal.
2. The listing threshold is \$5,000.00 or one half of one percent of the total project cost whichever is greatest.

| <u>Nature of work</u> | <u>Subcontractor Name Business</u> | <u>Location of</u> |
|-----------------------|--|--------------------|
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Note:

A contractor or subcontractor that submits a proposal valued at more than sixty thousand dollars (\$60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [[13-4-10](#) to [13-4-17](#) NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the division at the time of bid opening. Bidding documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection.

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CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate

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or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

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

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

Name(s) of Applicable Public Official(s) if any: BOCC Chair, Stella Davis; Vice-Chair Susan Crockett; Commissioners, James Walterscheid, Jon Henry, Larry E. Wood; County Assessor, Gemma Ferguson; County Clerk, Robin Van Natta; Sherriff Mark Cage; County Treasurer, Laurie Pruitt; Probate Judge, John Caraway.

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DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (position)

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Veterans Preference Certification

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

Please check one box only:

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

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

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

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

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

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

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

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AFFIDAVIT OF NON-COLLUSION

I state that I am _____ (title) of _____ (name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Offer.

I state that;

- 1) The price(s) and amount of this Offer have been arrived at independently and without consultation communication or agreement with any other Proposer or potential Proposer.
- 2) That neither the price(s) nor the amount of this Offer, and neither the approximate price(s) nor approximate amount of this Offer, have been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before Solicitation opening.
- 3) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this contract, or to submit an Offer higher than this Offer, or to submit any intentionally high or noncompetitive Offer or other form of complementary Offer.
- 4) The Offer of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Offer.
- 5) _____(name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described herein.
- 6) I state that _____ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by Eddy County in awarding the contract(s) for which this Offer is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Eddy County of the true facts relating to the submission of Offers for this contract.

(Authorized Signature)

(Name of Company/Position)

Sworn to and subscribed before me this ____ day of _____, 20__.

Notary Public for New Mexico

My Commission Expires: _____

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COMPLIANCE WITH REGULATORY AGENCIES

Please fill out this form to document and submit your response to the evaluation criteria listed in the Instruction to Proposers.

Has your firm during the past five (5) years been free of any determination by a court or administrative agency of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices on public works projects? ___Yes ___No

If "no" please explain:_____

Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations or notice of violation pertaining to the Occupational Safety and Health Administration (OSHA), Department of Transportation (DOT), or Environmental Protection Agency (EPA) requirement on a job site? ___Yes ___No

If "no" please explain:_____

Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations pertaining to Construction Industry Division requirements pertaining to projects? ___Yes ___No

If "no" please explain:_____

Is your firm free of any Subcontractor Fair Practices Act violations for the past five (5) years? ___Yes ___No

If "no" please explain:_____

Has your firm been free of violation of any Federal, State or Local Agency requirement on a jobsite that has resulted in a fine because violations? ___Yes ___No

If "no" please explain:_____

The undersigned hereby state under penalty of perjury that the above statements are true and accurate.

| | |
|-----------|-------|
| _____ | _____ |
| Name | Title |
| _____ | _____ |
| Signature | Date |

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**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

Have not within a three year period preceding this proposal been convicted of all has a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal of State Antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property,

Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses in enumerated in paragraph (2) of this certification and

Have not within a three year period preceding this proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement of this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 101, a false statement may result in a fine up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name and Title of Authorized Representative

Signature of Authorized Representative

Date

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REPLACE WITH AWARDED CONTRACTORS PROOF OF INSURANCE

Insurance Coverage:

The Contractor shall obtain, and provide proof thereof, to the Owner the following insurance coverage:

- 1) General liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
- 2) Auto liability insurance in the amount of \$1,000,000.00.
- 3) Workers Compensation insurance as required by New Mexico State Statute.

Eddy County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Award will be contingent upon receipt of proof of insurance.

Contractor shall further obtain and provide proof to the Owner of any other insurance coverage required by the statutes of the State of New Mexico or regulations of any agency of the State of New Mexico governing this type of Project.

Workers Compensation is required along with State statutory employer's liability limits regardless of the number of employees.

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REPLACE WITH CONTRACTORS NM W-9 FORM

Each Offeror shall complete and provide a State of New Mexico W-9 Form.

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REPLACE WITH OFFEROR'S CONTRACTOR'S LICENSES

Each Offeror shall provide a photocopy of their Contractor's License or Licenses.

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Exhibit A: Title VI of the Civil Rights Act- Appendix A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by THE Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of the 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the New Mexico Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Eddy County or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, Eddy County will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or

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- b. Cancelling, terminating or suspending the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as Eddy County or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request Eddy County to enter into any litigation to protect the interests of Eddy County. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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Exhibit B: Title VI of the Civil Rights Act- Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (29 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);

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- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et seq.*)