

Commodity Codes: Engineering Services (NOC), 92536, Engineer Services, Professional 92533, Environmental Engineering, 92535, Mapping Services, 96252, Maps, Engineer and topographical Environmental certified products, 30659. Land Surveying, Services, 91140, Environmental Services (NOC), 92642, Storm Water Discharge Testing Services, 92688, Modeling Services, 96195, Monitoring Services, Structural, 91268, Property Boundary Line Maintenance Services, 96859.

**EDDY COUNTY  
STATE OF NEW MEXICO  
QUALIFICATIONS-BASED REQUEST  
FOR PROPOSALS**

**On-Call Engineering, Surveying, Testing  
and/or Environmental Services**

**for**

**EDDY COUNTY**



**RFP # B-17-05**

**EDDY COUNTY PURCHASING  
101 W. GREENE CARLSBAD,  
NM 88220**

## **I. INTRODUCTION**

### **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The County of Eddy, on behalf of the Public Works Department, seeks sealed qualifications-based proposals from qualified companies that can do business in the State of New Mexico to provide services as follows.

### **B. SUMMARY SCOPE OF WORK**

Eddy County is seeking appropriate multiple firms to assist Public Works in On-Call Engineering, Surveying, Testing and/or Environmental Services.

The County will consider proposals from qualified candidates to provide on-call engineering, surveying, testing and/or environmental services on various construction projects and road projects. Awardees will be thoroughly familiar with current laws, regulations, manuals, standards and guidelines, standard specifications, and standard procedures accepted by construction industries.

Awardees will be required to provide on-call engineering, surveying, testing and/or environmental services that include but are not limited to the following (an exact scope of work will be negotiated on a project by project basis):

- 1) Planning services associated with the recovery of recent disaster events, impact to the environment/community, and potential constructability issues;
- 2) Technical and field services to identify and assess property boundaries, right-of-way, easements, and geotechnical conditions associated with the recovery area;
- 3) Hydraulic modeling;
- 4) Participation in public presentations of proposed projects;
- 5) Development of design documents and specifications;
- 6) Funding, bidding and negotiation services;
- 7) Construction administration services, including construction inspection and materials testing, and;
- 8) Other professional engineering services applicable to project

### **C. SCOPE OF PROCUREMENT**

The scope of the procurement consists of identifying companies to provide professional services for Public Works projects. The term of this contract shall be for one (1) year. The County reserves the right to extend any contract, on an annual basis (or any portion thereof) and by mutual agreement, for up to three (3) additional years. Under no circumstances will the term of this contract, including any extensions thereto, exceed four (4) years. This procurement will result in a multi-source award. There is no guarantee that the option will be exercised on any or all of the awarded contracts. There is no guarantee of a task order on any or all of the awarded contracts. The County will abide by all portions of New Mexico State Statute 13-1-154, regarding contract limits and terms.

**D. PROCUREMENT MANAGER**

The County of EDDY has designated a Procurement Manager who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other County employees do not have the authority to respond on behalf of the County of EDDY.

**BOB FABIAN**, Eddy County Procurement Manager

<u>Delivery Address (Including proposal delivery):</u> 101 W. GREENE // CARLSBAD, NM 88220	<u>Mailing Address:</u> 101 W. GREENE // CARLSBAD, NM 88220
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Phone: 575-887-9511  
Fax: 575-234-1835  
E-mail: rfabian@co.eddy.nm.us

NOTE: All deliveries via express carrier (INCLUDING PROPOSAL DELIVERY) should be addressed to Bob Fabian's Delivery Address, above.

## **E. DEFINITION OF TERMINOLOGY**

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Board of County Commissioners” (also “BOCC”) means the elected board in whom all powers of the County are vested and who are responsible for the proper and efficient administration of the County government.

"Close of Business" means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

"Contract" or “Agreement” means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful offeror who enters into a binding contract.

"County" means the County of Eddy, State of New Mexico.

"Determination" means the written documentation of a decision of the procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” refers to the terms "may", "can", "should", "preferably" or "prefers," which identify a discretionary item or factor. (As opposed to a “mandatory” item or factor.)

"Evaluation Committee" means a body appointed by County management to perform the evaluation of offeror proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Manager and the Evaluation Committee for submission to appropriate approval authorities for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

"Finalist" is defined as an offeror who meets all the mandatory specifications of this Request for Proposal and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required," which identify a required item or factor. (As opposed to a “desirable” item or factor.) Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

"Offeror" is any person, or entity who chooses to submit a proposal.

"Procurement Manager" means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Page" means one (1) side of an 8 ½ X 11 inch sheet of paper. One (1) 8 ½ X 11 inch sheet of paper printed on both sides constitutes two (2) pages. (See, however, Section III.C for the one exception to the 8 ½ X 11 inch page size limitation.)

"Procuring agency of the County" means the department or other subdivision of the County of Eddy that is requesting the procurement of services or items of tangible personal property.

"Purchase Order" or "PO" means the document that directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.

"Purchasing" means the County of Eddy Purchasing Office or the Eddy County Purchasing Agent.

"Purchasing Agent" or "PA" means the Purchasing Agent for the County of Eddy.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished required information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property called for in this proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity and delivery requirements.

"Statement of Compliance" and "Statement of Concurrence" mean an express, affirmative statement by the offeror in their proposal, which they agree with or agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE] Company agrees to comply with this requirement.", "The [NAME HERE] Company concurs with this requirement." and "The [NAME HERE] Company agrees to participate as required."

## **F. TITLE VI OF THE CIVIL RIGHTS ACT**

Eddy County is committed to compliance 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.

## **G. PROCUREMENT LIBRARY**

The Procurement Library consists of the following documents that may be accessed by their associated Internet links:

- **New Mexico Procurement Code**

<http://www.generalservices.state.nm.us/statepurchasing/>

- **Eddy County Purchasing Policy**

<http://www.eddycounty.org>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the general requirements governing the procurement.

### A. SEQUENCE OF EVENTS

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

<b>ACTION</b>	<b>RESPONSIBILITY</b>	<b>DATE</b>
1. RFP Documents made available to Potential Offerors on procurement websites	Procurement Manager	May 17 <sup>th</sup> – <a href="http://www.eddycounty.org">www.eddycounty.org</a> and gov.findrfp.com
2. <b>MANDATORY</b> Pre-Proposal Conference	Potential Offerors, Evaluation Committee	May, 24, 2017, <b>8:00 a.m. – 10 a.m.</b> , 3402 South 13 <sup>th</sup> Rd., Fairgrounds, Artesia, NM
<b>3. Submission of Proposal</b>	<b>Offerors</b>	June 9 <sup>th</sup> 2017
4. Proposal Evaluation	Evaluation Committee (EC)	June 12 <sup>th</sup> – 16 <sup>th</sup> 2017
5. Notification of Finalists	EC	As needed
6. Contract Negotiations	Tentative winner/County	As needed
7 Approval of BOCC	BOCC	June 27 <sup>th</sup> 2017
8. Contract Award	Purchasing Agent/BOCC	July 11 <sup>th</sup> 2017
9. Protest Deadline	Offerors	July 26 <sup>th</sup> 2017
<b>Start of Performance</b>	<b>Winner/General Services Director</b>	<b>AS NEEDED</b>

\*Contract award is subject to approval of the Board of County Commissioners.

### B. EXPLANATION OF EVENTS

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

1. RFP Documents available at:

[www.eddycounty.org](http://www.eddycounty.org),  
gov.findrfp.com

2. **MANDATORY** Pre-Proposal Conference

A Pre-Proposal Conference will be held on the date indicated in Section II.A (Sequence of Events), above at 8:00 a.m. – 10:00 a.m. MDT at 3402 South 13<sup>th</sup> Road, Eddy County Fairgrounds, Artesia, NM. **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.

### 3. Submission of Proposal

OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN CLOSE OF BUSINESS ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. **PROPOSALS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.**

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the delivery address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the “**On-Call Engineering, Surveying, Testing and/or Environmental Services**” Request For Proposals and should reference “**RFP # B-17-05**” Proposals submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED.**

A public log will be kept of the names of all offerors submitting proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

### 4. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by County management and the Procurement Manager. This process will take place during the time period indicated in Section II.A (Sequence of Events), above. During this time, the Procurement Manager may at his option initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

### 5. Notification of Finalists

The Evaluation Committee may select and the Procurement Manager may notify finalist offerors on the date indicated in Section II.A (Sequence of Events), above. Only finalists will be invited to participate in the subsequent steps of the procurement. The Evaluation Committee reserves the right not to utilize the finalist process if they deem it in the best interest of the County.



#### 6. Contract Negotiations

If necessary, contract negotiations shall commence with the most advantageous offeror no later than the date indicated in Section II.A (Sequence of Events), above. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

#### 7. Approval of BOCC

The Eddy County Board of County Commissioners approve all contracts awarded.

#### 8. Contract Award

After review of the Evaluation Committee Report and the tentative contract, the Purchasing Agent anticipates the Board of County Commissioners will award the contract on the date indicated in Section II.A (Sequence of Events), above.

Any contract awarded shall be awarded to the offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in this RFP.

#### 9. Protest Deadline

Any protest by an offeror must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978 and Eddy County Procurement Policy #401-01-3, Section 24. The fifteen (15) day protest period for timely offerors shall begin on the day following the contract award and will end at close of business on the date indicated in Section II.A (Sequence of Events), above. Protests must be written and must include the name and address of the protestor and the Request for Proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Agent. The protest must be delivered to the Purchasing Agent at:

Eddy County  
Attn. Bob Fabian, Procurement Manager  
101 W. Greene  
Carlsbad, New Mexico 88220

**NOTE: Protests received after the deadline will not be accepted.**

## **C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978) and the Eddy County Procurement Policy, R-14-41.

### **1. Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix D). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### **2. Incurring Cost**

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material, or negotiation associated with its response to this RFP shall be borne solely by the offeror.

### **3. Prime Contractor Responsibility**

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County. The County will only make contract payments to the prime contractor.

### **4. Subcontractors**

Use of subcontractors must be clearly explained in the proposal and each must be identified by name. The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the County Purchasing Office.

### **5. Amended Proposals**

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

### **6. Offerors' Rights to Withdraw Proposal**

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

### **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after the due date for the receipt of a best and final offer, if one is solicited.

#### 8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded by the awarding authority. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material which is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the remaining portions of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

#### 9. No Obligation

This procurement in no manner obligates Eddy County or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Procurement Manager and other required approval authorities.

#### 10. Termination

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

#### 11. 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 County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

#### 12. Legal Review

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

### 13. Governing Law

The laws of the State of New Mexico shall govern this procurement and any agreement with offerors that may result.

### 14. Basis for Proposal

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

### 15. Contract Terms and Conditions

The contract between the County and the contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix B, Sample Contract. However, the County reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

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

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording in order for the proposed alternate wording to be considered.

### 16. Offeror's Terms and Conditions

Offerors must submit with their proposal a complete set of any additional terms and conditions which they request are included in a contract negotiated with the County. The County may or may not accept the additional language, at the County's sole discretion.

### 17. Contract Deviations

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

### 18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will 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.

#### 19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. 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 or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

#### 20. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately.

#### 21. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities and kick-backs.

#### 22. County Rights

The County reserves the right to accept all or a portion of an Offeror's proposal.

#### 23. Right to Publish

Through the duration of this procurement process and contract term, potential offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

#### 24. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected offerors may be returned after the expiration of the protest period, by request, at the expense of the Offeror.

#### 25. Ambiguity, Inconsistency or Errors in RFP

Offerors shall promptly notify the Procurement Manager, in writing, of any ambiguity, inconsistency or error, which they discover upon examination of the RFP.

#### 26. Confidentiality

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

#### 27. Electronic mail address required

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

28. Use of Electronic Versions of this RFP

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

29. Sub consultants

The Offeror shall list and state the qualifications for each sub consultant the Offeror proposes to use for all subcontracted work.

The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Offeror's may submit only one (1) response to this RFP.

#### **B. NUMBER OF COPIES**

Offerors shall deliver four (4) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals. The original copy should be clearly marked "ORIGINAL" on the front cover and shall contain original signatures.

#### **C. PROPOSAL FORMAT**

All proposals must be printed on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Each proposal should be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated with a tab for each item listed below.

**Offerors shall not exceed 25 pages, including title, index, etc., not including front and back covers.**

- a. Letter of Transmittal Form
- b. Table of Contents
- c. Proposal Summary (optional)
- d. Response to Qualifications-Based Specifications
- e. Campaign Contribution Disclosure Form

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

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

A proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal and will be included in the total page count.

## **IV. SPECIFICATIONS**

### **A. INFORMATION**

Eddy County is seeking appropriate firms to assist Eddy County in On-Call Engineering, Surveying, Testing and/or Environmental Services to recover from recent natural disasters. This will include; Preliminary and Final Design, Hydrology Reports, Surveying, Staking, Materials Testing & Environmental investigations in accordance with National Environmental Policy Act (NEPA) and other applicable state and federal regulations.

### **B. PREFERENCES**

#### **Resident Veteran Business Preference**

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

#### **Response to Requirements**

Each mandatory requirement in sections IV.C.1 through IV.C.9 requires an Offeror response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the Offeror's proposal.



## **C. MANDATORY REQUIREMENTS**

### **1. Letter of Transmittal Form (Pass/Fail Only)**

Offeror must complete and submit the “Letter of Transmittal Form”, found at Appendix D, with their proposal. The form must be signed and dated by an individual authorized to contractually bind the firm.

### **2. Standards Compliance (Pass/Fail Only)**

Offeror must agree to comply with current and future standards established by Eddy County and any standards of FEMA and NEPA. **A statement of concurrence is required.**

### **3. Specialized Design and Technical Competence/Scope of Work (30 Points)**

Offer must respond to the Scope of Work in paragraph form explaining their ability and plan to provide those services for Eddy County.

### **4. Experience in the Field/Familiarity with Eddy County (35 Points)**

Offeror must explain their experience in the field and their familiarity with Eddy County in paragraph form.

### **5. Current Volume of Work with the Contracting Agency Not 75% Complete (5 Points)**

Offeror should indicate the volume of work they currently have underway with the Contracting Agency that is less than 75 percent complete. The purpose of these criteria is to help distribute projects among qualified firms. An example of how points can be assigned is provided below:

None	5
\$1 to \$ 25,000	4
25,001 to 50,000	3
50,001 to 75,000	2
75,001 to 100,000	1
100,001 or more	0

### **6. Past Record of Performance (15 Points)**

Offeror must detail their performance history (including dates) over the past five (5) years. At a minimum, this must include (A) control of costs, (B) quality of work, (C) ability to meet schedule.

### **7. Insurance (Pass/Fail Only)**

Offeror must agree to provide standard professional liability insurance.

### **8. Capacity and capability (15 Points)**

Capacity and capability of the business, including any consultants, representative’s qualifications and locations, to perform the work, including any specialized services, within the time limitations.

### **9. Campaign Contribution Disclosure Form (Pass/Fail Only)**

Offeror must complete and sign the Appendix E, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not. Note that there are two (2) different signature sections within the form. (For purposes of this requirement, the applicable elected public officials within the County of Eddy.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with the point value assigned to each or a Pass/Fail evaluation. These, along with the general requirements, will be used in the evaluation of individual offeror proposals.

REF.	REQUIREMENT	POINTS AVAIL.
IV.C.1	Letter of Transmittal Form	0*
IV.C.2	Standards Compliance	0*
IV.C.3	Specialized Design and Technical Competence /SoW	30
IV.C.4	Experience in the Field/Familiarity with Eddy County	35
IV.C.5	Current Volume of Work not 75% complete	5
IV.C.6	Performance History	15
IV.C.7	Insurance	0*
IV.C.8	Capacity and Capability	15
IV.C.10	Campaign Contribution Disclosure Form	0*
<b>TOTAL</b>		<b>100</b>

### B. Evaluation Factors

Points will be awarded based on the evaluation factors above. **\*\* Pursuant of the Procurement Code Section 13-1-120 Competitive sealed qualifications-based proposal; Price will be negotiated after selection of top qualified proposals.**

**EVALUATION PROCESS – Please consult Eddy County’s Purchasing Policy for more on the Evaluation Process Summary and for additional descriptions or additions to the following:**

#### RECEIPT, OPENING AND RECORDING

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information.

After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§13-1-116 NMSA 1978).

#### 1. Initial Review

All offeror proposals will be reviewed for compliance with the mandatory requirements stated

within the RFP. Proposals deemed non-responsive to any mandatory requirement will be eliminated from further consideration. Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required and shall be based on the evaluation factors set forth in this qualifications-based RFP. For the purpose of conducting discussions, proposals may initially be classified as Acceptable, Potentially Acceptable, that is reasonably assured of being made acceptable, or Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

## 2. Clarifications

The Procurement Manager may contact the offeror for clarification of the response.

## 3. Other Information Sources

The Evaluation Committee may use other sources of information to perform the evaluation.

## 5. Scoring and Contract Award Recommendation

Responsive proposals will be evaluated and assigned a point value based on the factors in Section V. Finalist offerors who are asked and choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the Purchasing Agent, and any other required approving authorities, as specified above. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

Request for Proposals

**ON-CALL ENGINEERING, SURVEYING, TESTING  
and/or ENVIRONMENTAL SERVICES  
for  
EDDY COUNTY**

In acknowledgment of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with the References.

**The acknowledgment of receipt should be signed and returned (by fax, e-mail and courier or hand delivery) to the Procurement Manager no later than May 23<sup>rd</sup> 5:00pm.**

**SMALL & SMALL DISADVANTAGED BUSINESS CERTIFICATION FORM.** Please note that the information on the certification form is for reporting purposes only and will not be used in evaluating or awarding a Purchase Order/Agreement.

The firm listed below does/does not (circle one) intend to respond to this Request for Proposals.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposals.

Please return to:

**Bob Fabian**  
Eddy County Procurement Manager  
101 W. Greene  
Carlsbad, NM, 88220  
Phone: 575-887-9511  
Fax: 575-234-1835  
E-mail: rfabian@co.eddy.nm.us

## APPENDIX B

### SAMPLE CONTRACT EDDY COUNTY CONTRACT #NUMBER

THIS AGREEMENT is made and entered into by and between the County of Eddy,

\_\_\_\_\_, hereinafter referred to as the "County" and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the work outlined in the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference.

**2. Compensation.**

A. The County shall pay to the Contractor in full payment for services satisfactorily performed [at the rate of] \_\_\_\_\_ dollars (\$) [per hour (OR BASED

UPON DELIVERABLES, MILESTONES, BUDGET, ETC.)], such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

### **3. Term.**

This Agreement shall terminate on DATE unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

### **4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

### **5. Termination Management.**

Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable

**6. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**7. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of the County of Eddy. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Eddy as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the County of Eddy unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

**9. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**10. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Eddy from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**11. Confidentiality.**

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

**12. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Eddy and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**13. Conflict of Interest: Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10 and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.



C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in Article 12(B).

**14. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the County proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**15. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**16. Penalties for violation of law.**

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

**17. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement and shall be enforceable in the Fifth Judicial District Court in Eddy County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**19. Worker's Compensation.**

The Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

**20. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration, and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments

**21. Disclaimer and Hold Harmless.**

Eddy County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold Eddy County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Eddy County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**22. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Eddy 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 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 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 thereof, notify the legal counsel of the County of Eddy and the New Mexico Association of Counties by certified mail.

**23. Invalid Term or Condition.**

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

**24. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**25. Authority.**

Individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**26. Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall 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 shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

**27. Limit of Liability.**

The contractor's liability to the County for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of County's claim. The foregoing limitation does not apply to the paragraphs entitled "Indemnification" and "Patent, Copyright, Trademark and Trade Secret Indemnification" of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

In no event will the contractor be liable for any damages resulting from loss of data or use, lost profits or any incidental or consequential damages.

**28. Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification"; "Indemnification"; and "Limit of Liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**29. Succession.**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

**30. Force Majeure.**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**31. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**32. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting or unless it is executed by the Eddy County Manager, if the amount of the contract is \$5,000.00 or less. The Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

**33. Attorney 'sFees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**34. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**35. Incorporation and Order of Precedence.**

Request for Proposals No. RFP NUMBER and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the Contractor's proposal; then
6. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

**36. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the County of Eddy against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Eddy based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the County of Eddy for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Eddy shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

**37. Contractor's Payment of Property Taxes.**

Contractor acknowledges that County has established a policy of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations to mitigate the economic burden otherwise imposed upon County and its taxpayers. Contractor warrants and certifies that it is presently not delinquent in the payment of its property tax obligations, and that it will not become delinquent during the term of this Contract.

**38. Termination For Failure to Comply with County's Tax Reduction Policy.**

Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure a property tax delinquency within 10 days of notice shall be grounds upon which County may terminate this Contract.

**40. Future Reference (Post Review).**

Upon completion of all work and the contract is over, there will be a review of all work done by the Contractor and/or any sub-contractors to be kept on file by Eddy County for future use to help ensure the County picks the best potential Offerors and Awardees.

**41. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: County Manager // 101 W. Greene // Carlsbad, NM 88220

To the Contractor: [insert name and address].

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date AND signature below.**

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

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

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

Address: \_\_\_\_\_

By: \_\_\_\_\_  
Stella Davis, BOCC Chairman

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

**Appendix C**  
**Scope of Work**  
**And**  
**Deliverables**

The CONTRACTOR shall deliver:

The County will consider proposals from qualified candidates to provide on-call engineering, surveying, testing and/or environmental services on various construction projects and road projects. Awardees will be thoroughly familiar with current laws, regulations, manuals, standards and guidelines, standard specifications, and standard procedures accepted by construction industries.

Awardees will be required to provide on-call engineering, surveying, testing and/or environmental services that include but are not limited to the following (an exact scope of work will be negotiated on a project by project basis):

- Planning services associated with the recovery of recent disaster events, impact to the environment/community, and potential constructability issues;
- Technical and field services to identify and assess property boundaries, right-of-ways, easements, and geotechnical conditions associated with the recovery area;
- Hydraulic modeling;
- Participation in public presentations of proposed projects;
- Development of design documents and specifications;
- Funding, bidding and negotiation services,
- Construction administration services, including construction inspection and materials testing, and;
- Other professional engineering services applicable to project.

## APPENDIX D

### LETTER OF TRANSMITTAL FORM

Items #1 to 4 **MUST EACH BE RESPONDED TO**. Failure to respond to all four items **WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!**

1. Identity (Name) and Mailing Address of the submitting organization:

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2. For the person authorized by the organization to contractually obligate the organization:

Name	
Title	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-Mail Address	
Telephone Number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-Mail Address	
Telephone Number	

- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.

- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

- I acknowledge receipt of any and all amendments to this RFP.

\_\_\_\_\_, 2014  
Authorized Signature and Date (**Must be signed** by the person identified in **item #2**, above.)



## APPENDIX E

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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

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

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

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 statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

**“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.

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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)

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Purpose of Contribution(s)

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(Attach extra pages if necessary)

Signature

Date

Title (position)

**--OR--**

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

Signature

Date

Title (Position)

APPENDIX F

OFFEROR

PAST PERFORMANCE REFERENCE QUESTIONNAIRE

RFP #: B-17-05

PLEASE RETURN THIS COMPLETED QUESTIONNAIRE TO THE PROCUREMENT  
MANAGER AT

Email: rfabian@co.eddy.nm.us

By:

Offeror's Name: \_\_\_\_\_

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

**Please include the name, title and telephone number of the person who is completing this questionnaire**

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

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

1. Please briefly describe the type of services performed for your organization by the offeror. (Name of project, types of services performed -- analysis, training, technical support, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Were any unique techniques or tools employed for the delivery of the services? Were the tools/techniques employed effectively?

Comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. How would you rate the Offeror's ability to learn/understand your organization's or the project needs/requirements?

- Excellent (Score 10 points)
- Very Good (Score 8 points)
- Good (Score 5 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
 \_\_\_\_\_

4. How would you rate the offeror’s knowledge and experience in providing the requested technical services?

- Excellent (Score 10 points)
- Very Good (Score 8 points)
- Good (Score 5 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
 \_\_\_\_\_

5. How would you rate the offeror’s ability to identify and recommend resolutions to problems or issues?

- Identified and recommended quickly (Score 10 points)
- Identified and recommended slowly (Score 8 points)
- Identified but not recommended (score 5 points)
- Were ignored (Score -0 points)

Comment: \_\_\_\_\_  
 \_\_\_\_\_

6. Quality of Services:

How would you rate the overall quality of the offeror's technical services?

- Excellent (Score 10 points)
- Very Good (Score 8 points)
- Good (Score 5 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
 \_\_\_\_\_

7. Do you recall the name(s) of the offeror’s employees who performed services under your contract? If so, please provide names below.

\_\_\_\_\_

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8. Overall Performance:

On a scale of 0 to 10, how would you rate the offeror's OVERALL PERFORMANCE?  
(Score based upon # of points – 10 points max)

Do you have any additional comments?

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9. Would you enter into a contract with this offeror again? If not, why not?

Comment: \_\_\_\_\_

---

10. Are you aware of any other company or organization this individual has done work for?

If so, do you have a contact name and phone number?

- Name:

- Phone Number:

11. Do you have any additional comments that might assist us in evaluating the offeror's past performance?

Comment: \_\_\_\_\_

---

**INDIVIDUAL  
PAST PERFORMANCE REFERENCE QUESTIONNAIRE**

**RFP #: B-17-05**

**PLEASE RETURN THIS COMPLETED QUESTIONNAIRE TO THE PROCUREMENT  
MANAGER AT  
Email: rfabian@co.eddy.nm.us**

**By:**

Offeror's Name: \_\_\_\_\_

Proposed Individual's Name: \_\_\_\_\_

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

**Please include the name, title and telephone number of the person who is completing this questionnaire**

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

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

1. Please briefly describe the type of work that was performed for your organization by this individual.

\_\_\_\_\_  
\_\_\_\_\_

2. At the onset, how well did this individual understand the scope of work that you want performed?

\_\_\_\_\_  
\_\_\_\_\_

Excellent (Score 10 points)  
Very Good (Score 5 points)  
Good (Score 3 points)  
Poor (Score 0 points)

3. What did you like best about the individual?

\_\_\_\_\_  
\_\_\_\_\_

4. What did you like least about the individual?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. How would you rate this individual's communication and interpersonal skills?

- Excellent (Score 10 points)
- Very Good (Score 5 points)
- Good (Score 3 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
\_\_\_\_\_

6. How would you rate this individual's technical skills related to your project?

- Excellent (Score 10 points)
- Very Good (Score 5 points)
- Good (Score 3 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
\_\_\_\_\_

7. How would you rate this individual's ability to identify and recommend resolutions to issues/problems?

- Excellent (Score 10 points)
- Very Good (Score 5 points)
- Good (Score 3 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
\_\_\_\_\_

8. How accurate were this individual's estimates for work products/deliverables?

- Excellent (Score 10 points)
- Very Good (Score 5 points)
- Good (Score 3 points)
- Poor (Score 0 points)

Comment: \_\_\_\_\_  
\_\_\_\_\_

9. On a scale of 0 to 10, how would you rate the individual's OVERALL PERFORMANCE? (Score based upon 1.5 times the # of points – 15 points max)

Comment: \_\_\_\_\_  
\_\_\_\_\_



10. How would you rate the contract deliverables prepared by this individual?

Thorough and on time (Score 10 points)

Thorough, but usually late (Score 5 points)

On time, but incomplete (Score 1 points)

Consistently late and incomplete(Score -0 points)

Comment: \_\_\_\_\_

\_\_\_\_\_

11. Would you enter into a contract with this offeror and individual again? If not, why not?

Comment: \_\_\_\_\_

\_\_\_\_\_

12. Are you aware of any other company or organization this individual has done work for?  
If so, do you have a contact name and phone number?

- Name:

- Phone Number:

13. Do you have any additional comments that might assist us in evaluating the proposed individual's past performance?

Comment: \_\_\_\_\_

\_\_\_\_\_

## Appendix G

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
  - 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.

## Appendix H

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);
- 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.*)