



313 Cree Meadows Dr.
Ruidoso, NM 88345

REQUEST FOR QUALIFICATIONS BASED PROPOSAL

VILLAGE OF RUIDOSO

On-Call Professional and General Engineering Services

Funding Sources: Local, State, and Federal

RFP: #2024-003P
NIGP: #92533

Date Issued: November 10, 2023
Virtual Pre-Proposal Conference: November 28, 2023 @ 10:00 am Local Time
Due Date: December 14, 2023 @ 10:00 am Local Time

NOTICE OF REQUEST FOR PROPOSALS (RFP)

The Village of Ruidoso, New Mexico is requesting proposals to provide Professional and General Engineering Services to include Grant Funding Consulting, Grant Searching and Application Process, Planning, Design Services, Surveying Services, Landscaping Services, Consulting, and Engineering for the Village of Ruidoso, with a focus on design and construction of recreation trails and pathway design and roadway design and drainage under an On-Call Service Agreement. Applicants must be licensed professional engineer in the State of New Mexico.

Applicants must have experience with the New Mexico Department of Transportation (NMDOT) Federal Highway Administration (FHWA) Recreation Trail and Pathway Design and Roadway Design and Drainage. Applicants must also be certified on the Tribal/Local Public Agency (T/LPA) process prior to entering into agreements with the Village and obtaining Federal funds. Federal-Aid Highway funds are only available to T/LPAs that obtain the required certification. (See Attachment A)

Qualifications-based competitive sealed proposals for On-Call Professional and General Engineering Services on an as needed basis for projects within the Village of Ruidoso, New Mexico will be received by the Village of Ruidoso, for RFP No. 2024-003P.

The Contracting Agency is requesting proposals for professional and general:

- architectural services
- surveying services
- planning services
- engineering services
- landscape architectural services

Proposals will be received at the Village of Ruidoso at 313 Cree Meadows Dr., Ruidoso, NM 88345 until **December 14, 2023 until 10:00 am Local Time**.

Copies of the Request for Proposals (RFP) can be obtained on the Village's website at <https://www.ruidoso-nm.gov/purchasing>, via an email request to Carol Kirkpatrick, Purchasing Agent at purchasing@ruidoso-nm.gov, or in person at the office of the Purchasing Agent at 313 Cree Meadows Dr., Ruidoso, NM 88345.

A non-mandatory virtual preproposal meeting will be held on November 28, 2023 @10:00 am via a Zoom Meeting.

<https://us06web.zoom.us/j/85983344422?pwd=IV2EafEyeG8jt83uhop4FqXVGSp7fG.1>

Meeting ID: 859 8334 4422
Passcode: 210983

PURCHASING AGENT:

Carol Kirkpatrick

Date

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Village of Ruidoso, New Mexico is requesting proposals to provide Professional and General Engineering Services to include Grant Funding Consulting, Grant Searching and Application Process, Planning, Design Services, Surveying Services, Landscaping Services, Consulting, and Engineering for the Village of Ruidoso, with a focus on design and construction of recreation trails and pathway design and roadway design and drainage under an On-Call Service Agreement. Applicants must be licensed professional engineer in the State of New Mexico.

Applicants must have experience with the New Mexico Department of Transportation (NMDOT) Federal Highway Administration (FHWA) Recreation Trail and Pathway Design and Roadway Design and Drainage. Applicants must also be certified on the Tribal/Local Public Agency (T/LPA) process prior to entering into agreements with the Village and obtaining Federal funds. Federal-Aid Highway funds are only available to T/LPAs that obtain the required certification. (See Attachment A)

B. BACKGROUND INFORMATION

The Village of Ruidoso is in need of qualified, and professional engineering firm(s) to provide on-call professional and general engineering services as needed with a focus on recreation trail and pathway design, roadway design and drainage.

C. SCOPE OF PROCUREMENT

The Village is conducting a multi-award proposal for **On-Call Professional and General Engineering Services**. It is anticipated that the award(s) under this RFP will result in a Professional Services Contract(s) for an initial term of one-year with the option to renew for up to three (3) additional one-year terms/length of project. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial contract.

All tasks will be accomplished after issuance and approval of a specific task order and purchase order.

The award shall be made to the responsible offeror(s) whose proposal is most advantageous to the Village of Ruidoso (Village), taking into consideration the evaluation factors set forth in this RFP.

D. PROCUREMENT MANAGER

The Village has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Procurement Manager
Address: 313 Cree Meadows Drive, Ruidoso, NM 88345
Telephone: (575) 258-4343 Ext. 1081
Email: Purchasing@ruidoso-nm.gov

Any inquiries or requests regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other village employees or Evaluation Committee members do not have the authority to respond on behalf of the Village. **Protests of the solicitation or award must be delivered by mail to the Procurement Manager.** The Procurement Manager shall act as a Protest Manager as pursuant to NMSA 1978, § 13-1-172. **ONLY** protests delivered directly to the Procurement Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Request for Proposals. Emailed protests will not be considered as properly submitted.

E. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“Village” means the Village of Ruidoso sponsoring the Procurement action.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

“Contractor” means any business having a contract with a state Village or local public body.

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

“Desirable” the terms "may", "can", "should", "preferably", or "prefers" to identify a desirable or discretionary item or factor.

“Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a USB flash drive. The electronic version/copy can NOT be emailed.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for Consultant personnel, as well as Sub-Consultant personnel if appropriate.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the Consultant to furnish items of tangible personal property, services or construction to a state Village or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Procurement Manager” means any person or designee authorized by a state Village or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Village” means all Village of Ruidoso agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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

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

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The Village reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offeror’s proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“VOR” means the Village of Ruidoso

“Written” means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information such as the electronic version of RFP, Questions & Answers, RFP Amendments:

<https://www.ruidoso-nm.gov/purchasing>

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description, and conditions governing the procurement.

RFP #2024-003P On-Call Professional and General Engineering Services

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates - Time Frames
1. Issue RFP	VOR	November 10 & 17, 2023
2. Acknowledgement of Receipt Form (Appendix C)	Potential Offerors	November 28, 2023 by 5:00 pm local time
3. Virtual Pre-Proposal Conference	VOR	November 28, 2023 @10:00 am local time via Zoom Meeting ID: 859 8334 4422 Passcode: 210983
4. Deadline to Submit Questions	Potential Offerors	December 5, 2023
5. Response to Written Questions	Procurement Manager	December 7, 2023
6. Submission of Proposal	Potential Offerors	December 14, 2023 @ 10:00 am Local Time
7. Proposal Evaluation	Evaluation Committee	December 14, 2023 – December 19, 2023
8. Selection of Finalists	Evaluation Committee	December 19, 2023
9. Finalize Contractual Agreements	VOR/Finalist Offerors	December 21, 2023
10. Contract Awards	VOR/Finalist Offerors	January 9, 2024
11. Protest Deadline	VOR	15 Days from award

*Dates indicated in Events 7 through 11 are estimates only, and may be subject to change without necessitating an amendment to the RFP

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the Village of Ruidoso on the date proposed in Section II. A.

2. Acknowledgement of Receipt

Potential Offerors should deliver the "Acknowledgement of Receipt Form" that accompanies this document, APPENDIX C, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative

of the organization, dated, and returned to the Procurement Manager by the date and time proposed in Section II. A.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and the potential Offeror's organization name shall not appear on the distribution list. If a potential Offeror fails to submit the Acknowledgement of Receipt Form, they are still eligible to submit a proposal.

3. Virtual Pre-Proposal Conference

A voluntary, virtual pre-proposal conference will be held as listed in Schedule II. A. Sequence of Events via Zoom.

<https://us06web.zoom.us/j/85983344422?pwd=IV2EafEyeG8jt83uhop4FqXVGSp7fG.1>

Meeting ID: 859 8334 4422

Passcode: 210983

Offerors are not required to attend; however, it is highly encouraged.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP on the date and time proposed in Section II. A. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

5. Response to Written Questions

Responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide the Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Responses will also be posted to: <https://www.ruidoso-nm.gov/purchasing>

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN THE DATE AND TIME PROPOSED IN SECTION II. A. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Ruidoso is a rural community, be aware that overnight deliveries often do not arrive by the submission deadline. Please plan accordingly.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D at **313 Cree Meadows Drive, Ruidoso, NM 88345**. Proposals must be sealed and **labeled on the outside of the package with the number and title of this RFP in addition to the due date and time** to clearly indicate that they

are in response to this advertisement. Proposals submitted by facsimile, or other electronic means will not be accepted. (See Exhibit A Proposal Submittal Example)

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required Village signature on the contract(s) resulting from the procurement has been obtained.

7. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II. A., depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A. or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time, if applicable.

9. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A. or as soon thereafter as possible. This date is subject to change at the discretion of the Village. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Village reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

10. Contract Awards

After reviewing the Evaluation Committee Report and the signed contractual agreement, the Village Procurement office will award as per the schedule in Section II. A. or as soon as possible thereafter. This date is subject to change at the discretion of the Village.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the Village and taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Village approval.

11. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the award

of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day.

Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Purchasing Agent
Village of Ruidoso Purchasing Department
313 Cree Meadows Drive
Ruidoso, NM 88345

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal (APPENDIX D). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V. Evaluation of this RFP.

2. Incurring Cost

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

3. Prime Consultant Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime Consultant is solely responsible for fulfillment of all requirements of the contractual agreement with the Village which may derive from this RFP. The Village entering into a contractual agreement with a vendor will make payments to only the prime Consultant.

4. Sub-Consultants/Consent

The use of Sub-Consultants is allowed. The prime Consultant shall be wholly responsible for the entire performance of the contractual agreement whether or not Sub-Consultants are used. Additionally, the prime Consultant must receive approval in writing from the Village before any Sub-Consultant is used during the term of this agreement.

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. The Village personnel will not merge, collate, or assemble proposal materials.

6. Offeror's 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 addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

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

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Village. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- a. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - b. Confidential data is restricted to:
 1. confidential financial information concerning the Offeror's organization,
 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 3. PLEASE NOTE: The price of products offered, or the cost of services proposed **shall not be designated** as proprietary or confidential information.
- B. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Village shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This RFP in no manner obligates the Village to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate 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 Village determines such action to be in the best interest of the Village.

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 terminations will be affected by sending written notice to the Consultant. The Village's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Consultant as final.

12. Legal Review

The Village requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager before the proposal due date as indicated in Section II.A. Sequence of Events.

13. Governing Law

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

14. Basis for Proposal

Only information supplied, in writing, by the Village 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 Village and Consultant will follow the format specified by the Village and contain the terms and conditions set forth in the Draft Professional Services Agreement or Contract (APPENDIX A). However, the Village reserves the right to negotiate provisions in addition to those contained in this RFP and Draft Agreement with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Village discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Professional Services Agreement or Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Village (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Professional Services Agreement or Contract (APPENDIX A) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific alternative language**. The Village may or may not accept the alternative language. Any response to the contract terms and conditions shall be submitted on Tab E. See Section III.C.

General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Professional Services Agreement or Contract are not acceptable to the Village and will result in 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.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection of a successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection of a successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Additional Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Village. Please see Section II.C.15 for requirements. Offeror's additional terms and conditions must be submitted with proposal on Tab E. See Section III.C.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Village and the Offeror selected 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 potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

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 and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Consultant Representatives

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

21. Notice of Penalties

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

22. Village Rights

The Village, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

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

24. Ownership of Proposals

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

25. Confidentiality

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

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

26. 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. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Village, the Offeror acknowledges that the version maintained by the Village shall govern. Please refer to: <https://www.ruidoso-nm.gov/purchasing>.

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Consultant and Village exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state or Village.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com>.

- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form (Appendix E)

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX E, as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Mayor and Village Councilors or other identified official. Failure to complete and return the signed unaltered form may result in the disqualification of Offeror's proposal.

30. Letter of Transmittal (Appendix D)

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX D which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization.
4. Identify the name, title, telephone, and e-mail address of persons to be contacted for clarification/questions regarding proposal content.
5. Identify Sub-Consultants (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity (other than Sub-Consultants listed in number 5 above) which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in number 2 above.

31. Debarment Certification (Appendix F)

A. Any prospective Consultant and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the Village for professional services, tangible personal property, services or construction agrees to disclose whether the Consultant, or any principal of the Consultant's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, the State of New Mexico, or local public body;
2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract;

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

of the facts during the term of this Agreement. If during the performance of the contract, the Consultant is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Consultant must provide immediate written notice to the Village Procurement Manager or other party to this Agreement. If it is later determined that the Consultant knowingly rendered an erroneous disclosure, in addition to other remedies available to the Governing Body, the Village Manager may terminate the involved contract for cause. Still further the Village Procurement Manager or the Village Finance Director may suspend or debar the Consultant from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Village Procurement Manager or Village Finance Director.

- G. The Village of Ruidoso shall determine whether a person or company is excluded (from participation in federal funds) through the Check System for Award Management (SAM) at <https://sam.gov/SAM/>.
- H. The Village of Ruidoso may also determine whether a person or company is excluded (from participation in state funds) at the General Services Department list at http://www.rld.state.nm.us/Look_Up_aLicense.aspx.

32. New Mexico Preferences

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

Note: This RFP is for Professional and General Engineering Services that may include state or federal funding. Therefore, no preference points will be given.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES AND SUBMITTAL

(See Exhibit A. Proposal Submittal Example)

1. Technical Proposal Submission

- a. Offerors shall deliver one (1) hard copy of the original proposal and five (5) identical hard copies of their proposals in binders. The binders shall be labeled “Original” and “Copy.”
- b. Offerors shall also deliver one (1) electronic version (cannot be emailed) of the proposal on a USB jump drive containing their proposal.
- c. The information on the original, hard copies, and electronic copy **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

2. Proposal Submission (Binders and Electronic Version)

- a. Proposals must be delivered by the date and time as indicated in Section II. A. Sequence of Events. Late proposals will not be accepted.
- b. The outside of the package(s) should be clearly labeled referencing the **RFP #, title, due date, and time**.
- c. Proposals shall be delivered to Procurement Manager, 313 Cree Meadows Dr, Ruidoso, NM 88345.

Any proposal that does not adhere to the requirements of this Section and Section III.C.1 Proposal Content and Organization may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed **within binders with tabs delineating each section**. This format makes it much easier to find information and to evaluate each proposal.

Organization of binders for hard copy proposals and electronic copy proposals:

1. Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal shall be **organized, indexed with tabs, and in a binder** in the following format and **must contain**, at a minimum, all listed items in the sequence indicated below. (See Exhibit A: Proposal Submittal Example)

Technical Proposal Binder:

TAB A: Table of Contents

TAB B: Response to Business Specifications (Section IV. B)

1. Signed Letter of Transmittal Form (Appendix D)
2. Signed Campaign Contribution Form (Appendix E)
3. Signed Debarment Certification (Appendix F)
4. Signed Non-Collusion Affidavit (Appendix G)

TAB C: Response to Technical Specifications (Section IV. C)

(Please reference Section IV.C.1-6)

1. Corporate Experience and Capabilities
2. Specialized Design and Technical Competence
3. Capacity and Capability of the Offeror to Perform the Work
4. Past Record of Performance
5. Proximity to or Familiarity with the Area in which the Project is Located
6. Current Volume of Work With the Contracting Agency Not 75% Complete (Appendix H)

TAB D: Proposal Summary (Optional)

TAB E: Offeror's Response to Contract Terms and Conditions (If applicable) (Section II.C.15)

TAB F: Offeror's Additional Terms and Conditions (If applicable) (Section II.C.16)
TAB G: Other Supporting Material (If applicable)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed, signed, 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.

The proposal summary (Tab D) may be included by potential Offerors to provide the Evaluation Committee with an overview 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.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. SCOPE OF WORK

The Village of Ruidoso, New Mexico is requesting proposals to provide Professional and General Engineering Services to include Grant Funding Consulting, Grant Searching and Application Process, Planning, Design Services, Surveying Services, Landscaping Services, Consulting, and Engineering for the Village of Ruidoso, with a focus on recreation trail and pathway design, construction oversight for roadway design, drainage, and construction under an On-Call Service Agreement. Applicants must be licensed professional engineer in the State of New Mexico.

Applicants must have experience in the New Mexico Department of Transportation (NMDOT) Federal Highway Administration (FHWA) Recreation Trail and Pathway Design and Construction Oversight and Construction and Roadway Design. Applicants must also be certified on the Tribal/Local Public Agency (T/LPA) process prior to entering into agreements with the village and obtaining Federal funds. Federal-Aid Highway funds are only available to T/LPAs that obtain the required certification.

A detailed scope of work has been attached as APPENDIX B.

B. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form (APPENDIX D). The form **must** be completed and must be signed by the person authorized to obligate the company.

2. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a **signed** copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (APPENDIX E).

3. Debarment Certification

The Offeror's proposal **must** be accompanied by the completed and **signed** Debarment Certification form (APPENDIX F).

4. Non-Collusion Affidavit

The Offeror's proposal **must** be accompanied by the completed and notarized Non-Collusion Affidavit (APPENDIX G).

5. Certification for Tribal/Local Public Agency (T/LPA) Process

The New Mexico Department of Transportation (NMDOT) and Federal Highway Administration (FHWA) requires that any consultant or engineer that assists a T/LPA with projects utilizing federal funds be certified by January 1, 2024 on the T/LPA process prior to entering into agreements with Local Public Agency (LPA) and obtaining Federal funds. The Offeror must provide proof of certification along with their proposal or must become certified prior to performing any services for the Village. The Award Winner of this RFP may sign a contract with the Village of Ruidoso; however, no task order or notification to proceed will be issued to the Offeror until proof of certification is provided.

C. TECHNICAL SPECIFICATIONS

The Evaluation Criteria listed below contains items as required by statute (§ 13-1-120.B NMSA 1978) and will be used to access the demonstrated competence and qualification for the professional services being solicited.

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

1. Corporate Experience and Capabilities (50 points)

Offerors should submit a detailed narrative describing their relevant corporate experience and capabilities in working with Grant Funding Consulting, Grant Searching and Application Process, Planning, Design Services, Surveying Services, Landscaping Services, Consulting, and Engineering for municipalities or other governmental entities. The documentation should thoroughly describe how the offeror has supplied expertise for similar contracts and projects. Offerors may include any supporting documentation they wish that they feel will support their descriptive narrative. Offerors should provide specific details of relevant corporate experience and capabilities in working with NMDOT- FHWA recreation trail and pathway design and roadway design and drainage.

Points will be awarded based on the depth, breadth, and applicability of the offeror's previous experience as it relates to the needs of this effort.

2. Specialized Design and Technical Competence (50 points)

The Offeror should describe or provide a detailed description of what specialized design and technical competence their business provides, including a joint venture or association, regarding the type of services required in this RFP. Offeror should include

specialized problem-solving techniques or approaches, innovative practices/ideas, and advantages its team bring or offers to the project(s).

Points will be awarded based on the strength and convincingness of the response.

3. Capacity and Capability of the Offer to Perform the Work (80 points)

- a. The Offeror must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations, and project administration requirements, including information that demonstrates the Offeror's ability to perform the services required for this RFP.
- b. Proposals must include an organizational chart indicating key project team members, including any sub-consultants, and their specific roles on the project and/or area(s) of expertise, and clearly identifying the lead engineer who will be directly responsible for the project. The percentage of time each team member will spend or commit to while providing the services as listed in the scope of work must be included in the organizational chart.
- c. Brief resumes for the lead engineer and key project team members must be included in the proposal, describing why each team member was selected for this project, highlighting relevant project experience and knowledge of the special needs of a municipality.
- d. The proposal must also identify the Offeror's team's list of current projects.

Points will be awarded based on the strength and convincingness of the response.

4. Past Record of Performance (40 points)

The Offeror should provide a list of past records of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules. The Offeror should include examples of three (3) projects of a similar nature to those listed in the Scope of Work and include the contact names and telephone information of project owner(s).

The examples should describe the project(s), the process used to complete the project, and include any difficulty of performing similar duties required in this proposal with respect to such factors as control of costs, quality of work, and ability to meet schedules.

Points will be awarded based on the strength and convincingness of the response.

5. Proximity to or Familiarity with the Area in which the Project is Located (30 points)

The Offeror must identify its familiarity with the Village of Ruidoso and its understanding of the future needs of recreation trail and pathway design and roadway design and construction. The Offeror should also indicate previous knowledge or experience regarding prior projects of a similar nature, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise on project needs.

Points will be awarded based on the depth, breadth, and applicability of the offeror's previous experience as it relates to the needs of this effort.

6. Current Volume of Work With the Contracting Agency Not 75% Complete (Minus 0 to 4 points)

This section evaluates the volume of work previously done for the Village of Ruidoso which is not seventy-five percent complete with respect to basic professional design services or on-call services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

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

Value of work not yet completed on projects that are not 75% Complete (Contract Balance Amount*)	Points to be deducted for this item
\$0 to \$800,000	Minus 0 points
\$800,001 to \$1,334,000	Minus 1 point
\$1,334,001 to \$2,668,000	Minus 2 points
\$2,668,001 to \$4,000,000	Minus 3 points
\$4,000.001 or more	Minus 4 points maximum**

*Contract Balance Amount is defined as:

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

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

The Procurement Division will calculate points.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors – correspond to section IV. B. and IV.C.	Points Available
B. Business Specifications	
1. Signed Letter of Transmittal (Appendix D)	Pass / Fail
2. Signed Campaign Contribution Disclosure Form (Appendix E)	Pass / Fail
3. Signed Debarment Certification (Appendix F)	Pass / Fail
4. Signed Non-Collusion Affidavit (Appendix G)	Pass / Fail
5. Proof of Certification on the T/LPA process	Current or Future
C. Technical Specifications	
1. Corporate Experience and Capabilities	50
2. Specialized Design and Technical Competence	50
3. Capacity and Capability of the Offer to Perform the Work	80
4. Past Record of Performance	40
5. Proximity to or Familiarity with the Area in which the Project is Located	30
6. Current Volume of Work With the Contracting Agency Not 75% Complete	0 up to minus 4 points
TOTAL POSSIBLE POINTS	250 points

Table 1: Evaluation Point Summary

B. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offeror(s) whose proposal(s) are most advantageous to the Village taking into consideration the evaluation factors in Section IV will be recommended for award.

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 – DRAFT PROFESSIONAL SERVICES
AGREEMENT**

RFP #2024-003P

On-Call Professional and General Engineering Services

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**DRAFT PROFESSIONAL SERVICES AGREEMENT
FOR ON-CALL PROFESSIONAL AND GENERAL ENGINEERING SERVICES**

THIS Agreement ("Agreement") is made by and between the Village of Ruidoso, hereinafter referred to as the "Procuring Agency", and XXXXXXXXXX, hereinafter referred to as the "Consultant" and collectively the "Parties".

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:

Village of Ruidoso
Department: Finance
ATTN: Procurement Manager
Street: 313 Cree Meadows Drive
City, State, Zip: Ruidoso, NM 88345
Phone: 575-258-4343 Ext. 1081
Email: purchasing@ruidoso-nm.gov

Consultant
ATTN:
Title: President
Street: 123 Main Street
City, State, Zip: Any Town, XX 99999
Phone: XXX/XXX-XXXX
Email: xxxx@xxxx.com

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Consultant has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Consultant as the offeror most advantageous to the Village of Ruidoso; and

WHEREAS, all terms and conditions of the **RFP #2024-003P On-Call Professional and General Engineering Services** and the Consultant's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

- A. "Business Hours" means 8:00 AM to 5:00 PM Local Time.
- B. "Procuring Agency" means any state agency or local body that enters into an Agreement to procure products or services.
- C. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and

services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.

- D. "RFP" means Request for Proposals as defined in statute and rule.
- E. "RPR" means Resident Project Representative.
- F. "You" and "your" refers to (Consultant Name). "We," "us" or "our" refers to the Village of Ruidoso.
- G. "On-Call" Contract means: a standard on-call contract requires consulting firms to provide work and services for a number of projects, under task or work orders issued on an as-needed or on-call basis.

2. Scope of Work.

The Consultant shall perform the work as outlined in Attachment A Detailed Scope of Work, attached hereto and incorporated herein by reference.

3. Compensation.

A. Compensation Schedule. The Procuring Agency shall pay the Consultant based upon fixed prices for each Deliverable, per the schedule outlined in Attachment B, less retainage, if any, as identified in paragraph D of this Clause.

B. Payment. The total compensation under this Agreement shall not exceed approved task order dollar amounts including New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Consultant under this Agreement shall equal the amount stated herein. The Parties do not intend for the Consultant to continue to provide Services without compensation when the total compensation amount is reached. Consultant is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Consultant be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Consultant's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Consultant within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID**.

C. Taxes. The Consultant shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Consultant by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONSULTANT BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Consultant's sole responsibility and should be reported under the Consultant's Federal and State tax identification number(s).

Consultant and any and all Sub-Consultants shall pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Consultant. Consultant shall require all Sub-Consultants to hold the Procuring Agency harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. Not Applicable. The Parties agree there is no retainage.

E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

4. Term.

This agreement shall be effective XXXXXX, XXX, 20XX through XXX XX, 20XX, unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories, for three (3) additional years. In any case, the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

5. Termination.

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Consultant may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Consultant written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Consultant shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Consultant's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Consultant of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Consultant (i) if the Consultant becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Consultant is suspended or debarred by the Village of Ruidoso; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work

performed prior to the Consultant's receipt or issuance of a notice of termination; 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 Consultant shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONSULTANT'S DEFAULT/BREACH OF THIS AGREEMENT.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Village Council of Ruidoso for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Council, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Consultant. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Consultant and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Consultant 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 Consultant.

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

8. Conflict of Interest; Governmental Conduct Act.

A. The Consultant 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 Consultant 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, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Consultant specifically represents and warrants that:

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

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

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

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Consultant is not a councilor; (ii) the Consultant is not a member of a councilor's family; (iii) the Consultant is not a business in which a councilor or a councilor's family has a substantial interest; or (iv) if the Consultant is a councilor, a member of a councilor's family, or a business in which a councilor or a councilor's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

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

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Consultant has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Consultant's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Consultant shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Consultant learns that Consultant's representations and warranties in paragraphs A and B of this Clause 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 Consultant's representations and warranties in paragraphs A and B of this Clause 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 Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. 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 Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Consultant 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. 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.

11. Penalties for Violation of Law.

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

12. Equal Opportunity Compliance.

The Consultant agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Consultant 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 Consultant is found not to be in compliance with these requirements during the life of this Agreement, Consultant agrees to take appropriate steps to correct these deficiencies.

13. Workers Compensation.

The Consultant agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Consultant fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a Lincoln County court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement,

Consultant 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.

15. Records and Financial Audit.

The Consultant 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 Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments

16. 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.

17. 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.

18. Non-Collusion.

In signing this Agreement, the Consultant certifies the Consultant has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Purchasing Agency.

19. Succession.

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

20. Headings.

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

21. Default/Breach.

In case of Default and/or Breach by the Consultant, for any reason whatsoever, the Procuring Agency may procure the goods or Services from another source and hold the Consultant responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring

Agency may also seek all other remedies under the terms of this Agreement and under law or equity.

22. Equitable Remedies.

Consultant acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Consultant consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

23. New Mexico Employees Health Coverage.

A. If Consultant has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Consultant certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Consultant and the State exceed \$250,000 dollars.

B. Consultant agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Consultant agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwemexico.state.nm.us/>.

24. Employee Pay Equity Reporting.

Consultant agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If Consultant has (250) or more employees Consultant must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Consultant also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should Consultant not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Consultant agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Consultant also agrees to levy this requirement on any Sub-Consultant(s) performing more than 10% of the dollar value of this Agreement if said Sub-

Consultant(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Consultant further agrees that, should one or more Sub-Consultant not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Consultant will submit the required report, for each such Sub-Consultant, within ninety (90 days) of that Sub-Consultant meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such Sub-Consultant, shall be due on the annual anniversary of the initial report submittal. Consultant shall submit the required form(s) to the Village of Ruidoso Purchasing Department, and other departments as may be determined, on behalf of the applicable Sub-Consultant(s) in accordance with the schedule contained in this Clause. Consultant acknowledges that this Sub-Consultant requirement applies even though Consultant itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Consultant has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

25. Indemnification.

The Consultant shall defend, indemnify and hold harmless the Procuring Agency 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 Consultant, its officers, employees, servants, Sub-Consultants, or agents resulting in injury or damage to persons or property during the time when the Consultant or any officer, agent, employee, servant or Sub-Consultant thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Consultant or any officer, agent, employee, servant or Sub-Consultant under this Agreement is brought against the Consultant, the Consultant shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency by certified mail.

26. Default and Force Majeure.

The Village reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the Village, if the Consultant fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Consultant liable for any excess cost occasioned by the Village due to the Consultant's default. The Consultant shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Consultant; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of Sub-Consultants due to any of the above, unless the Village shall determine that the supplies or services to be furnished by the Sub-Consultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required delivery scheduled. The rights and remedies of the Village provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. Assignment.

The Consultant 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 Procuring Agency.

28. Subcontracting.

The Consultant shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Consultant from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

29. Inspection of Plant.

The Procuring Agency that is a party to this Agreement may inspect, at any reasonable time during Consultant's regular business hours and upon prior written notice, the Consultant's plant or place of business, or any Sub-Consultant's plant or place of business, which is related to the performance of this Agreement.

30. Commercial Warranty.

The Consultant agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Consultant gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the Village and are in addition to and do not limit any rights afforded to the Village by any other Clause of this Agreement or order. Consultant agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. Condition of Proposed Items.

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

33. Confidentiality.

Any Confidential Information provided to the Consultant by the Procuring Agency or, developed by the Consultant based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Consultant without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Consultant shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) business days of such termination. Consultant acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. Consultant Personnel.

A. Key Personnel. Consultant's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Consultant Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Consultant's personnel assigned to the Project is reduced for any reason, Consultant shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Consultant shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Consultant shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Consultant's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. Incorporation by Reference and Precedence.

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Consultant's best and final offer; and (3) the Consultant's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Consultant's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Consultant's response to the request for proposals.

36. Inspection.

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Consultant's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. Inspection of Services.

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Consultant shall provide and maintain an inspection system acceptable to the Procuring Agency covering the services under this Agreement. Complete records of all inspection work performed by the Consultant shall be maintained and made available to the Procuring Agency during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The Procuring Agency has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Procuring Agency shall perform inspections and tests in a manner that will not unduly delay or interfere with Consultant's performance.

D. If the Procuring Agency performs inspections or tests on the premises of the Consultant or a Sub-Consultant, the Consultant shall furnish, and shall require Sub-Consultants to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements of this Agreement, the Procuring Agency may require the Consultant to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Procuring Agency may:

- (1) require the Consultant to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Consultant fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Procuring Agency may:

- (1) by Agreement or otherwise, perform the services and charge to the Consultant any cost incurred by the Procuring Agency that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

38. Contract Provisions

Per Federal Requirements of 44 CFR § 13.36, this contract entered between the Village of Ruidoso (Owner) and (Consultant), unless otherwise specified in the above-mentioned sections, shall be in full compliance with the following paragraph (i) of 44 CFR § 13.36. Owner and Consultant understand that Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

- A. Administrative, contractual, or legal remedies in instances where Consultants violate

- or breach contract terms and provide for such sanctions and penalties as may be appropriate.
- B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.
 - C. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
 - D. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair)
 - E. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
 - F. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
 - G. Notice of awarding agency requirements and regulations pertaining to reporting.
 - H. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed in the course of or undersuch contract.
 - I. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - J. Access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - K. Financial and administrative records for all projects receiving only federal funds shall be retained for a minimum period of three (3) years following the date of the receipt of the final payment of federal funds. Financial and administrative records for all projects that received state funding shall be retained for a minimum period of six (6) years following the receipt of the final payment of state funds. During the period of record retention, the sub-grant may be audited, and the applicant agrees to make their records available to auditors upon request from DHSEM.
 - L. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - M. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - N. Prime Consultant must be in compliance with (2 C.F.R. § 200.319) in regards to hiring Sub-Consultants.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE VILLAGE PARTIES OF THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONSULTANT'S DEFAULT/BREACH OF THIS AGREEMENT.

39. Insurance.

If the services contemplated under this Agreement will be performed on or in Village facilities or property, Consultant shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Village of Ruidoso as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers' liability: \$100,000.
- B. Professional Liability Insurance: Contractor agrees to maintain, during the term of the Agreement, Professional Liability Insurance with a minimum of One Million Dollars (\$1,000,00.00) coverage.
- C. Consultant shall maintain the above insurance for the term of this Agreement and name the Village of Ruidoso as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Consultant. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

40. Arbitration.

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by the Village of Ruidoso out hereinafter.

SIGNATURES:

Village of Ruidoso:

Consultant:

Lynn D. Crawford, Mayor

Draft Only Do Not Sign

Consultant, Title

Date: _____

Date: _____

ATTEST: _____

Jini S. Turri, Village Clerk

EXHIBIT A -DETAIL SCOPE OF WORK
EXHIBIT B-FEE SCHEDULE

APPENDIX B – DETAILED SCOPE OF WORK

RFP #2024-003P

On-Call Professional and General Engineering Services

PROJECT DESCRIPTION

The Village of Ruidoso, New Mexico is requesting proposals to provide Professional and General Engineering Services to include Grant Funding Consulting, Grant Searching and Application Process, Planning, Design Services, Surveying Services, Landscaping Services, Consulting, and Engineering for the Village of Ruidoso, with a focus on design and construction of recreation trails and pathway design and roadway design and drainage under an On-Call Service Agreement. Applicants must be licensed professional engineer in the State of New Mexico.

Applicants must have experience with the New Mexico Department of Transportation (NMDOT) Federal Highway Administration (FHWA) Recreation Trail and Pathway Design and Roadway Design and Drainage. Applicants must also be certified on the Tribal/Local Public Agency (T/LPA) process prior to entering into agreements with the Village and obtaining Federal funds. Federal-Aid Highway funds are only available to T/LPAs that obtain the required certification. (See Attachment A)

The Contracting Agency is requesting proposals for professional:

Architects/Landscape Architects

- Programming Phase
- Schematic Phase
- Design Development Phase
- Construction Documents Phase
- Bidding & Negotiations Phase
- Construction Administration Phase
- Post-Construction Phase

Engineers

- Study and Report Phase
- Preliminary Design Phase
- Final Design Phase
- Bidding & Negotiations Phase
- Construction Phase
- Operational Phase

Surveyors

- Property Boundary survey
- Topographic Survey
- Easement Survey
- Right-of-Way Survey
- Inspection Report

Planning Studies

- Comprehensive Plan
- Strategic (i.e. issue specific)
- Mapping and/or Zoning
- Other Planning Tasks

Projects May Include:

- Design and construction of multi-use pathways and walking trails
- Design and construction of multi-use path, lighting, and trail amenities
- Engineering for federal, state, and local trails and roadways
- Roadway design and construction
- Drainage design and construction
- On-call engineering services necessary for providing emergency/disaster operations, damage and repair assessment and emergency recovery engineering services
- Preliminary and final engineering studies, environmental, historical reports, preliminary and final design services

- Provide engineering and technical assistance (project evaluations, field inspections and investigations, analysis, recommendation, system design, cost and time estimates, testing, reports, studies, etc.) to other professional, design and assessment services
- Provide quality control and assurance services relating to the review of project and system design documents, specifications, recommendations, and cost estimates prepared by others
- Sub-surface investigation
- System assessment, material condition review, reliability analysis, testing, and design services
- Emergency operations, damage and repair assessment and recovery engineering services to include engineering, planning, and surveying services; environmental investigations; architectural and landscape design services; as well as administration of FEMA/FHWA projects, debris reduction contracts and debris removal contracts.
- Provide the required engineering, observation, inspection, testing, and support services during the construction and/or renovation of new or existing infrastructure, facilities, buildings and building systems to ensure compliance and adherence to construction project documents.

Project Phase:

Each individual project’s scope of work performed will be subject to the Participating Entity engaging, assessing, evaluating, selecting, and negotiating with the Offeror that possesses the qualifications, background, experience, attributes, and resources that best fit their project’s goals, objectives, and outcomes, and to assist them in developing, implementing, executing, conducting, and completing the identified project in the most cost effective and timely manner.

The project phases may include, but are not limited to:

- Programming phase;
- Conceptual design and alignment studies;
- Schematic design phase;
- Design development phase;
- Construction documents phase;
- Procurement and/or bidding phase;
- Construction phase;
- Project acceptance and close-out;
- Project 11-month warranty phase

Post Construction:

- Completing all project documentation including, but not limited to, change order summary, final detail estimate, project acceptance documentation, and claims management/resolution
- Finalize all project documents for NMDOT, FHWA, and Village or Ruidoso review and inspection
- Preparing a final construction project report as required by NMDOT and FHWA Guidelines

APPENDIX C – ACKNOWLEDGEMENT OF RECEIPT FORM

RFP #2024-003P On-Call Professional and General Engineering Services

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that they have received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX H.

The acknowledgement of receipt shall be signed and returned to the Procurement Manager no later than date proposed in Section II. A. in the advertised RFP. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Village of Ruidoso
313 Cree Meadows Dr
Ruidoso, NM 88345
E-mail: Purchasing@ruidoso-nm.gov

APPENDIX D – LETTER OF TRANSMITTAL FORM

RFP #2024-003P On-Call Professional and General Engineering Services

Offeror Name: _____ FEIN# _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

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

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

5. Use of Sub-Consultants (Select one)

_____ No Sub-Consultants will be used in the performance of any resultant contract OR

____ The following Sub-Consultants will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Sub-Consultants listed in (5) above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. ____ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.
____ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.
____ I hereby acknowledge receipt of the following addenda to this RFP (if applicable)

Addendum # _____ Dated: _____ Addendum # _____ Dated: _____

Addendum # _____ Dated: _____ Addendum # _____ Dated: _____

Authorized Signature

(Must be signed by the person identified in item #2, above.)

Date

APPENDIX E – CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP #2024-003P

On-Call Professional and General Engineering Services

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state Village 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 Village 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 Consultant must disclose whether they, a family member or a representative of the prospective Consultant 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 Consultant submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the Consultant signs the contract, if the aggregate total of contributions given by the prospective Consultant, a family member or a representative of the prospective Consultant to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state Village or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective Consultant, a family member of the prospective Consultant, or a representative of the prospective Consultant 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 Consultant fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONSULTANT 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 Consultant is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

APPENDIX F – DEBARMENT CERTIFICATION

RFP #2024-003P On-Call Professional and General Engineering Services

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:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal entity, or the State of New Mexico or local public body department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had 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 or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Date

Signature of Authorized Representative

APPENDIX G – NON-COLLUSION AFFIDAVIT

**RFP #2024-003P
On-Call Professional and General Engineering Services**

STATE OF _____)
) SS
COUNTY OF _____)

_____, being first duly sworn, deposes and says:

That he/she is _____ of _____
who submits herewith to the Village of Ruidoso, a proposal/bid:

That all statement of fact in such proposal/bid are true;

That said proposal/bid was not made in the interest of or on behalf of any undisclosed person,
partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with
anyone attempted to induce action prejudicial to the interest of Village of Ruidoso, or any bidder
of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading or proposal/bid, said bidder:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal/bid;
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals/bids;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal/bid price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal/bid price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposal/bid price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository or to any member or agent thereof, or to any individual or group of individuals, except that Village of Ruidoso, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By: _____

SUBSCRIBED and sworn to before me this _____ day of _____ 20__.

Notary Public: _____

My commission expires: _____

APPENDIX H – PROJECT/CONTRACT LISTING FORM

RFP #2024-003P

On-Call Professional and General Engineering Services

Firm: _____ Date: _____

Offerors shall list all current contracts with the Village of Ruidoso

Table A – Project Specific Contracts

Project Directly Awarded to Firm	Contract Start Date	Contract Amount (in dollars)	% Complete to Date	Contract Amount Expended to Date (in dollars)	Contract Remaining Balance (in dollars)
1.					
2.					
3.					
4.					
5.					
			Totals		

Table B-On-Call Contracts

Project Directly Awarded to Firm	Contract Start Date	Contract Amount (in dollars)	Total Amount Tasked Out to Date (in dollars)	% of Tasked Out Work Complete to Date	Total Tasked Out Work Expended to Date (in dollars)	Total Remaining Balance of Tasked Out Work (in dollars)
1.						
2.						
3.						
4.						
5.						
		Totals				

Notes:

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

completion of this form. (Use additional sheets if necessary).

REMARKS:

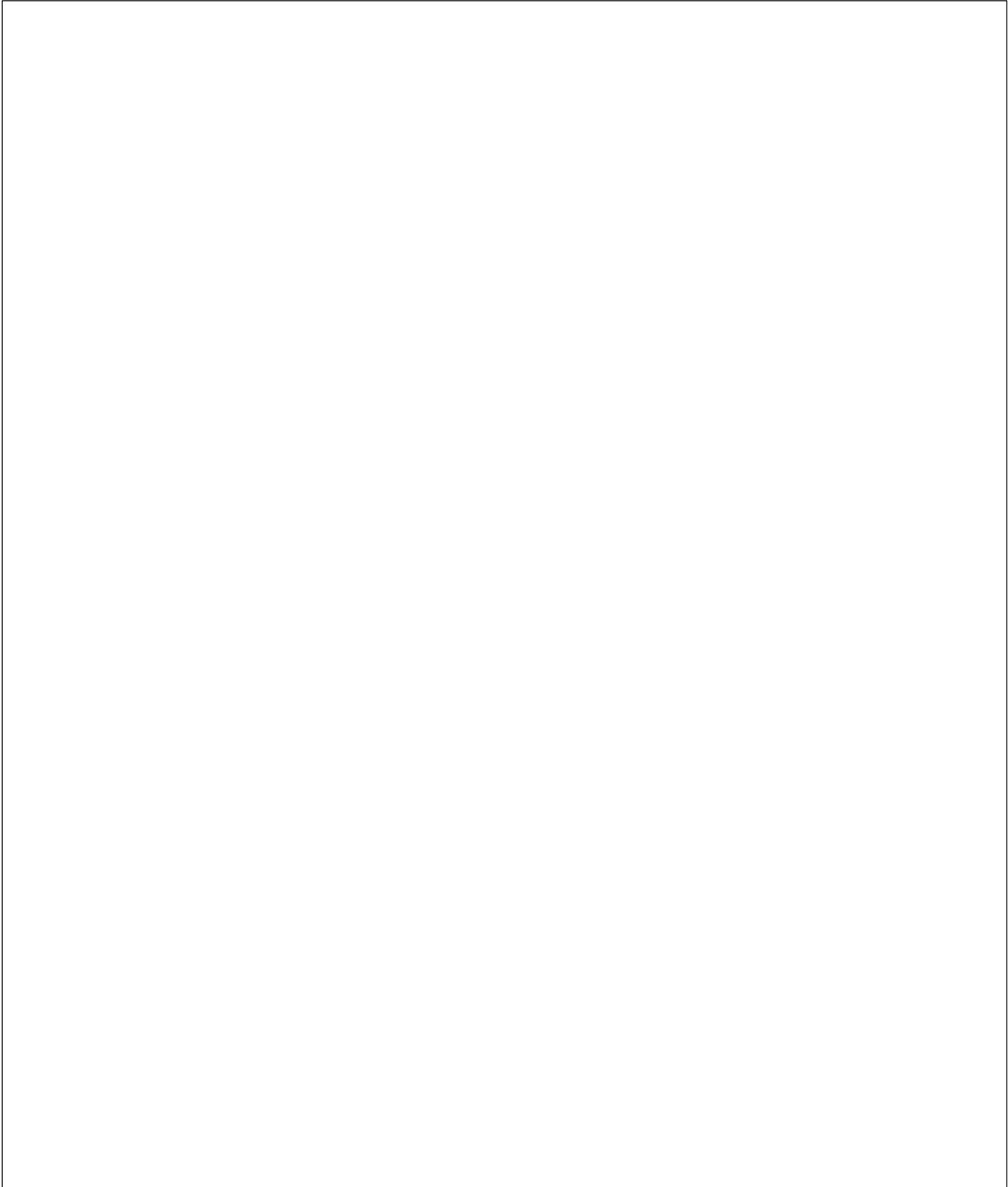
A large, empty rectangular box with a thin black border, intended for writing remarks. It occupies the majority of the page's vertical space below the 'REMARKS:' label.

EXHIBIT A - PROPOSAL SUBMITTAL EXAMPLE (Note: This is only an Example)

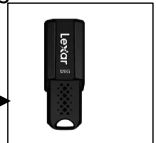
On the outside of the delivery package, please label the following:



Label on outside of package:
 RFP #2023-XXXP and Title
 Due Date: xx/xx/xx Time x:xx pm

1. TECHNICAL PROPOSAL (Binder 1): One original and five copies are to be submitted as follows (electronic version must be on a USB drive):

3 ring binder or similar (1 original (hard copy) and 5 copies and 1 USB drive): 1 USB Drive



Tabs inside of binders:



- Tab A:** Table of Contents
- Tab B:** Response to Business Specifications
 - 1. Signed Letter of Transmittal Form (Appendix D)
 - 2. Signed Campaign Contribution Form (Appendix E)
 - 3. Debarment Certification (Appendix F)
 - 4. Non-Collusion Affidavit (Appendix G)
- Tab C:** Response to Technical Specifications
 - 1. List Criteria 1 -6 with full detail
- Tab D:** Proposal Summary (Optional)
- Tab E:** Offeror's Response to Contract Terms & Conditions (If applicable)
- Tab F:** Offeror's Additional Terms & Conditions (If applicable)
- Tab G:** Other Supporting Material (If applicable)

Attachment A



Tribal and Local Public Agency (T/LPA) Certification Training

The NMDOT is initiating a new certification program that requires the “Person In Responsible Charge” for Federally Funded T/LPAs Projects to become certified on the T/LPA process prior to entering into agreements with NMDOT and obtaining Federal funds.

This program will be voluntary until January 1, 2024, at which point it will become mandatory. Training on the T/LPA Handbook will be offered throughout the State over the next six (6) months, allowing multiple opportunities to receive training and become certified prior to January 2024.

Area	Date	Location
Farmington	July 24-25th	Farmington Civic Center 200 W Arrington, Farmington
Gallup	Aug 16-17 th	Gallup Down Town Conference Center 204 W Coal Ave, Gallup
Albuquerque	Aug 23-23 rd	Bernalillo County at Alvarado Square 415 Silver Ave. SW Albuquerque
Las Vegas	Sept 5 – 6th	Highlands University Student Union Building (Ballroom) 800 National Avenue, Las Vegas
Roswell	Sept 26 - 27th	NMDOT Training Academy 132 E Earl Cummings Loop, Roswell
Hobbs	Sept 20-21	Lea County Event Center 5101 N Lovington Hwy, Hobbs, NM
Las Cruces	October 11-12 th	Farm and Ranch Heritage Museum 4100 Dripping Springs Road, Las Cruces
Albuquerque	Nov 1 – 2 nd	NMDOT D3 Auditorium 7500 Pan American Frwy NE, ABQ
Clovis	Nov 14 – 15 th	Clovis Carver Library – Ingram Room 701 N Main Street, Clovis
Silver City	Dec 6 - 7th	The Grant County Veterans Memorial Business & Conference Center 3031 Highway 180 East, Silver City

All trainings are free and will be held from 8:30 am – 4 pm on both days. Please make sure to review your T/LPA Handbook prior to the training and bring a copy of the Handbook with you as you will be able to use it as a resource during the exam portion of the training. **Handbooks will NOT be provided.** If you require a Handbook, it can be downloaded from the following link: <https://www.dot.nm.gov/business-support/project-oversight-division/t-lpa-documents-and-information>

Training is open to T/LPA staff that deal with the Federally Funded T/LPA Projects, consultants, NMDOT staff and others that may be listed as the Person in Responsible Charge for the T/LPA project.

Please contact Frank Lozano, at FLozano@bhinc.com to reserve a seat at one of the trainings. We do expect a wait list for some of the areas, so if you are unable to attend, please let Frank know.



July 12, 2023

Re: Tribal/Local Public Agency (T/LPA) Certification and Training Program
To: All Tribal/Local Public Agencies (T/LPA), New Mexico Department of Transportation (NMDOT) T/LPA Personnel and Consultants that support the T/LPA Federal Program

The Federal Highway Administration (FHWA) through a Stewardship Agreement, delegates authority to the New Mexico Department of Transportation (NMDOT) for approving project development and construction administration. NMDOT is the steward of the federal funds and is responsible for oversight of federally funded projects. NMDOT staff members are responsible for assuring compliance with CFRs, the terms of the Cooperative Agreements and the requirements outlined in the T/LPA Handbook. NMDOT oversees the project throughout design, construction, and project closeout to ensure compliance.

It is the desire of both the NMDOT and FHWA that all T/LPAs obtain and maintain a strong understanding of the Federal-Aid process, as well as the rules and regulations. Maintaining a strong understanding reduces the risk to both the T/LPAs and the NMDOT, as it helps sustain compliance with Federal rules and regulations and helps to ensure that T/LPAs receive the maximum Federal reimbursement as outlined in the Cooperative Agreements.

It is the responsibility of the NMDOT to have a strong and sustainable T/LPA program to better ensure that T/LPAs are capable and have sufficient resources to compliantly administer Federal-Aid Funds and projects.

The following attachment outlines a new certification program that requires T/LPAs to become certified on the T/LPA process prior to entering into agreements with NMDOT and obtaining Federal funds.

This program will be voluntary until January 1, 2024, at which point it will become mandatory. Trainings will be offered throughout the State over the next six (6) months to allow multiple opportunities for those who work with the

Michelle Lujan Grisham
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

Federal T/LPA Program the ability to be trained, prior to taking a certification exam.

Details about upcoming training sessions will be released shortly. If you have any questions related to the program, please contact Tisha Clark, State Construction Engineer at (505) 490-1175.

We look forward to seeing you at one of our future training sessions.

Sincerely,

A handwritten signature in blue ink that reads "Trent Doolittle". The signature is written in a cursive style with a horizontal line above the first name.

Trent Doolittle, P.E.
NMDOT Deputy Secretary

Tribal/Local Public Agency Certification and Training Program for Federally Funded Projects

General

The Federal Highway Administration (FHWA) through a Stewardship Agreement, delegates authority to the New Mexico Department of Transportation (NMDOT) for approving project development and construction administration. NMDOT is the steward of the federal funds and is responsible for oversight of federally funded projects. NMDOT staff members are responsible for assuring compliance with CFRs, the terms of the Cooperative Agreements and the requirements outlined in the T/LPA Handbook. NMDOT oversees the project throughout design, construction, and project closeout to ensure compliance.

It is the desire of both the NMDOT and FHWA that all T/LPAs obtain and maintain a strong understanding of the Federal-Aid process, as well as the rules and regulations. Maintaining a strong understanding reduces the risk to both the T/LPAs and the NMDOT, as it helps sustain compliance with Federal rules and regulations and helps to ensure that T/LPAs receive the maximum Federal reimbursement as outlined in the Cooperative Agreements.

It is the responsibility of the NMDOT to have a strong and sustainable T/LPA program to better ensure that T/LPAs are capable and have sufficient resources to compliantly administer Federal-Aid Funds and projects.

Requirements

As required by 23 CFR 635.105(b), the regulation provides that the NMDOT and T/LPA must provide a full-time employee to be in "responsible charge" of the project. For projects administered by the NMDOT, the regulation requires that the person in "responsible charge" be a full-time employed state engineer. This requirement applies even when consultants are providing construction engineering services.

For locally administered projects, the regulation requires that the person in "responsible charge" be a full-time employee of the T/LPA. The regulation is silent about engineering credentials. Thus, the person in "responsible charge" of T/LPA administered projects need not be an engineer. The T/LPA must maintain a responsible charge even when consultants are providing preliminary engineering and/or construction engineering services.

In 2011, FHWA issued a memorandum clarifying the requirement of a "responsible charge". A "responsible charge" must be a full-time employee of the local agency shall preform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day-to-day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Reviews financial processes, transactions, and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation.
- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The regulations do not preclude the sharing of these duties and functions among a number of public agency employees. Meaning the T/LPA can designate a different staff person to be in Responsible Charge for each of the two phases established for T/LPA projects: preliminary engineering and construction.

T/LPAs may require technical assistance during the design and/or construction of the project and may hire consultants for assistance. Therefore, the consultants hired by the T/LPAs must be familiar with the processes outlined in the T/LPA Handbook and must become certified.

NMDOT T/LPA Certification

This Certification Program will require T/LPAs to commit sufficient staff and other resources to project administration to ensure that all applicable state and federal requirements are met, and that the work can be accomplished efficiently. Federal-Aid Highway funds are only available to T/LPAs that obtain the required certification. This will help the NMDOT evaluate whether the T/LPA has sufficient qualifications and ability to undertake and satisfactorily complete the work. The certification provides confirmation that the tribal or local public agency can comply with federal requirements in a project. Without the certification, the T/LPA will no longer be able to receive Federal-Aid Highway Funding.

Each Public Entity applying for Federal-Aid Highway funding, at a minimum, must have a person in Responsible Charge certified. The NMDOT will certify individual full-time employees of public agencies and will not certify public agencies themselves. A T/LPA, at a minimum, must maintain a full-time employee of the entity certified for the entire duration of the project, and therefore, it is highly recommended that the entity certifies more than

one employee to ensure they stay in compliance if a certified employee leaves the entity. If a T/LPA only has one certified employee, and loses their certified employee, the T/LPA will have one (1) month to certify another full-time employee. Exceptions to the timeframe can be made on a case-by-case basis through the Chief Engineer (design agreement) or the State Construction Engineer (construction agreement).

For consultants hired by T/LPAs for technical assistance, the Engineer of Record (when using federal funding for design), and the T/LPA Construction Project Manager must have a current Certification. The NMDOT will certify individual employees of consulting firms and not consulting firms themselves. The consultants may not be designated as a Person in Responsible Charge as that responsibility remains with the T/LPA.

Beginning July 1, 2023, the NMDOT will implement the new T/LPA Certification process, overseen by a T/LPA Program Coordinator, housed under the Construction and Civil Rights Bureau (CCRB). From July 1, 2023, through December 31, 2023, T/LPA employees, consultants, NMDOT Region Coordinators and NMDOT District Coordinators will be required to obtain certification through CCRB. Certification will be for individual personnel and will not be granted to entire agencies or firms. On January 1, 2024, the certification will become mandatory for personnel overseeing T/LPA projects and must be obtained prior to entering a design and/or construction agreement with NMDOT. At a minimum, the Person in Responsible Charge, the Engineer of Record (when using federal funding for design), and the T/LPA Construction Project Manager must have a current T/LPA Certification. If an entity has entered into a design agreement with NMDOT prior to January 1, 2024, it will not be mandatory for the current personnel working on the project to obtain certification until it is time to enter into the construction agreement.

Once obtained, the certification will be granted for a period of two (2) years, at which time re-certification will be required.

Training

In preparation for this certification requirement, CCRB will offer multiple in-person T/LPA training opportunities around the state over the next 6 months that T/LPA employees, consultants, and NMDOT Regional and District personnel may attend. The training sessions will be based on the T/LPA Handbook and will help individuals prepare for the certification exam. Although the training sessions are not mandatory, they are highly recommended. Recordings of past training sessions are also available on the NMDOT T/LPA website.

Certification Exam

Certification will be granted to those that obtain a minimum of seventy percent (70%) on the T/LPA Certification Exam.

If the T/LPA person chooses to attend one of the training sessions, they will have the opportunity to take a written exam as part of the session. If a T/LPA is unable to attend the training, they may request a code to access the test online. If the student is unable to obtain a passing grade after taking the test (or for those who do not pass the written test during the training), they must wait 3 business days before attempting the test again. If a student is unable to obtain a passing grade on their second attempt, they must wait seven (7) business days before their third attempt. If the student is unsuccessful on their third attempt, they must wait one (1) month before starting the process again. This process allows an opportunity for the student to study for the test in between attempts. It is highly recommended that the student attends a training session prior to attempting the certification exam after three failed attempts.

Upon successful completion of the exam, the student will be provided with a Certification of Completion, that will show the date of successful completion of the test, as well as the expiration date of the certificate.

The training sessions, as well as the certification test, will be offered at no cost.

When a T/LPA entity chooses to have a project overseen by uncertified employees or consultants, the entity will **not be reimbursed** for the project in question, and the entity will **not be eligible to apply for additional federal funding** through NMDOT without obtaining certification of their employees and consultants.

Recertification

It will be the responsibility of the T/LAP or consultant to contact the CCRB T/LPA Program Coordinator to renew the certification, which may be done through a class, or taking the online test. All personnel must maintain a current certification to continue to work on Federal-aid T/LPA projects.

Conclusion

Through this process, NMDOT will assist the T/LPAs in being prepared by having all the tools necessary to successfully administer a Federal-Aid project from inception to completion. The program will relieve NMDOT oversight resources and better ensure that all Federal-Aid T/LPA projects are fully reimbursed.