DEPARTMENT OF CULTURAL AFFAIRS

REQUEST FOR PROPOSALS (RFP)

CONSTRUCTION MANAGEMENT SERVICES

RFP
20-505-2000-50014

April 22, 2020

May 20, 2020
I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS .......................................................... 1

B. BACKGROUND INFORMATION .................................................................................. 1

   1. Design Intent ........................................................................................................... 1
   2. Existing Building.................................................................................................... 2
   3. New Additions ....................................................................................................... 2

C. SCOPE OF PROCUREMENT ......................................................................................... 3

D. PROCUREMENT MANAGER ...................................................................................... 3

E. DEFINITION OF TERMINOLOGY .............................................................................. 4

F. PROCUREMENT LIBRARY ........................................................................................ 7

A. SEQUENCE OF EVENTS .......................................................................................... 7

B. EXPLANATION OF EVENTS ..................................................................................... 8

   1. Issuance of RFP ...................................................................................................... 8
   2. Acknowledgement of Receipt ............................................................................... 8
   3. Pre-Proposal Conference ..................................................................................... 8
   4. Deadline to Submit Written Questions .................................................................. 9
   5. Response to Written Questions ........................................................................... 9
   6. Submission of Proposal ........................................................................................ 9
   7. Proposal Evaluation .............................................................................................. 10
   8. Selection of Finalists ............................................................................................ 10
   9. Best and Final Offers ............................................................................................ 10
   10. Oral Presentations ................................................................................................ 10
   11. Finalize Contractual Agreements .......................................................................... 10
   12. Contract Awards .................................................................................................. 11
   13. Protest Deadline ................................................................................................... 11

C. GENERAL REQUIREMENTS ....................................................................................... 11

   1. Acceptance of Conditions Governing the Procurement ......................................... 11
   2. Incurring Cost ........................................................................................................ 12
   3. Prime Contractor Responsibility .......................................................................... 12
   4. Subcontractors/Consent ....................................................................................... 12
   5. Amended Proposals ............................................................................................. 12
   6. Offeror’s Rights to Withdraw Proposal .................................................................. 12
   7. Proposal Offer Firm ............................................................................................. 13
   8. Disclosure of Proposal Contents .......................................................................... 13
   9. No Obligation ........................................................................................................ 13
   10. Termination .......................................................................................................... 13
   11. Sufficient Appropriation ..................................................................................... 14
   12. Legal Review ........................................................................................................ 14
   13. Governing Law ..................................................................................................... 14
   14. Basis for Proposal ............................................................................................... 14
   15. Contract Terms and Conditions .......................................................................... 14
   16. Offeror’s Terms and Conditions .......................................................................... 15
   17. Contract Deviations ............................................................................................ 15
   18. Offeror Qualifications ......................................................................................... 15
   19. Right to Waive Minor Irregularities ..................................................................... 15
   20. Change in Contractor Representatives ................................................................. 15
   21. Notice of Penalties ............................................................................................... 16
   22. Agency Rights ...................................................................................................... 16
   23. Right to Publish ................................................................................................... 16
   24. Ownership of Proposals ..................................................................................... 16
   25. Confidentiality ..................................................................................................... 16
   26. Electronic mail address required ......................................................................... 16
APPENDIX A

27. Use of Electronic Versions of this RFP ................................................................. 17
28. New Mexico Employees Health Coverage .......................................................... 17
29. Campaign Contribution Disclosure Form ............................................................. 17
30. Letter of Transmittal ......................................................................................... 17
31. Disclosure Regarding Responsibility ................................................................. 18
32. New Mexico Preferences .................................................................................. 20

III. RESPONSE FORMAT AND ORGANIZATION ........................................................................ 21
   A. NUMBER OF RESPONSES .................................................................................. 21
   B. NUMBER OF COPIES ....................................................................................... 21
   C. PROPOSAL FORMAT ......................................................................................... 22

IV. SPECIFICATIONS ........................................................................................................ 23
   A. DETAILED SCOPE OF WORK ........................................................................... 23
   B. TECHNICAL SPECIFICATIONS ....................................................................... 29
      1. Organizational Experience ............................................................................. 29
      2. Organizational References .......................................................................... 30
      3. Oral Presentation .......................................................................................... 30
      4. Mandatory Specification .............................................................................. 31
      5. Desirable Specifications .............................................................................. 31
   C. BUSINESS SPECIFICATIONS ......................................................................... 32
      1. Letter of Transmittal Form ............................................................................ 32
      2. Campaign Contribution Disclosure Form ..................................................... 32
      3. Financial Stability ....................................................................................... 32
      4. Performance Surety Bond ............................................................................ 32
      5. Antitrust Claims .......................................................................................... 32
      6. Department of Finance and Administration Certification .................................. 33
      7. NM Health Insurance Coverage ................................................................... 33
      8. Affidavit NM Employee Pay Equity ................................................................ 33
      9. Affidavit Non-Violation of Labor Codes ......................................................... 33
     10. Cost .............................................................................................................. 33
     11. NM Resident Business or NM Resident Veterans Preferences ......................... 33

V. EVALUATION ........................................................................................................ 34
   A. EVALUATION POINT SUMMARY .................................................................... 34
   B. EVALUATION FACTORS ................................................................................ 35
      2. B.2 Organizational References ...................................................................... 35
      3. B.3 Oral Presentation .................................................................................... 35
      4. B.4 Mandatory Specifications (See Table 1) .................................................. 36
      5. B.5 Desirable Specifications ......................................................................... 36
      6. C.1. Letter of Transmittal ............................................................................ 37
      7. C.2. Campaign Contribution Disclosure Form ............................................. 37
     8. C.3. Financial Stability .................................................................................. 37
     9. C.4 Assignments of Antitrust Claims Form ................................................... 37
    10. C.5. DFA Agency Certification Form ............................................................. 37
    11. C.6. New Mexico Health Coverage Form ..................................................... 37
    12. C.7. Affidavit of NM Pay Equity ..................................................................... 38
    13. C.8. Affidavit of Non-Violation of Labor Codes ........................................... 38
    15. C.10. New Mexico Preferences ...................................................................... 38
   C. EVALUATION PROCESS .................................................................................. 38

APPENDIX A ............................................................................................................ 40
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGEMENT OF RECEIPT FORM</td>
<td>40</td>
</tr>
<tr>
<td>APPENDIX B</td>
<td>42</td>
</tr>
<tr>
<td>CAMPAIGN CONTRIBUTION DISCLOSURE FORM</td>
<td>42</td>
</tr>
<tr>
<td>APPENDIX C</td>
<td>46</td>
</tr>
<tr>
<td>SAMPLE CONTRACT</td>
<td>46</td>
</tr>
<tr>
<td>APPENDIX D</td>
<td>46</td>
</tr>
<tr>
<td>COST RESPONSE FORM</td>
<td>67</td>
</tr>
<tr>
<td>APPENDIX E</td>
<td>68</td>
</tr>
<tr>
<td>LETTER OF TRANSMITTAL FORM</td>
<td>68</td>
</tr>
<tr>
<td>APPENDIX F</td>
<td>70</td>
</tr>
<tr>
<td>ORGANIZATIONAL REFERENCE QUESTIONNAIRE</td>
<td>70</td>
</tr>
<tr>
<td>APPENDIX G</td>
<td>75</td>
</tr>
<tr>
<td>APPENDIX G: ASSIGNMENTS OF ANTITRUST CLAIMS FORM</td>
<td>76</td>
</tr>
<tr>
<td>APPENDIX H: DEPARTMENT OF FINANCE AND ADMINISTRATION AGENCY CERTIFICATION FORM</td>
<td>77</td>
</tr>
<tr>
<td>APPENDIX I: NEW MEXICO EMPLOYEES HEALTH COVERAGE VERIFICATION FORM</td>
<td>78</td>
</tr>
</tbody>
</table>
I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of professional construction management and supervision services (CMS).

B. BACKGROUND INFORMATION

The State of New Mexico Department of Cultural Affairs is looking for construction management services for the following construction project: the project consists of the adaptive reuse of, and an addition to, an existing 1936 territorial-style warehouse. The project site is located at the Halpin Building, 404 Montezuma Avenue. Santa Fe at the southwest corner of the intersection of Montezuma Avenue and South Guadalupe. It sits adjacent to the northernmost end of the Railrunner Line. The total building size will be 35,180 square feet, with 22,742 sq. ft. of existing building and 12,438 sq. ft. of new construction. 

DNCA (125 Jefferson Street NE, Albuquerque, NM) and Studio GP (400 Gold Ave SW Albuquerque, NM) are the Architects of the project.

The State of New Mexico will operate the building and owns the land on which the building will sit. The State of New Mexico leases a parcel of land at the west of the site from the Santa Fe Railyard Community Corporation with permission to conduct improvement activities. The State of New Mexico leases a parcel of land at the east of the site from the City of Santa Fe with permission to conduct improvement activities.

1. Design Intent

The design intent of the project is to preserve the integrity of the original existing warehouse building while providing an addition that is of our time and that legibly reflects the programmatic intent of a museum dedicated to the contemporary arts. In addition, the building should contribute to the emerging identity of the Railyard/Sanbusco neighborhood as a contemporary arts destination in a city defined by the arts.
2. **Existing Building**
The purpose of this project is to repurpose the Halpin building into a dedicated gallery space for contemporary art in New Mexico. The existing warehouse building has a full basement. The structure features exterior brick bearing walls, exposed steel interior columns and beams with wood floor and roof decks. The existing building also includes an office addition and a heated enclosure under an original awning structure on its north side, and an attached storage shed on the south of the building.

The design calls for the restoration and refurbishment of character-defining elements of the additional warehouse structure, such as windows, the awning canopy, and the territorial brick coping. The interior steel columns will be exposed as a design feature and the brick interiors will be exposed wherever possible. The office and storage annex to the original warehouse will be removed, as will the ad-hoc infill structure below the existing awning.

**Finish Restoration**
The existing brick warehouse building has a finish of synthetic paint over stucco. This finish is peeling and will be removed; the brick will be re-stuccoed with an earth-toned cement stucco system. The existing windows will be re-glazed and their frames painted. The existing brick coping will be cleaned and repointed as necessary.

3. **New Additions**
At the ground floor, the new addition will add 3,156 sq. ft. to the building footprint. A 45’-3.5” by 226’-2” “bar” building spanning over the existing warehouse structure will add an additional 9,145 sq. ft. at the second floor. The total building size (including additions) will be 35,180 square feet.

Finishes for the new building are intended to provide temporal contrast to the finishes of the existing warehouse.
- Concrete: At the street level, the predominant material will be integrally dyed, cast-in-place concrete. The material is referential to the masonry load-bearing traditions of vernacular earthen architecture.

It is anticipated that the project will commence during the end of June, 2020 and will take approximately 12 months to complete.

In general, the Consultant CMS Project Manager shall have the necessary experience and knowledge of construction equipment, materials, methods, and workmanship for the specific work to be performed on the project. The Consultant Project Manager shall be able to understand and interpret Plans and Specifications and shall be familiar with the Greenbook (Standard Specifications for Public Works Construction), New Mexico Building Code, and OSHA Construction Safety Orders. The Consultant shall be able to interact professionally with contractors, engineers, elected officials, property owners, business owners, and the public at large; coordinate with other state personnel; promote quality customer service; and respond promptly and courteously to requests. The Consultant shall be able to follow verbal and written instructions, communicate clearly and concisely, both orally and in writing.
The Consultant shall be responsible for providing complete project management services for approximately 12 months during and after construction of the project (project closeout). The consultant shall provide coordination services with architects, engineers, geotechnical engineers, material testing consultant, construction inspection consultant, utility companies and the general contractor.

The Consultant shall work with: the Department of Cultural Affairs (DCA), consultants, architects, contractors, Museum of New Mexico Foundation staff and others in providing any required services. A full-time CMS Project Manager shall be assigned to this project.

The Consultant’s inspector will be provided an office space within the Contractor’s field office trailer. All personal equipment (cell phones, computers, safety equipment, transportation and travel costs, etc.) needed to conduct the proposed construction management services shall be provided by the Consultant as a part of his services.

C. SCOPE OF PROCUREMENT

The Consultant shall be responsible for providing complete project management services for approximately 12 months during and after construction of the project (project closeout). The consultant shall provide coordination services with architects, engineers, geotechnical engineers, material testing consultant, construction inspection consultant, utility companies and the general contractor.

The Consultant shall work with: the Department of Cultural Affairs (DCA), consultants, architects, contractors, Museum of New Mexico Foundation staff and others in providing any required services. A full-time CMS Project Manager shall be assigned to this project.

The Consultant’s inspector will be provided an office space within the Contractor’s field office trailer. All personal equipment (cell phones, computers, safety equipment, transportation and travel costs, etc.) needed to conduct the proposed construction management services shall be provided by the Consultant as a part of his services.

D. PROCUREMENT MANAGER

1. The Department of Cultural Affairs 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: Kristine Navarro-McElhaney/ Danelle Lucero  
   Procurement Manager/Officer  
   Department of Cultural Affairs  
   Address: 407 Galisteo St. Rm. 264  
   Santa Fe, NM 87501  
   Telephone: (505) 690-5284  
   Email: Kristine.Navarro-Mc@state.nm.us
2. **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.

3. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** 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. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

4. **PROPOSAL DELIVERY**

   All deliveries of proposals, must be addressed and submitted via email to:

   Name: Kristine Navarro-McElhaney  
   Email: rfp.response@state.nm.us  
   Subject: Reference RFP 20-505-2000-50014: Construction Management Services, Your Business Name, (Technical File 1, Cost File 2)

E. **DEFINITION OF TERMINOLOGY**

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

“**Agency**” means the State Agency sponsoring the Procurement action.

(Ensure definition is appropriately placed in sample contract pro-forma as required).

“**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.

“**Builder**” means the construction firm responsible for the construction of the Vladem Contemporary Art Museum.

“**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 agency 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" identify a desirable or discretionary item or factor.

“Electronic Submission” means a successful submittal of Offeror’s proposal via the email address provided.

“Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content. The electronic version must be emailed to the specific email address provided.

“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 contractor personnel, as well as subcontractor personnel if appropriate.

“IT” means Information Technology.

“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 contractor to furnish items of tangible personal property, services or construction to a state agency 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 agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Agency” means all State of New Mexico 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.

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

“State (the State)” means the State of New Mexico.
“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state.

“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 Offerors 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.

“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 or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Electronic version of RFP, Questions & Answers, RFP Amendments, drawings etc.:  
[www.nmculture.org/rfp](http://www.nmculture.org/rfp)

**II. CONDITIONS GOVERNING THE PROCUREMENT**

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

**A. SEQUENCE OF EVENTS**

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

<table>
<thead>
<tr>
<th>Action</th>
<th>Responsible Party</th>
<th>Due Dates Sample Time Frames</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issue RFP</td>
<td>SPD</td>
<td>April 22, 2020</td>
</tr>
<tr>
<td>2. Distribution List</td>
<td>Agency</td>
<td>April 30, 2020</td>
</tr>
<tr>
<td>3. Pre-Proposal Conference</td>
<td>Agency</td>
<td>April 30, 2020</td>
</tr>
<tr>
<td>4. Deadline to submit Questions</td>
<td>Potential Offerors</td>
<td>May 1, 2020</td>
</tr>
<tr>
<td>5. Response to Written Questions</td>
<td>Procurement Manager</td>
<td>May 6, 2020</td>
</tr>
<tr>
<td><strong>6. Submission of Proposal</strong></td>
<td>Potential Offerors</td>
<td>May 20, 2020</td>
</tr>
</tbody>
</table>
7. Proposal Evaluation | Evaluation Committee | May 20 to May 27, 2020
8. Selection of Finalists | Evaluation Committee | May 28, 2020
10. Oral Presentation(s) | Finalist Offerors | June 2, 2020
11. Finalize Contractual Agreements | Agency/Finalist Offerors | June 3-June 10, 2020
13. Protest Deadline | SPD | + 15 days

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 New Mexico State Department of Cultural Affairs on April 22, 2020. Potential Offerors may obtain a copy of the RFP from the Procurement Manager. The RFP may also be obtained from the DCA website at www.nmculture.org/rfp.

2. Acknowledgement of Receipt

Potential Offerors should e-mail or return via registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, 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 3:00 pm MST or MDT, as stated on Section II. A. Sequence of Events.

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 rejection of the RFP, and the potential Offeror’s organization name shall not appear on the distribution list and will be solely responsible for obtaining responses to written questions and any amendments to the RFP.

3. Pre-Proposal Conference

A pre-proposal conference will be held as indicated in the sequence of events beginning at 2pm Mountain Standard Time/Daylight Time by WebEx (link below). Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. Electronically submitted questions will be accepted during
and after the conference. All written questions will be addressed in writing on the date listed in the Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

Link for pre-proposal conference: RFP 20-2000-505-50014 Preproposal Meeting
Meeting number: 626 340 052
Password: 2020005050014
https://nmculture.my.webex.com/nmculture.my/j.php?MTID=md59ecbf6d49baa46600b7e4f3ebeb1a8

Join by phone
+1-510-338-9438 USA Toll
Access code: 626 340 052

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 as indicated in, Section II, A, Sequence of Events. 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

Written 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 Acknowledgement of Receipt Forms described in II.B.2 before the deadline.

An electronic version of the Questions and Answers will be posted to: www.nmculture.org/rfp

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON, as referenced in Section II, A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its electronic proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline.
Proposals must be electronically submitted and delivered to the Procurement Manager at the email address identified in Section I. D.4. Proposals. Proposals in hard copy format, submitted by facsimile, or other electronic means will not be accepted.

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 state agency 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 the Section II, A., Sequence of Events, 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., Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror’s oral presentation and demonstration.

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation online to be determined as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee and DCA.

11. 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., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the relevant Agency Procurement office. In the event mutually agreeable terms cannot be reached with
the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Awards

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

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and the Department of Cultural Affairs, 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 Department and State approval.

13. 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:

Name: Peter Ives, General Counsel
Address: 407 Galisteo St.
           Bataan Memorial Building
           Santa Fe, NM 87501
Telephone: (505)-660-9527Fax: (505) 820-6293
Email: Peter.Ives@state.nm.us

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. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. **Incurring Cost**

Any cost incurred by the 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 Contractor Responsibility**

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

4. **Subcontractors/Consent**

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor 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 Agency 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, 1.4.1.5 & 1.4.1.36 NMAC.
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 Agency. 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:

B. 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.

C. 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.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Agency 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 State of New Mexico or any of its Agencies 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 agency determines such action to be in the best interest of the State of New Mexico.
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 effected by sending written notice to the contractor. The Agency’s decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency 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.

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 Agency 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 an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) 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 Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (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 Sample Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the Offeror’s terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency 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 as 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 as 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 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 Agency. Please see Section II.C.15 for requirements.

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 Agency 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 Contractor Representatives**

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

The Agency 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 contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency 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 State of New Mexico.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor 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 contractor without the prior written approval of the Agency.

The Contractor(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 Agency'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 agency, the Offeror acknowledges that the version maintained by the agency shall govern.

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 Contractor and the State 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.

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

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

30. Letter of Transmittal

Offeror’s proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company, identified in #2 below. DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK (N/A, None, Does not apply, etc. are acceptable responses). 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 (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity 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 para 2 above.

**Failure to respond to ALL items as indicated above, will result in Offeror’s disqualification.**

31. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars ($60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company:
   1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency 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 or state agency 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 Contractor shall provide immediate written notice to the other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor’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 Contractor’s responsibility and ability to perform under this Agreement. Failure of the Contractor 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 Contractor 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 Contractor 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 Contractor must provide immediate written notice to other party to
this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Central Purchasing Officer.

32. New Mexico Preferences
To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx.

A. **New Mexico Business Preference**  
A copy of the certification must accompany your proposal.

B. **New Mexico Resident Veterans Business Preference**  
A copy of the certification must accompany your proposal.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.
III. RESPONSE FORMAT AND ORGANIZATION

Please note that DCA Staff are working remotely and are not in the office to accept hard copy proposal responses, therefore, Offerors will be **required** to submit their proposal electronically, see Section I., D. Proposal.

For assistance with submitting your proposal, please contact:

Kristine Navarro-McElhaney at: Kristine.Navarro-Mc@state.nm.us
IT support at: Doug.Patinka@state.nm.us

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

Offeror’s proposals must be clearly labeled and numbered and indexed as outlined in Section III.C. Proposal Format. Proposals must be submitted in the manner outlined below. Each ORIGINAL File (Technical and Cost) shall be clearly marked as “ORIGINAL” on the subject line of the email.

Technical and Cost portions of Offerors proposal **must** be submitted in separate emails as indicated below in this section, and **must** be prominently identified as “Technical File,” or “Cost File,” on the subject line of each email.

Offerors **must** email:

a) **Technical Proposals:** One (1) ELECTRONIC copy of the proposal containing **ONLY** the Technical Proposal; The Technical Proposals **SHALL NOT** contain any cost information.

   i. **Confidential Information:** If Offeror’s proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit:

      • all of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section 1.F.38) versions for evaluation purposes; **AND**
      • ONE (1) **redacted** electronic version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the subject line of the email and on the first page of the electronic file;
b) **Cost Proposals:** One (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal; The Cost Proposal shall be in separate labeled email from the Technical Proposals.

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**

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 must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Organizational References (sent directly to Procurement Manager)

**Technical Proposal** (File 1) - **Do not include any cost information in the technical proposal.**
   A. Table of Contents
   B. Proposal Summary (Optional)
   C. Response to Technical Specifications
      1. Organizational Experience
      2. Oral Presentation
      3. Mandatory Specifications
      4. Desirable Specifications
      5. Other supporting materials

**Business Specifications** (File 2):
   A. Signed Letter of Transmittal
   B. Signed Campaign Contribution Form
   C. Financial Stability - Financial information considered confidential should be listed as a **Confidential Information** File.
   D. Antitrust Claims
   E. DFA Certification
   F. NM Health Coverage
   G. Affidavit Non-Violation of NM Pay Equity
   H. Affidavit Non-Violation of Labor Codes
   I. Completed Cost (Price Proposal) Response Form
   J. New Mexico Preferences (if applicable)
   K. Response to Contract Terms and Conditions
   L. Offeror’s Additional Terms and Conditions (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 and included in the appropriate section of
the proposal. All discussion of proposed costs, rates or expenses must occur only in File #2 on the Cost Response Form (Appendix D).

A proposal summary may be included by potential Offerors Technical Proposal File #1, 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. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

**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. DETAILED SCOPE OF WORK**

The following scope of work will become part of the Contract Agreement and must be listed and addressed on the proposal submitted to the Department of Cultural Affairs as follows:

**TASK 1: PRE-CONSTRUCTION SERVICES**

The Consultant shall be responsible for providing services during the pre-construction phase of the project, including, but not limited to:

Subtask A:

- Reviewing approved Plans and Specifications thoroughly prior to the Pre-Construction Meeting;
- Coordinating activities of pre-construction phase with utility companies; and
- Monitor scheduling of activities during pre-construction phase.

Subtask B:

- Conducting the pre-construction conference with the Contractor and all stakeholders including preparation of meeting agenda and minutes; and distribute to all applicable entities (not just attendees) within three (3) working days.

**TASK 2: SERVICES DURING CONSTRUCTION**

The Consultant shall be responsible for providing services during construction throughout the duration of the project including, but not limited to:

Subtask A - Project Management:

- Implementation of Schedule: Review and monitor construction schedule which will be provided by the Contractor. Ensure Contractor complies with the Schedule and has ordered materials, supplies and performed work, etc. per their schedule. CMS Consultant shall submit the final draft construction and project schedules to DCA staff for approval. Prepare and maintain a project schedule
identifying the critical path for expeditious project completion.

- Record Management: Maintain all files generated for the Project including daily reports, submittals, transmittals, O & M Manuals, warranties, etc. Ensure DCA Staff receives copies of those items. Upon completion of the project, provide all files to the DCA. Show the proposed filing system to DCA staff prior to the start of the job and obtain their approval, during the pre-construction phase.

- Provide site coordination between the Contractor, DCA and Consultant's Inspector, DCA-appointed consultants, (material testing, inspection, architecture, engineering, etc.), and utility companies.

- Communication with Contractor, Consultant’s Inspector and others, on a daily basis as required.

- Facilitate, coordinate, and oversee the ongoing daily actions required to completely provide the full level of intended services and ensure that the project meets all applicable federal, state, and local requirements.

- Oversee and ensure that all measures of the specific project’s scope of services are completed in a timely and professional manner with an emphasis on providing the DCA with a high-quality project.

- Report to DCA staff and act as a liaison between the DCA and all project stakeholders in order to accomplish the full project services intended by the DCA.

- Check all contract documents to ensure compliance.

- Review and approval of Contractor’s monthly progress report and payment request. The monthly progress report from the CMS Consultant shall be due to DCA on the tenth (10th) of every month and shall contain at a minimum:
  - Overview of work accomplished during the previous month
  - Overview of work to be accomplished the following month
  - Updated schedule
  - Contractor work progress and completion percentage in a summary form and graphs
  - Problem areas, if any, with proposed corrective actions
  - Outstanding issues with deadline to resolve by date
  - Monthly progress photos (coordinate with Inspector Consultant)
  - Approve contractor payment request for partial breakdown of lump sum items
  - Inspector’s daily reports, field inspection diaries and their required submittals shall be included with this package
  - Daily reports written by CMS Consultant of activities they performed

- Prepare daily report of work completed by the CMS Consultant and submit weekly to DCA.

Subtask B - Construction Contract Administration
Review of contract documents at 100% completion for familiarity with project plans and specifications, prior to construction.

Coordination of weekly site meetings with the Contractor, Inspection Consultant and DCA staff/consultants, and preparation and distribution of meeting agenda and minutes within three (3) working days. Participation in all required conferences and progress meetings on a weekly basis.

Establish and maintain project controls and provide administrative, management, and related services necessary to coordinate the work of the Contractor and all sub-contractors in order to facilitate timely completion of the project in accordance with contract documents and DCA objectives.

Provide, manage, coordinate, and ensure timely completion/approvals in response to all Requests for Information (RFI), shop drawings, product data samples, submittals, Change Notices, Intent to File Change Notices, and Construction Change Orders (CCO), as well as review, negotiations and issuance of the CCO to the Contractor.

Follow the established DCA procedures in processing CCO. The following is a brief outline of DCA’s procedures:

- Review requests for CCO received from the Contractor.
- Recommend necessary or desirable project changes to the DCA with Design Consultant’s concurrence.
- Assist DCA with concurrence of the Design Consultant in CCO negotiations and negotiate price with the Contractor.
- Submit recommendations to the DCA relative to change order requests.
- Prepare the CCO, obtain project designer’s concurrence, and obtain Contractor and Design Consultant’s signature on the CCO forms for the DCA’s consideration, review, and approval.

Ensure that contractor’s daily work effort is documented.

- Ensure adequate inspection coverage for the project, coordinate and oversee project Consultant Inspector(s).
- Schedule applicable agency for inspection of electrical services/cabinets, footings, specialty retaining walls, or as otherwise required.
- Coordinate and schedule internet and telephone service with DCA’s Security Specialist and Information Technology staff.
- Provide administrative, management, and related services as required to coordinate work and to complete the project in accordance with the DCA’s objectives for cost, time, and quality. The Consultant shall provide sufficient qualified personnel and management to carry out the requirements of the Project.
- Schedule and conduct pre-construction and construction progress meetings to discuss such matters as procedures, progress, problems, scheduling, and coordination and other project related items. General construction progress
meetings will be required on a weekly basis until the project is completed. Primary attendees will include: Utilities, Consultant’s Inspector, DCA staff, and the Contractor. Prepare meeting agendas, and minutes for all meetings. The minutes shall be prepared and distributed to all attendees within three (3) working days after the meeting. The minutes shall include, but not be limited to, list of attendees with phone numbers and e-mail, synopsis of discussion items, any pertinent information, action items, and follow-up to the action items.

- Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
- Maintain the record copies of the following:
  - Plans, specifications, and contract documents with all changes and modifications.
  - Permits, SWPPP, etc.
  - Addenda(s), change order(s), shop drawings, product data, submittals, and samples, material certifications.
  - Progress payments, inventories, and applicable codes.
  - Contractor’s reports, correspondence, certified payrolls, and accident reports.
  - Survey and layout data and certifications, photographs of as-built locations and depths.
  - List of addresses, telephone and license numbers of General Contractor, all sub- contractors, material suppliers, and utility agencies.
  - Daily reports (logs) of Consultant’s Inspector and CMS Project Manager.

- Determine whether the work of the Contractor is being performed in accordance with the requirements of the contract documents, and endeavor to guard DCA against defects and deficiencies in such work. The Consultant shall make recommendations to the DCA and DCA staff regarding special inspection or testing of work not in accordance with the provision of the contract documents whether or not such work is then fabricated, installed or completed. The Consultant shall also inform the DCA of work that does not conform to the requirements of the contract documents. The Consultant shall review the Contractor’s recommendations for corrective action on observed non-conforming work.
- Identify and report potential contractor claims and recommend resolution.
- Prepare the weekly statement of working days and send to the Contractor on a weekly basis.
- Conduct interviews with the Contractor’s and subcontractor’s employees to ensure labor compliance (prevailing wage, benefits, etc.).
- Compare Certified Payrolls with Inspection Reports, employee interview forms,
and the Prevailing Wage Rates, and verify proper payment in compliance with the project specifications.

- Reviewing working days, contract time, and documenting time extensions. Weekly Statement of Working Days, will be required in the project file.

- Enforcing Labor Compliance by preparing daily reports with required information, including work completed and pay items, monitoring Certified Payrolls and doing spot check labor surveys and interviews, to ensure Prevailing Wages.

- Provide regular monitoring (minimum monthly) of the approved estimates of Total Construction Cost, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Consultant shall identify variances between actual and budgeted or estimated costs, and inform the DCA staff whenever Project costs exceed budgets or estimates.

- Maintain cost accounting records on authorized work performed under unit cost, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- The Consultant shall provide written documentation (e.g. memorandum, letter, email, etc.) to the Contractor and DCA staff, etc., regarding all important issues, decisions, and discussions within three (3) working days.

- The Consultant shall be required to document and submit weekly written progress reports to the DCA staff on multiple construction phases of the project, which shall include information on the Contractor and the Contractor’s work, as well as the entire Project. The CMS Consultant shall also keep a daily log containing a record of weather, the Contractor, work on the site, number of workers, craft or trades, equipment, subcontractors, work accomplished, problems encountered, and other similar relevant data as the Design Consultant may require. The consultant shall make log available to the DCA and submit weekly.

- Observe the contractor’s check-out of utilities, operational systems and equipment for readiness, and assist in their initial start-up testing.

- Determine when the contractor’s work or a designated portion thereof is complete. The Consultant shall prepare a list of incomplete or unsatisfactory items (punch list) and a schedule for their completion. The CMS Consultant shall coordinate the correction and completion of the Work with appointed Inspector.

- Evaluate the completion of the work of the Contractor and make recommendations to the DCA staff when work is ready for final inspection. The CMS Consultant shall assist the DCA staff in conducting final inspection and shall secure and transmit to the DCA required guarantees, affidavits, release, and waivers. The Consultant shall also deliver keys, manuals, and record drawings to the DCA.

- Coordinate close-out of the project; obtain necessary operation manuals, warranties, guarantees, and other applicable necessary information. Provide all
documentation in a well-organized (binders, folders, CDs, etc.) manner in electronic and hard copies.

- Obtain all releases and warranty bonds from the Contractor and sub-contractors. Provide all documentation in a well-organized (binder, folders, CDs, etc.) manner in electronic and hard copies.
- Provide a redline set of any modified plans to the Design Consultant to prepare “drawings of record” and “As-Built” on the Mylars.
- Maintaining well organized photographic/video records.
- Monitoring construction schedules throughout the course of construction.
- Track all work of sub-contractors. Ensure Contractor submits written request prior to substituting a subcontractor.

**TASK 3: SERVICES DURING CONSTRUCTION CLOSE-OUT:**

The Consultant shall be responsible for providing services during construction close-out:

**Subtask A:**

- Substantial and Final Completion services, including:
  - Site inspection to determine if facilities are complete and in compliance with Contract Documents and Plans.
  - Preparation of punch-list and inspection of punch-list corrective actions.
  - Recommendation to DCA staff as to release of Notice of Completion and final payment and retention to Contractor.
  - O&M Manual Submittal and Training Coordination with Contractor, and DCA staff, and O&M review.

**Subtask B:**

- Record Compilation and Submittal, including:
  - Preparation and submittal of a complete set of organized construction contract documentation, and all submittals, transmittals, etc. in filing format approved by DCA staff.
  - Submittal of any record drawings made by CMS Consultant and Contractor during construction.
- Obtain Warranty and Lien Release Information from Contractor and organize in binders.
- Establish an approved record file that supports: 1) adequacy of field control, 2) conformance to contract specifications, 3) payments to contractor 4) daily reports of work done by the Consultant’s CMS Project Manager and Consultant’s Inspector during this project. The file must be complete, organized, and maintained in a manner that permits inspection by the DCA staff at any time.
- Compile, on a compact disc and printed, all photos taken during the progress and final completion of said project.
Subtask C:

- Review As-Built plans prepared by Contractor and Inspector Consultant and ensure they are accurate and signoff (with PE stamp). Submit to DCA Engineer for approval.

General Notes:

- The Consultant does not have authority to make changes or deviations from the Plans and Specifications, except as authorized by the Design Consultant and DCA Engineer.
- Endeavor to achieve satisfactory performance from each of the contractors and recommend courses of action to the DCA Engineer when requirements of a contract are not being fulfilled and the non-performing party will not take satisfactory corrective action from the Consultant.
- Perform warranty walk through within 10 days of the Notice of Completion and provide a list of deficiencies (punch list).
- The extent of the duties, responsibilities, and limitations of authority of consultant as a representative of the DCA during the construction shall not be modified or extended without the written consent of DCA staff.
- Review, keep log of and file all shop drawings, substitutions, RFI’s submittals, etc. and route to the Design Consultant for approval.

B. TECHNICAL SPECIFICATIONS

All proposals must be submitted as follows:

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

1. Organizational Experience

Offerors must:

a) Offeror shall have at least five (5) years of relevant construction management experience. Offeror shall provide a description of the relevant experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of construction management services. All construction management services provided to private sector will also be considered;

b) Provide details on the types of construction management projects. Indicate how many construction projects your organization has managed in the last two years and what percentage of business revenue is derived from that service.
c) Describe at least two project successes and failures associated with construction management services engagements. If there are no failures, provide a written statement attesting to this. Include how each experience improved the Offeror’s services. If available, provide details of performance quality and overall customer satisfaction.

2. Organizational References

Offerors should provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror’s responsibility to ensure the completed forms are received on or before May 20, 2020 for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor’s score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II, Para C.18.

Offerors shall submit the following Business Reference information as part of Offer:

a) Client name;
b) Project description;
c) Project dates (starting and ending);
d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
e) Staff assigned to reference engagement that will be designated for work per this RFP; and
f) Client project manager name, telephone number, fax number and e-mail address.

3. Oral Presentation

If selected as a finalist, Offerors agree to provide, at the Evaluation Committee’s discretion, the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.
4. Mandatory Specification

The Offeror must have at least five (5) years of experience in each of the following categories. Please describe in detail three (3) examples for each reference:

- **Record Management:** Maintenance of all files generated for projects including daily reports, submittals, transmittals, O & M Manuals, warranties, etc.
- **Project Facilitation:** Includes the coordination and oversite of the ongoing daily actions required to completely provide the full level of intended services and ensure that the project meets all applicable federal, state, and local requirements.
- **Project Liaison:** Information hub and lead coordinator between the project owner and all other project stakeholders.
- **Project Management:** Review monthly progress reports, payment requests, Requests for Information (RFI), shop drawings, product data samples, submittals, Change Notices, Intent to File Change Notices, and Construction Change Orders (CCO), as well as review, negotiations and issuance of the CCO to the Contractor. Include project staffing, the Offeror must provide staffing information for critical project personnel. This may take the form of narrative statements or attached resumes.
  - A.1. Attachment A: Resumes (These pages will not count in the page count, limit one page per resume)
  - A.2. Attachment B: Organizational chart(s). These pages do not count in the page count
  - A.3. Attachments C and D: Clarifications and Explanations. These pages do not count in the page count

5. Desirable Specifications

Please describe in detail your experiences in the following categories, include years and projects:

- **Labor Compliance:** Conducting interviews with the Contractor’s and subcontractor’s employees to ensure labor compliance (prevailing wage, benefits, etc.). Comparing Certified Payrolls with Inspection Reports, employee interview forms, and the Prevailing Wage Rates, and verify proper payment in compliance with the project specifications. Enforcing Labor Compliance by preparing daily reports with required information, including work completed and pay items, monitoring Certified Payrolls and doing spot check labor surveys and interviews, to ensure Prevailing Wages.
- **Contract Management:** Reviewing working days, contract time, and documenting time extensions.
- **Cost Accounting:** Maintaining cost accounting records on authorized work performed under unit cost, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records. Providing regular monitoring of the approved estimates of total construction cost, showing actual costs for activities in progress, and estimates for uncompleted tasks.
To receive full points, Offerors must provide up to three (3) examples for each category that thoroughly describe how the Offeror supplied expertise for these projects. In order for these examples to be considered, the Offeror should at minimum provide a descriptive narrative of the project, including the specific challenges from start to finish. All construction management services provided to private sector will also be considered.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror’s proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form must be completed and must be signed by the person authorized to obligate the company. Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and to return a signed, unaltered form will result in Offeror’s disqualification.

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. (See APPENDIX B) Failure to complete and return the signed, unaltered form will result in Offeror’s disqualification.

3. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

4. Performance Surety Bond

Not applicable

5. Antitrust Claims

Each Offeror shall complete and the Assignments of Antitrust Claims Form and include this form in the Business Specification Requirements. Subcontractors and suppliers do not complete the form at this time. (Appendix G).
6. **Department of Finance and Administration Certification**
   Each offeror shall complete and submit the Department of Finance and Administration Agency Certification Form (Appendix H).

7. **NM Health Insurance Coverage**
   Each Offeror shall complete and submit the New Mexico Health Coverage Form (Appendix I).

8. **Affidavit NM Employee Pay Equity**
   Each Offeror shall submit the NM Employee Pay Equity.

9. **Affidavit Non-Violation of Labor Codes**
   Each Offeror shall submit the Non-Violation of Labor Codes.

10. **Cost**
    
    Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by labor, materials, equipment, transportation, configuration, travel, taxes and fees, to include subcontractors and profit to provide the Services described in.

    The formula that will be utilized for the calculation of points for this item will be:

    \[
    \frac{\text{Lowest Proposal Cost}}{\text{Offeror’s Total Cost}} \times 300 = \text{Awarded Points}
    \]

    The lowest cost proposal (from all proposals received) divided by the cost of the Offeror’s proposal submitted; the quotient derived from this calculation is then multiplied by 300 (maximum total points given) and produces the final point total.

11. **NM Resident Business or NM Resident Veterans Preferences**
    
    To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **MUST** include a copy, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.
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.

<table>
<thead>
<tr>
<th>Factors – correspond to section IV.B and IV. C</th>
<th>Points Available</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B. Technical Specifications</strong></td>
<td></td>
</tr>
<tr>
<td>B. 1. Organizational Experience</td>
<td>150 (15%)</td>
</tr>
<tr>
<td>B. 2. Organizational References</td>
<td>75 (7.5%)</td>
</tr>
<tr>
<td>B. 3. Oral Presentations</td>
<td>100 (10%)</td>
</tr>
<tr>
<td>B. 4. Mandatory Specification</td>
<td></td>
</tr>
<tr>
<td>Record Management</td>
<td>50 (5%)</td>
</tr>
<tr>
<td>Project Facilitation</td>
<td>75 (7.5%)</td>
</tr>
<tr>
<td>Project Liaison</td>
<td>50 (5%)</td>
</tr>
<tr>
<td>Project Management</td>
<td>125 (12.5%)</td>
</tr>
<tr>
<td>B. 5. Desirable Specification</td>
<td></td>
</tr>
<tr>
<td>Labor Compliance</td>
<td>25 (2.5%)</td>
</tr>
<tr>
<td>Contract Management</td>
<td>25 (2.5%)</td>
</tr>
<tr>
<td>Cost Accounting</td>
<td>25 (2.5%)</td>
</tr>
<tr>
<td><strong>C. Business Specifications</strong></td>
<td></td>
</tr>
<tr>
<td>C.1. Letter Of Transmittal</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.2. Signed Campaign Contribution Disclosure Form</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.3. Financial Stability</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.4. Completed Assignments of Antitrust Claims Form</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.5. Completed DFA Agency Certification Form</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.6. Completed New Mexico Health Coverage Form</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.7. Affidavit of NM Pay Equity</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.8. Affidavit of Non-Violation of Labor Codes</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.9. Cost</td>
<td>300 (30%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,000 points</strong></td>
</tr>
<tr>
<td>D.1. New Mexico Preference - Resident Vendor Points per Section IV C. 7</td>
<td><strong>50</strong></td>
</tr>
<tr>
<td>D.2. New Mexico Preference - Resident Veterans Points per Section IV C. 7</td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. (Up to 150 points)

The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of construction management services. Refer to criteria outlined in Section IV.B.1.

100 - 150 points for three or more projects of similar scope breadth. Demonstrates a thorough understanding of experience, expertise and knowledge as a provider of construction management services on public projects. Deductions will be made if required items is missing. Strengths of proposal significantly outweigh weaknesses, if any. Little doubt exists, based on the Offeror’s performance record, that the Offeror can perform the proposed effort.

50 – 99 points for two or fewer projects of similar scope breadth, but clear experience with working in construction management services on public projects. Construction experience meets minimum standards. Demonstrates an acceptable understanding of project requirements. Proposal offers some strengths. Some doubt exists, based on the Offeror’s performance record, that the Offeror can perform the proposed effort.

1 – 49 points for no experience with completed projects of similar size and complexity. Demonstrates limited understanding of requirements. Experience is questionable as to whether or not they meet minimum standards necessary for contract performance. Significant doubt exists, based on the Offeror’s performance record, that the Offeror can perform the proposed effort.

2. B.2 Organizational References

Points will be awarded based upon an evaluation of the responses to a series of questions as per Appendix F. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points.

Reference questionnaires are to be submitted directly to the Procurement Manager, not to be submitted with the Offeror’s proposal. Properly Submitted Reference Questionnaires will be considered in this Factor. (Up to 75 points)

3. B.3 Oral Presentation

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda. If the Evaluation Committee
determines that no Oral Presentations are required all Offerors will receive the same amount of total points for this evaluation factor. (Up to 100 points)

4. B.4 Mandatory Specifications (See Table 1)

Refer to mandatory criteria outlined in Section IV.B.4. Lack of a response to any item will result in zero (0) points awarded.

Points will be awarded based on the thoroughness and clarity of the response to:

The Offeror must have at least five (5) years of experience in each of the following categories. Please describe in detail and give three (3) examples for reference:

- A. Record Management: Maintenance of all files generated for projects including daily reports, submittals, transmittals, O & M Manuals, warranties, etc. (Up to 50 points)

- B. Project Facilitation: Includes the coordination and oversite of the ongoing daily actions required to completely provide the full level of intended services and ensure that the project meets all applicable federal, state, and local requirements. (Up to 50 points)

- C. Project Liaison: Information hub and lead coordinator between the project owner all other project stakeholders. (Up to 50 points)

- D. Project Management: Review monthly progress reports, payment requests, Requests for Information (RFI), shop drawings, product data samples, submittals, Change Notices, Intent to File Change Notices, and Construction Change Orders (CCO), as well as review, negotiations and issuance of the CCO to the Contractor. Include Project Staffing: Offeror must provide staffing information for critical project personnel. This may take the form of narrative statements or attached resumes. (Up to 125 points)
  - A.1.Attachment A: Resumes (These pages will not count in the page count, limit one page per resume)
  - A.2.Attachment B: Organizational chart(s). These pages do not count in the page count

5. B.5 Desirable Specifications

To receive full points, Offerors must provide up to three (3) examples for each category that thoroughly describe how the Offeror supplied expertise for these projects. In order for these examples to be considered, the Offeror should at minimum provide a descriptive narrative of the project, including the specific challenges from start to finish. All construction management services provided to private sector will also be
considered. Points will be awarded based on the thoroughness and clarity of the response to:

- **Labor Compliance:** Conducting interviews with the Contractor’s and subcontractor’s employees to ensure labor compliance (prevailing wage, benefits, etc.). Comparing Certified Payrolls with Inspection Reports, employee interview forms, and the Prevailing Wage Rates, and verify proper payment in compliance with the project specifications. Enforcing Labor Compliance by preparing daily reports with required information, including work completed and pay items, monitoring Certified Payrolls and doing spot check labor surveys and interviews, to ensure Prevailing Wages. *(Up to 25 points)*

- **Contract Management:** Reviewing working days, contract time, and documenting time extensions. *(Up to 25 points)*

- **Cost Accounting:** Maintaining cost accounting records on authorized work performed under unit cost, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records. Providing regular monitoring of the approved estimates of total construction cost, showing actual costs for activities in progress, and estimates for uncompleted tasks. *(Up to 25 points)*

Refer to mandatory criteria outlined in Section IV.B.5. Lack of a response to any item will result in zero (0) points awarded.

6. **C.1. Letter of Transmittal**
   Pass/Fail. No points assigned.

7. **C.2. Campaign Contribution Disclosure Form**
   Pass/Fail only. No points assigned.

8. **C.3. Financial Stability**
   Refer to mandatory criteria outlined in Section IV.C.3. Pass/Fail only. No points assigned.

9. **C.4 Assignments of Antitrust Claims Form**
   Pass/Fail only. No points assigned

10. **C.5. DFA Agency Certification Form**
    Pass/Fail only. No points assigned

11. **C.6. New Mexico Health Coverage Form**
    Pass/Fail only. No points assigned
12. **C.7. Affidavit of NM Pay Equity**
   Pass/Fail only. No points assigned

13. **C.8. Affidavit of Non-Violation of Labor Codes**
   Pass/Fail only. No points assigned.

   Offerors must complete the Cost Response Form in APPENDIX D. Price offered must be responsive to the RFP and realistic in respect to project plans and specifications.

   The formula that will be utilized for the calculation of points for this item will be:

   \[
   \frac{\text{Lowest Proposal Cost}}{\text{Offeror's Total Cost}} \times 300 = \text{Awarded Points}
   \]

   The lowest cost proposal (from all proposals received) divided by the cost of the Offeror's proposal submitted; the quotient derived from this calculation is then multiplied by 300 (maximum total points given) and produces the final point total.

15. **C.10. New Mexico Preferences**
   Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended).

   A. **New Mexico Business Preference**
   If the Offeror has provided a copy of their Preference Certificate, the Preference Point for a New Mexico Business is 50 points (5%).

   B. **New Mexico Resident Veterans Business Preference**
   If the Offeror has provided a copy of their Preference Certificate, the Preference Point is 100 points (10%).

**C. 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 of 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 Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM
APPENDIX A
REQUEST FOR PROPOSAL
CONSTRUCTION MANAGEMENT SERVICES
20-505-2000-50014
ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX G.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 3:00 PM MST, April 30th, 2020. 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.

Kristine Navarro-McElhaney/ Danelle Lucero, Procurement Manager
Construction Management Services 20-505-2000-50014
NM Dept. Of Cultural Affairs
407 Galisteo Street, Rm. 264
E-mail: Kristine.Navarro-Mc@state.nm.us
APPENDIX B

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

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

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

The following definitions apply:

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: __________________________________________________________

Relation to Prospective Contractor: ______________________________________________

Name of Applicable Public Official: ______________________________________________

Date Contribution(s) Made: ______________________________________________________

Amount(s) of Contribution(s) ____________________________________________________

Nature of Contribution(s) _______________________________________________________

Purpose of Contribution(s) ______________________________________________________

(Attach extra pages if necessary)

_________________________________________ ________________________________
Signature Date

__________________________________________
44
Title (position)

—OR—

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

______________________________  __________________________
Signature Date

______________________________
Title (Position)
APPENDIX C

SAMPLE CONTRACT

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Cultural Affairs (“DCA”), hereinafter referred to as the “Owner” or the “Agency,” and ___________________________ (Business ID# ___________), a ______ corporation, hereinafter referred to as the “Construction Manager,” (collectively, “the Parties”) and is effective as of the date set forth below.

RECITALS

WHEREAS, Agency has determined to have a museum of modern art (the “Project”) constructed on its real property located at 404 Montezuma Street, Santa Fe, NM 87501 (the “Property”);

WHEREAS, the Agency anticipates entering into a construction contract for the building of the Project on the Property by a builder (the “Builder”);

WHEREAS, the Agency issued its RFP seeking construction management services in connection with the Project;

WHEREAS, Construction Manager submitted its proposal to provide said construction management services, a copy of which is attached hereto as Exhibit 1

WHEREAS, the Owner has let this contract according to the established State Purchasing procedures for Contracts of the type and amount let; and

The OWNER and the CONSTRUCTION MANAGER agree as set forth below:

1. Contract Documents
The Contract Documents consist of the following to date:
This Agreement
Construction Manager’s Bid/Proposal Dated: ______________, 2020
Modifications Issued after Execution of this Agreement
Copy of Construction Manager’s Licenses
Notice to Proceed
These documents form the Contract, and all are as fully a part of the Contract, as if attached to this Agreement, or repeated herein.

2. Scope of Work
The Construction Manager shall perform the following work:

TASK 1: PRE-CONSTRUCTION SERVICES
The Consultant shall be responsible for providing services during the pre-construction phase of the project, including, but not limited to:

Subtask A:
- Reviewing approved Plans and Specifications thoroughly prior to the Pre-Construction Meeting;
- Coordinating activities of pre-construction phase with utility companies; and
- Monitor scheduling of activities during pre-construction phase.

Subtask B:
- Conducting the pre-construction conference with the Builder and all stakeholders including preparation of meeting agenda and minutes; and distribute to all applicable entities (not just attendees) within three (3) working days.

TASK 2: SERVICES DURING CONSTRUCTION
The Consultant shall be responsible for providing services during construction throughout the duration of the project including, but not limited to:

Subtask A - Project Management:
- Implementation of Schedule: Review and monitor construction schedule which will be provided by the Builder. Ensure Builder complies with the Schedule and has ordered materials, supplies and performed work, etc. per their schedule. CMS Consultant shall submit the final draft construction and project schedules to DCA staff for approval. Prepare and maintain a project schedule identifying the critical path for expeditious project completion.
- Record Management: Maintain all files generated for the Project including daily reports, submittals, transmittals, O & M Manuals, warranties, etc. Ensure DCA Staff receives copies of those items. Upon completion of the project, provide all files to the DCA. Show the proposed filing system to DCA staff prior to the start of the job and obtain their approval, during the pre-construction phase.
- Provide site coordination between the Builder, DCA and Consultant’s Inspector, DCA-appointed consultants, (material testing, inspection, architecture, engineering, etc.), and utility companies.
- Communication with Builder, Consultant’s Inspector and others, on a daily basis as required.
- Facilitate, coordinate, and oversee the ongoing daily actions required to completely provide the full level of intended services and ensure that the project meets all applicable federal, state, and local requirements.
Oversee and ensure that all measures of the specific project’s scope of services are completed in a timely and professional manner with an emphasis on providing the DCA with a high-quality project.

Report to DCA staff and act as a liaison between the DCA and all project stakeholders in order to accomplish the full project services intended by the DCA.

Check all contract documents to ensure compliance.

Review and approval of Builder’s monthly progress report and payment request. The monthly progress report from the CMS Consultant shall be due to DCA on the tenth (10th) of every month and shall contain at a minimum:

- Overview of work accomplished during the previous month
- Overview of work to be accomplished the following month
- Updated schedule
- Builder work progress and completion percentage in a summary form and graphs
- Problem areas, if any, with proposed corrective actions
- Outstanding issues with deadline to resolve by date
- Monthly progress photos
- Approve Builder payment request for partial breakdown of lump sum items
- Inspector’s daily reports, field inspection diaries and their required submittals shall be included with this package
- Daily reports written by CMS Consultant of activities they performed

Prepare daily report of work completed by the CMS Consultant and submit weekly to DCA.

Subtask B - Construction Contract Administration

- Review of contract documents at 100% completion for familiarity with project plans and specifications, prior to construction.
- Coordination of weekly site meetings with the Builder, Inspection Consultant and DCA staff/consultants, and preparation and distribution of meeting agenda and minutes within three (3) working days. Participation in all required conferences and progress meetings on a weekly basis.
- Establish and maintain project controls and provide administrative, management, and related services necessary to coordinate the work of the Builder and all sub-contractors in order to facilitate timely completion of the project in accordance with contract documents and DCA objectives.
- Provide, manage, coordinate, and ensure timely completion/approvals in response to all Requests for Information (RFI), shop drawings, product data samples, submittals, Change Notices, Intent to File Change Notices, and Construction Change Orders (CCO), as well as review, negotiations and issuance of the CCO to the Builder.
- Follow the established DCA procedures in processing CCO. The following is a brief outline of DCA’s procedures:
• Review requests for CCO received from the Builder.
• Recommend necessary or desirable project changes to the DCA with Design Consultant’s concurrence.
• Assist DCA with concurrence of the Design Consultant in CCO negotiations and negotiate price with the Builder.
• Submit recommendations to the DCA relative to change order requests.
• Prepare the CCO, obtain project designer’s concurrence, and obtain Builder and Design Consultant’s signature on the CCO forms for the DCA’s consideration, review, and approval.

Ensure that Builder’s daily work effort is documented.
• Ensure adequate inspection coverage for the project.
• Schedule applicable agency for inspection of electrical services/cabinets, footings, specialty retaining walls, or as otherwise required.
• Coordinate and schedule internet and telephone service with DCA’s Security Specialist and Information Technology staff.
• Provide administrative, management, and related services as required to coordinate work and to complete the project in accordance with the DCA’s objectives for cost, time, and quality. The Consultant shall provide sufficient qualified personnel and management to carry out the requirements of the Project.
• Schedule and conduct pre-construction and construction progress meetings to discuss such matters as procedures, progress, problems, scheduling, and coordination and other project related items. General construction progress meetings will be required on a weekly basis until the project is completed. Primary attendees will include: Utilities, Consultant’s Inspector, DCA staff, and the Builder. Prepare meeting agendas, and minutes for all meetings. The minutes shall be prepared and distributed to all attendees within three (3) working days after the meeting. The minutes shall include, but not be limited to, list of attendees with phone numbers and e-mail, synopsis of discussion items, any pertinent information, action items, and follow-up to the action items.
• Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
• Maintain the record copies of the following:
  • Plans, specifications, and contract documents with all changes and modifications.
  • Permits, SWPPP, etc.
  • Addenda(s), change order(s), shop drawings, product data, submittals, and samples, material certifications.
  • Progress payments, inventories, and applicable codes.
  • Builder’s reports, correspondence, certified payrolls, and accident reports.
• Survey and layout data and certifications, photographs of as-built locations and depths.
• List of addresses, telephone and license numbers of Builder, all sub-contractors, material suppliers, and utility agencies.
• Daily reports (logs) of Consultant’s Inspector and CMS Project Manager.

• Determine whether the work of the Builder is being performed in accordance with the requirements of the contract documents, and endeavor to guard DCA against defects and deficiencies in such work. The Consultant shall make recommendations to the DCA and DCA staff regarding special inspection or testing of work not in accordance with the provision of the contract documents whether or not such work is then fabricated, installed or completed. The Consultant shall also inform the DCA of work that does not conform to the requirements of the contract documents. The Consultant shall review the Builder’s recommendations for corrective action on observed non-conforming work.
• Identify and report potential Builder claims and recommend resolution.
• Prepare the weekly statement of working days and send to the Builder on a weekly basis.
• Conduct interviews with the Builder’s and subcontractor’s employees to ensure labor compliance (prevailing wage, benefits, etc.).
• Compare Certified Payrolls with Inspection Reports, employee interview forms, and the Prevailing Wage Rates, and verify proper payment in compliance with the project specifications.
• Reviewing working days, contract time, and documenting time extensions. Weekly Statement of Working Days, will be required in the project file.
• Enforcing Labor Compliance by preparing daily reports with required information, including work completed and pay items, monitoring Certified Payrolls and doing spot check labor surveys and interviews, to ensure Prevailing Wages.
• Provide regular monitoring (minimum monthly) of the approved estimates of Total Construction Cost, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Consultant shall identify variances between actual and budgeted or estimated costs, and inform the DCA staff whenever Project costs exceed budgets or estimates.
• Maintain cost accounting records on authorized work performed under unit cost, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
• The Consultant shall provide written documentation (e.g. memorandum, letter, email, etc.) to the Builder and DCA staff, etc., regarding all important issues, decisions, and discussions within three (3) working days.
• The Consultant shall be required to document and submit weekly written progress reports to the DCA staff on multiple construction phases of the project, which shall include information on the Builder and the Builder’s work, as well as the entire Project. The CMS Consultant shall also keep a
daily log containing a record of weather, the Builder, work on the site, number of workers, craft or trades, equipment, subcontractors, work accomplished, problems encountered, and other similar relevant data as the Design Consultant may require. The consultant shall make log available to the DCA and submit weekly.

- Observe the Builder’s check-out of utilities, operational systems and equipment for readiness, and assist in their initial start-up testing.
- Determine when the Builder’s work or a designated portion thereof is complete. The Consultant shall prepare a list of incomplete or unsatisfactory items (punch list) and a schedule for their completion.
- Evaluate the completion of the work of the Builder and make recommendations to the DCA staff when work is ready for final inspection. The CMS Consultant shall assist the DCA staff in conducting final inspection and shall secure and transmit to the DCA required guarantees, affidavits, release, and waivers. The Consultant shall also deliver keys, manuals, and record drawings to the DCA.
- Coordinate close-out of the project; obtain necessary operation manuals, warranties, guarantees, and other applicable necessary information. Provide all documentation in a well-organized (binders, folders, CDs, etc.) manner in electronic and hard copies.
- Obtain all releases and warranty bonds from the Builder and subcontractors. Provide all documentation in a well-organized (binder, folders, CDs, etc.) manner in electronic and hard copies.
- Provide a redline set of any modified plans to the Design Consultant to prepare “drawings of record” and “As-Built” on the Mylars.
- Maintaining well organized photographic/video records.

- Monitoring construction schedules throughout the course of construction.
- Track all work of sub-contractors. Ensure Builder submits written request prior to substituting a subcontractor.

**TASK 3: SERVICES DURING CONSTRUCTION CLOSE-OUT:**
The Consultant shall be responsible for providing services during construction close-out:

**Subtask A:**

- Substantial and Final Completion services, including:
  - Site inspection to determine if facilities are complete and in compliance with Contract Documents and Plans.
  - Preparation of punch-list and inspection of punch-list corrective actions.
  - Recommendation to DCA staff as to release of Notice of Completion and final payment and retention to Builder.
  - O&M Manual Submittal and Training Coordination with Builder, and DCA staff, and O&M review.

**Subtask B:**
- Record Compilation and Submittal, including:
  - Preparation and submittal of a complete set of organized construction contract documentation, and all submittals, transmittals, etc. in filing format approved by DCA staff.
  - Submittal of any record drawings made by CMS Consultant and Builder during construction.
- Obtain Warranty and Lien Release Information from Builder and organize in binders.
- Establish an approved record file that supports: 1) adequacy of field control, 2) conformance to contract specifications, 3) payments to Builder 4) daily reports of work done by the Consultant’s CMS Project Manager and Consultant’s Inspector during this project. The file must be complete, organized, and maintained in a manner that permits inspection by the DCA staff at any time.
- Compile, on a compact disc and printed, all photos taken during the progress and final completion of said project.

Subtask C:
- Review As-Built plans prepared by Builder and ensure they are accurate and signoff (with PE stamp). Submit to DCA Engineer for approval.

General Notes:
- The Consultant does not have authority to make changes or deviations from the Plans and Specifications, except as authorized by the Design Consultant and DCA Engineer.
- Endeavor to achieve satisfactory performance from each of the Builders and recommend courses of action to the DCA Engineer when requirements of a contract are not being fulfilled and the non-performing party will not take satisfactory corrective action from the Consultant.
- Perform warranty walk through within 10 days of the Notice of Completion and provide a list of deficiencies (punch list).
- The extent of the duties, responsibilities, and limitations of authority of consultant as a representative of the DCA during the construction shall not be modified or extended without the written consent of DCA staff.
- Review, keep log of and file all shop drawings, substitutions, RFI’s submittals, etc. and route to the Design Consultant for approval.

3. Term
The Work to be performed under this Contract shall commence no later than ten (10) consecutive calendar days after the date of written “Notice to Proceed”. Substantial Completion shall be achieved not later than ___________, 20__, except as hereafter extended by the Owner by valid written Change Order. This Agreement shall terminate on ______________, unless terminated pursuant to Article 7d (Termination) or Article 6 (Appropriations). The Agency reserves the right to renew this Agreement on an annual basis by mutual agreement of the Parties, not to exceed a total of EIGHT years in accordance with NMSA 1978 §13-1-150.

Should the Construction Manager neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Construction Manager agrees, in partial consideration for the
award of this Contract, to pay to the Owner the amount of One Hundred Dollars ($100.00) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

4. **Compensation**

The Owner shall pay the Construction Manager in current funds for the performance and completion of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of _________________ ($_______), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling dollars and cents ($) shall be paid by the Owner to the Construction Manager. The total amount payable to the Construction Manager under this Agreement, including gross receipts tax and expenses, shall not exceed EIGHT HUNDRED ELEVEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT dollars and SIXTY-ONE cents ($811,488.61).

A copy of the Construction Manager’s Estimate 447, showing Construction Manager’s pricing for portions of the work is attached as a part of Exhibit 1 hereto.

**If the state gross receipts tax or local option tax increases the Construction Manager must submit a request for a change order in order to increase the state gross receipts tax or local option tax on this Contract (1.4.1.24 NMAC).**

The tax shall be shown as a separate amount on each application for payment made under the contract.[56]

5. **Progress Payments**

Based upon applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following receipt by the Owner of the undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Sum, less such amounts for all incomplete Work and unsettled claims, which shall be paid in accordance with Article 6 of this Contract.

Valid, undisputed payments due and unpaid shall bear interest from the date payment is due, at the legal rate established by the Prompt Payment Act Laws of 2001, Chapter 57, Section 5 NMSA 1978.[57]

6. **Final Payment**
Final payment constituting the entire undisputed and unpaid balance of the Contract Sum, shall be paid by the Owner to the Construction Manager within ten (10) days after receipt of notification by the Owner from Construction Manager, that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final application for Payment has been issued by Construction Manager. In addition, the Construction Manager shall provide to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety, if such consent is applicable.

7. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause at any time. The Construction Manager may only terminate this Agreement based upon the Agency’s uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1) Except as otherwise provided in Paragraph (5)(B)(3), the Agency shall give Construction Manager written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Construction Manager shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Construction Manager’s notice of termination shall only be effective (i) if the 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 Agency does not, within the thirty (30) day notice period, notify the Construction Manager 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 Construction Manager (i) if the Construction Manager becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Construction Manager is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Article 6 (Appropriations) of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Construction Manager’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 Construction Manager 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 AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONSTRUCTION MANAGER’S DEFAULT/BREACH OF THIS AGREEMENT.

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

8. Appropriations.
The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Construction Manager. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Construction Manager and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Construction Manager 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.

9. Amendment.
This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Construction Manager 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 Articles 5 and 6 herein, or to agree to the reduced funding.

10. Status of Construction Manager.
The Construction Manager and its agents and employees are independent Construction Managers performing services for the Agency and are not employees of the State of New Mexico. The Construction Manager 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 State of New Mexico as a result of this Agreement. The Construction Manager acknowledges that all sums received hereunder are reportable by the Construction Manager for tax purposes, including without limitation, self-employment and business income tax. The Construction Manager agrees not to purport to bind the State of New Mexico unless the Construction Manager has express written authority to do so, and then only within the strict limits of that authority.

11. Assignment.
The Construction Manager 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 Agency.

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

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

The Agency may inspect, at any reasonable time during Construction Manager’s regular business hours and upon prior written notice, the Construction Manager’s place of business, subcontractor which is related to the performance of this Agreement.

15. Records and Audit.
During the term of this Agreement and for three years thereafter, the Construction Manager shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the Agency, the State Auditor and other appropriate state and federal authorities. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

The Construction Manager, upon final payment of the amount due under this Agreement, releases the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Construction Manager agrees not to purport to bind the State of New Mexico, unless the Construction Manager has express written authority to do so, and then only within the strict limits of that authority.

17. Confidentiality.
A. Any confidential information provided to or developed by the Construction Manager in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Construction Manager without the prior written approval of the Agency.
B. Construction Manager shall maintain complete confidential records for the benefit of clients, sufficient to fulfill the provisions of this Agreement and to document the services rendered under this Agreement. All records maintained pursuant to this provision shall be available for inspection by the Agency.
C. Construction Manager shall comply with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), and all other applicable regulations and other state and federal rules, regulations and laws protecting the confidentiality of information. If Construction Manager may reasonably be expected to have access to Agency’s Protected Health Information (PHI) as defined by HIPAA, Construction Manager shall execute the HIPAA CONSTRUCTION MANAGER AGREEMENT as a separately executed mandatory agreement, which is hereby incorporated by reference into and made part of this Agreement. Failure to execute the HIPAA CONSTRUCTION MANAGER AGREEMENT, when required by the Agency, shall constitute grounds for termination of this Agreement, in accordance with Article 5 (Termination) of this Agreement.

18. Conflict of Interest; Governmental Conduct Act.
A. The Construction Manager 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 Construction Manager 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 Construction Manager specifically represents and warrants that:

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

2) this Agreement complies with NMSA 1978, §10-16-7(A) because (i) the Construction Manager is not a public officer or employee of the State; (ii) the Construction Manager is not a member of the family of a public officer or employee of the State; (iii) the Construction Manager 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 Construction Manager is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State 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 Construction Manager is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Construction Manager is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency’s making this Agreement;

4) this Agreement complies with NMSA 1978, §10-16-9(A) because (i) the Construction Manager is not a legislator; (ii) the Construction Manager is not a member of a legislator’s family; (iii) the Construction Manager is not a business in which a legislator or a legislator’s family has a substantial interest; or (iv) if the Construction Manager is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator’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 Construction Manager has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement; and

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

C. Construction Manager’s representations and warranties in Paragraphs A and B of this Article 16 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Construction Manager shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Construction Manager learns that Construction Manager’s representations and warranties in Paragraphs A and B of this Article 16
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 Construction Manager’s representations and warranties in Paragraphs A and B of this Article 16 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 Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement. 

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 16.

19. Approval of Construction Manager Representative(s).
The Agency reserves the right to require a change in Construction Manager representative(s) if the assigned representative(s) are not, in the opinion of the Agency, adequately serving the needs of the State of New Mexico.

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.

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

The Construction Manager 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 Construction Manager 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 Construction Manager is found not to be in compliance with these requirements during the life of this Agreement, Construction Manager agrees to take appropriate steps to correct these deficiencies.

23. Indemnification.
The Construction Manager shall defend, indemnify and hold harmless the Agency and the State of New Mexico from any and all demands, actions, proceedings, claims, causes of action, costs, damages, injuries, judgments, attorneys’ fees and all other liabilities and expenses, including attorneys fees, of any kind from any source which may arise out of or in connection with the performance of this Agreement, caused by the acts or failure to act of the Construction Manager, its officers, employees, servants, subcontractors, invitees, clients or agents. In the event that any action, suit or proceeding related to the services performed by the Construction Manager or any officer, agent, employee, servant, invitee, client or subcontractor under this Agreement is brought
against the Construction Manager, the Construction Manager shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

A. If Construction Manager 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, Construction Manager certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, 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 Construction Manager and the State exceed $250,000.00.
B. Construction Manager 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. Construction Manager 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://insurenewmexico.state.nm.us/.

25. 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 New Mexico court of competent jurisdiction in accordance with NMSA 1978, §38-3-1(G). By execution of this Agreement, Construction Manager 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.

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

27. 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 Construction Manager’s best and final offer; and (3) the Construction Manager’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 Construction Manager’s best and final offer if such has been made and accepted by the SPA or Agency; and (5) the Construction Manager’s response to the request for proposals.

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

29. Inspection of Services.
If this contract is for the purchase of services, the following terms shall apply.
A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.
B. The Construction Manager shall provide and maintain an inspection system acceptable to the Agency covering the services under this Agreement. Complete records of all inspection work performed by the Construction Manager shall be maintained and made available to the Agency during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
C. The 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 Agency shall perform inspections and tests in a manner that will not unduly delay or interfere with Construction Manager’s performance.
D. If the Agency performs inspections or tests on the premises of the Construction Manager or a subcontractor, the Construction Manager shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
E. If any of the services do not conform to the requirements of this Agreement, the Agency may require the Construction Manager to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the Agency may: (1) require the Construction Manager to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and (2) reduce the contract price to reflect the reduced value of the services performed.
F. If the Construction Manager 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 Agency may: (1) by contract or otherwise, perform the services and charge to the Construction Manager any cost incurred by the Agency that is directly related to the performance of such service; or (2) terminate the contract for default. THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONSTRUCTION MANAGER’S DEFAULT/BREACH OF THIS AGREEMENT.

30. Insurance.
If the services contemplated under this Agreement will be performed on or in State facilities or property, Construction Manager shall maintain in force during the entire term of this Agreement, the following minimum insurance coverage(s), naming the State of New Mexico, General Services Department or the Agency as additional insured.
A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employer’s liability: $100,000.00.
B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the
Construction Manager has assumed under this contract). Limits shall not be less than the following:

1) Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.
2) Property damage or combined single limit coverage: $1,000,000.
3) Automobile liability (including non-owned automobile coverage): $1,000,000.
4) Umbrella: $1,000,000.

C. Construction Manager shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department, the Department of Cultural Affairs and the Historic Sites and Monuments Division as additional insureds and provide for 30 days’ cancellation notice on any Certificate of Insurance form furnished by Construction Manager. 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.

31. 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.

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

33. 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.

34. Patent, Copyright and Trade Secret Indemnification.
A. Construction Manager shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys’ fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the Agency based upon Construction Manager’s trade secret infringement relating to any product or services provided under this Agreement, the Construction Manager agrees to reimburse the state for all costs, attorneys’ fees and amount of the judgement. To qualify for such defense and/or payment, the Agency shall:

1) Give the Construction Manager prompt written notice within 48 hours of any claim;
2) Allow the Construction Manager to control the defense of settlement of the claim; and
3) Cooperate with the Construction Manager in a reasonable way to facilitate the defense or settlement of the claim.
B. If any product or service becomes, or in the Construction Manager’s opinion is likely to become the subject of a claim of infringement, the Construction Manager shall at its option and expense:
1) Provide the Agency the right to continue using the product or service and fully indemnify the Agency against all claims that may arise out of the Agency’s use of the product or service;
2) Replace or modify the product or service so that it becomes non-infringing; or
3) Accept the return of the product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Construction Manager. The Construction Manager’s obligation will be void as to any product or service modified by the Agency to the extent such modification is the cause of the claim.

35. Survival.
The Agreement Articles entitled “Patent, Copyright, Trademark, and Trade Secret Indemnification”; “Indemnification”; and “Limitation of Liability” shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

36. Employee Pay Equity Reporting.
Construction Manager 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 contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If Construction Manager has 250 or more employees, Construction Manager must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Construction Manager also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract 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 contract, whichever comes first. Should Construction Manager not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Construction Manager 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. Construction Manager also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Construction Manager further agrees that, should one or more subcontractors not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Construction Manager will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Construction Manager shall submit the required form(s) to the department as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Article. Construction Manager acknowledges that this subcontractor requirement applies even though Construction Manager itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding
the foregoing, if this contract was procured pursuant to a solicitation, and if Construction Manager has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

37. Suspension, Delay or Interruption of Work.
The Agency may, without cause, order the Construction Manager, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the Agency may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Construction Manager’s compliance therewith. Upon receipt of such notice, Construction Manager shall leave the jobsite and any equipment in a safe condition prior to departing. Construction Manager must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Construction Manager costs incurred directly tied to the suspension itself and not otherwise covered by contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Article 7 of this Agreement.

38. Notices.
All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as follows:

THE OWNER:

Nick Schiavo, Deputy Secretary
Bataan Memorial Building
407 Galisteo Street; Room 260
Santa Fe, NM 87501
Cell: (505) 629-2244
Fax: (505) 827-
Email: nick.schiavo@state.nm.us

With a copy to:

New Mexico Museum of Art
Attn: Mark White, Interim Director
107 West Palace Avenue
Santa Fe, NM 87501
Tel: (505) 476-5072
Fax: (505) 476-5076
Email: MarkA.White@state.nm.us

THE CONSTRUCTION MANAGER:

Tel:
Mobile:
Email:
With a copy to:

NM Department of Cultural Affairs  
Attn: Legal  
Bataan Memorial Building; Room 259  
407 Galisteo Street  
Santa Fe, NM  87501  
Tel: (505) 660-9527  
Email: dca-legal@state.nm.us

The Contract Administrator for this Agreement is Nick Schiavo.  This individual is designated to confirm deliverables from the Construction Manager and to administer this Agreement on behalf of the Agency.  The Contract Administrator may be reached by phone at (505) 827-8440 by email at nick.schiavo@state.nm.us .

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

41. 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.

42. Authority.  
If Construction Manager is other than a natural person, the individual(s) signing this Agreement on behalf of Construction Manager represents and warrants that he or she has the power and authority to bind Construction Manager, and that no further action, resolution, or approval from Construction Manager is necessary to enter into a binding contract.

43. Effective.  
This Agreement shall neither become effective nor binding until signed by all parties which are required to sign this Agreement.

44. Gender, Singular/Plural.  
Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

45. Captions and Section Headings.  
The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

46. Number of Originals.
This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

47. Certificates and Documents Incorporated.
All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

48. Multiple Originals.
This Agreement may be signed in multiple counterparts that together shall constitute a single instrument.

49. Transmitted Signatures
The Parties stipulate, acknowledge and agree that the facsimile, email or other electronically communicated signature of a party by that party shall be legally binding upon that party for the purposes of ensuring the efficient formation, amendment and handling of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates below.

By: ___________________________ Date: ____________
    Construction Manager

Approved for legal sufficiency:

By: ___________________________ Date: ____________
    Peter Ives, General Counsel
    Department of Cultural Affairs, Agency

By: ___________________________ Date: ____________
    Greg Geisler, Chief Financial Officer
    Department of Cultural Affairs, Agency

By: ___________________________ Date: ____________
    Debra Garcia y Griego, Cabinet Secretary
    Department of Cultural Affairs, Agency

The records of the Taxation and Revenue Department reflect that the Construction Manager is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

CRS ID Number:

By: ___________________________ Date: ____________
Prompt Payment Act. Payments prompt pay required: withholding prohibited. Except as provided in Subsection B of this section, all construction contracts shall provide that payment for amounts due shall be paid within twenty-one days after the owner receives an undisputed request for payment. Payment by the owner to the Construction Manager may be made by first-class mailing, electronic fund transfer or by hand delivery of the undisputed amount of a pay request based on work completed or services provided under the contract. If the owner fails to pay the Construction Manager within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the Construction Manager beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.
**APPENDIX D**

**COST RESPONSE FORM**

<table>
<thead>
<tr>
<th>Description</th>
<th>Type</th>
<th>Quantity</th>
<th>Cost per Item</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Option Year 1: (07/01/2020 thru 06/30/2021) Price: $_________________

(includes all labor, materials, equipment, transportation, configuration, taxes and fees. To include subcontractors and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 2: (07/01/2020 thru 06/30/2020) Price: $_________________

(includes all labor, materials, equipment, transportation, configuration, taxes and fees. To include subcontractors and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)
APPENDIX E

LETTER OF TRANSMITTAL FORM
APPENDIX E
Letter of Transmittal Form

RFP#: _______________________________
Offeror Name: _____________________  FED ID# _______________________________

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-Contractors (Select one)
   ____ No sub-contractors will be used in the performance of any resultant contract OR
   ____ The following sub-contractors 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 Subcontractors 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 acknowledge receipt of any and all amendments to this RFP.

___________________________________________  _________________, 2020
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)
APPENDIX F

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror’s experience relevant to the scope of work in an effort to establish Offeror’s responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to: Kristine Navarro-McElhaney, Procurement Manager, Kristine.Navarro-Mc@state.nm.us by May 20, 2020 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.
RFP # 20-505-2000-5014
ORGANIZATIONAL REFERENCE QUESTIONNAIRE FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, Department of Cultural Affairs via e-mail at:

- Name: Kristine Navarro-McElhaney, Procurement Manager
- Address: 407 Galisteo Street Santa Fe 87501

- Telephone: 505.690-5284
- Email: Kristine-navarro-mc@state.nm.us

no later than May 20, 2020 and must not be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

<table>
<thead>
<tr>
<th>Company providing reference:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact name and title/position</td>
<td></td>
</tr>
<tr>
<td>Contact telephone number</td>
<td></td>
</tr>
<tr>
<td>Contact e-mail address</td>
<td></td>
</tr>
<tr>
<td>Project description;</td>
<td></td>
</tr>
<tr>
<td>Project dates (starting and ending);</td>
<td></td>
</tr>
<tr>
<td>Technical environment for the project your providing a reference (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);</td>
<td></td>
</tr>
</tbody>
</table>
QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
   COMMENTS:

2. How would you rate this firm's knowledge and expertise?
   ______ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
   ______ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
   ______ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
   ______ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:
6. Who were the vendor’s principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating? 
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: ___________________________ Rating: 
Name: ___________________________ Rating: 
Name: ___________________________ Rating: 
Name: ___________________________ Rating: 

COMMENTS: 

7. How satisfied are you with the products developed by the vendor? 
______ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS: 

8. With which aspect(s) of this vendor's services are you most satisfied? 
COMMENTS: 

9. With which aspect(s) of this vendor's services are you least satisfied? 
COMMENTS: 

10. Would you recommend this vendor's services to your organization again? 
COMMENTS: 
APPENDIX G

ASSIGNMENTS OF ANTITRUST CLAIMS FORM
APPENDIX G: ASSIGNMENTS OF ANTITRUST CLAIMS FORM

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AND SUBSUBCONTRACTORS OF CONTRACTORS ON STATE CONTRACTS

PROJECT: Construction Management Services PROJECT NO:

FIRM NAME:

ADDRESS:

PHONE NO.:

________________________________________________________ agrees that any and all claims which it may have or may inure to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the State, including the right to any treble damages attributable thereto.

FIRM: _____________________________________________

BY: _____________________________________________
Signed by Individual empowered to obligate Suppliers, Subcontractors, or Sub-subcontractors
APPENDIX H: DEPARTMENT OF FINANCE AND ADMINISTRATION AGENCY CERTIFICATION FORM

The Department of Cultural Affairs hereby certifies the following in regard to the attached contractual agreement between the Agency and _________________________ (NAME OF CONTRACTOR):

1) This Contractor IS/IS NOT (select one) a former state employee.*

2) This Contractor IS/IS NOT (select one) a current state employee or a legislator or the family member of a current state employee or legislator, or a business in which a current state employee or legislator or family member of the current state employee or legislator has an interest of greater than twenty percent (20%).*

PLEASE NOTE: No contract may be awarded to a current state employee or legislator, or to a family member of a current state employee or legislator, or to a business in which any of these persons has an interest greater than twenty percent (20%) unless such contract is awarded pursuant to the Procurement Code, except such persons or businesses cannot be awarded a contract through a sole source or small purchase. (See Section 10-16-1 through 10-16-18 NMSA 1978 for further information).

3) This Contractor is a (check one):

   FOR PROFIT VENDOR _____
   NOT FOR PROFIT VENDOR _____

4) This PSA DOES COMPLY with the Governor’s Guidelines for Contract Review and ReEvaluation and IS an essential contract for the Agency.

_______________________________ _________________________________
Signature of Agency Representative** Date

I certify that the information stated in paragraphs 1-3 is true.

_______________________________ _________________________________
Signature of Contractor Date

*If the Contractor is covered by one of these categories, please contact your CRB Analyst for the required procedures for processing.

**Must be an authorized signatory for the Agency.
APPENDIX I: NEW MEXICO EMPLOYEES HEALTH COVERAGE VERIFICATION FORM

CONTRACTOR NAME: ______________________________

1. For all contracts solicited and awarded on or after January 1, 2008: 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:

   (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars ($1,000,000) or;

   (b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed five hundred thousand dollars ($500,000) or

   (c) have in place and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed two hundred fifty thousand dollars ($250,000).

2. 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.

3. 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

4. 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, $500,000 or $1,000,000.

   (Check one)
   _____ I have fewer than 6 employees at this time.
   _____ I agree with the terms and conditions stated above.

Signature of Offeror: ______________________________ Date________