



ADDENDA NUMBER (3)

March 3, 2020

RFP #2020-07-011

DESIGN BUILD

SIERRA COUNTY ADMINISTRATION BUILDING

Please, note the following changes:

Clarification:

For the purpose of this RFP the County has updated the Modifications to General Conditions and will now be using the AIA 141-2014 Exhibit A-C and the Standard Form of Agreement Between Owner And Design-Builder for this project.

These documents will supersede the original documents set forth in this RFP and will be used for the awarded vendor (s).

The following supplements modify, change, delete from or add to the "Standard Form of Agreement Between Owner and Design-Builder", AIA Document A141-2014 as indicated in each numbered "Part" heading. Where any article of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that article, paragraph, subparagraph or clause shall remain in effect.

✦ **MODIFICATIONS TO GENERAL CONDITIONS** ✦

Part 1.0 (Re: 1.3 BINDING DISPUTE RESOLUTION)

Check "Litigation in a Court of Competent Jurisdiction"

PART 2.0 (Re: 1.4 BASIC DEFINITIONS) - ADD THE FOLLOWING SUBPARAGRAPH 1.4:

"1.4 ADDITIONAL DEFINITIONS

The following definitions shall apply throughout the Bidding Documents or Contract Documents unless otherwise specified:

- .1 SURETY: The person or entity obligated to provide such performance or payment as set forth in bonds required by the Contract Documents.
- .2 UNIT PRICES: Amounts stated in the Contract as prices per unit of measurement for materials or services as described in the Contract Documents.
- .3 USER: The Owner agency or agencies or designated entity for whose use the Project is being constructed.
- .4 OWNER: Sierra County referenced as Owner within these Documents.
- .5 RETAINAGE: The amount of money otherwise due to a Design-Builder that may be withheld by the Owner to secure performance of the Contract."

PART 3.0 (Re: 5.4 TAXES) - ADD THE FOLLOWING TO PARAGRAPH 5.4:

"The Design-Builder shall comply with the requirements of the state of New Mexico gross receipts law and shall require all subcontractors to comply with the same. Any increase or decrease in gross receipts and local option taxes enacted after the date the Contract is signed shall result in a similar increase or decrease in the contract sum by appropriate modification."

PART 4.0 (Re: 5.11 CLEANING UP) - ADD THE FOLLOWING TO SUBPARAGRAPH 5.11:

"The Design-Builder shall thoroughly clean the premises at the completion of the Work."

PART 5.0 (Re: PROGRESS AND COMPLETION) - ADD THE FOLLOWING SUBPARAGRAPH 8.1.3:

"8.1.3 The Design-Builder agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at a rate of progress that will insure full completion within the Contract Time specified. It is expressly understood and agreed, by and between the Design-Builder and the Owner, that the Contract time specified for the completion of the Work is reasonable; taking into consideration the average climate conditions, temperature ranges, and usual industrial conditions prevailing in this locality. If the Design-Builder shall neglect, fail or refuse to complete the Work within the Contract Time, or any proper extension granted by the Owner, then the Design-Builder agrees, as a part consideration for the awarding of this Contract, not as a penalty but as liquidated damages for such breach of contract as set forth in the Contract Documents, for each and every calendar day that the Design-Builder shall be in default after the Contract Time."

PART 6.0 (Re: 8.2 DELAYS AND EXTENSIONS OF TIME) - ADD THE FOLLOWING SENTENCE TO SUBPARAGRAPH 8.2.1:

"Where individual items or designated portions of the Work require changes in completion time, but are not interrelated with items of work governed by the Contract Time, the Design-Builder and the Owner may establish by Change Order separate completion dates with separate Liquidated Damages acceptable to the Design-Builder and leave the Contract Time unchanged."

PART 7.0 (Re: 9.2 SCHEDULE OF VALUES) - ADD THE FOLLOWING TO SUBPARAGRAPH 9.2:

"This schedule shall include separate line items for costs pertaining to each Cash Allowance item indicated in the Contract Documents and for a reasonable amount, which shall be designated as 'Final Administrative Closeout', attributable to Design-Builder completion of the administrative and documentation requirements for Contract Closeout following certification of Substantial Completion."

PART 8.0 (Re: 9.3 APPLICATIONS FOR PAYMENT) - ADD NEW SUBPARAGRAPHS 9.3.1.3 and 9.3.1.4

"9.3.2.1 Retainage: Unless good cause exists, the Owner shall not withhold retainage from any payments due and owing to the Design-Builder.

PART 9.0 (Re: 9.5 DECISIONS TO WITHHOLD CERTIFICATION) - ADD THE FOLLOWING ITEMS TO SUB-PARAGRAPH 9.5.1:

.8 failure to provide an approved progress schedule.

.9 the contract sum has been reduced by change order, and the payment request exceeds the revised Contract Sum."

PART 10.0 (Re: 9.5 DECISIONS TO WITHHOLD CERTIFICATION) - ADD THE FOLLOWING SUBPARAGRAPH 9.5.4:

"9.5.4 The Owner may refuse to make payment of the full amount to protect itself from loss because of Subparagraphs 9.5.1.1 through 9.5.1.9, but the Owner must give the Design-Builder immediate written notice stating the reasons for such action."

PART 11.0 (Re: PAYMENTS APPLICATIONS AND PROJECT COMPLETION) - ADD THE FOLLOWING PARAGRAPH 9.11:

"9.11 LIQUIDATED DAMAGES

9.11.1 The Design-Builder and the Design-Builder's surety shall be jointly and severally liable for and shall pay the Owner \$500.00/day as liquidated damages for each calendar day of delay until the work is substantially complete. Liquidated damages set forth in the Agreement will be assessed from the Contractor's scheduled completion date."

PART 12.0 (Re: 10.3.3, 10.3.4, and 10.3.6 HAZARDOUS MATERIALS) - DELETE EACH SUBSECTION IN THEIR ENTIRETY. Article IX, Section 12 and the similar constitutional debt restrictions for the state and other local governments (N.M. Const. art. IX, §§ 8, 11-13) have been judicially interpreted to preclude a government from entering into an agreement subjecting it to contingent liability, the amount of which is uncertain at the time of the agreement.

PART 13.0 (Re: EXHIBIT B INSURANCE AND BONDS) - ADD THE FOLLOWING TO SUBPARAGRAPH B.2.1:

1. For the duration of the contract and until all work specified in the contract is completed, the Design-Builder shall maintain in effect all insurance as required below and comply with all limits, terms, and conditions stipulated therein. Any claims made coverages shall be maintained for two years after the substantial completion.

a) Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Owner.

b) All insurance shall be written to conform to the requirements below.

c) Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Design-Builder and returned to the Owner.

2. Design-Builder shall obtain insurance of the types described below from an insurer with an A.M. Best rating of not less than A-VIII and authorized to do business in the State of New Mexico.

a) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or similar and shall cover liability arising from products and completed operations, premises, contractual liability, personal injury, and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance limiting coverage for claims arising from explosion, collapse, or underground exposures.

b) Workers' Compensation Insurance as required by the State.

c) Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage.

d) Property Insurance.

PART 14.0 (Re: EXHIBIT B INSURANCE AND BONDS) - SUBSTITUTE THE FOLLOWING PARAGRAPHS FOR APPLICABLE SUBPARAGRAPHS IN ARTICLE B.2.:

B.2.1.1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligation of this Agreement.

B.2.1.2. Automobile Liability Insurance covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per accident and \$2,000,000.00 in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Agreement, along with any other statutorily required automobile coverage.

B.2.1.6. Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than \$2,000,000.00 per claim and \$4,000,000.00 in the aggregate.

PART 15.0 (Re: EXHIBIT B INSURANCE AND BONDS) – ADD THE FOLLOWING TO PARAGRAPH B.2.1.9:

A. Subcontractors:

1. The Design-Builder shall:

- a. Include all subcontractors as insureds under its policies, or
- b. Shall furnish separate certificates and endorsements for each subcontractor to the Owner. The

Subcontractors' Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate and a \$1,000,000 products-completed operations aggregate limit.

B. Design Builder's Insurance for Other Losses:

1. The Design-Builder shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Design-Builder's employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the Design-Builder, or the Design-Builder's agents, suppliers or contractors, as well as to any temporary structures, scaffolding, and protective fences.

PART 16.0 (Re: EXHIBIT B INSURANCE AND BONDS) - ADD THE FOLLOWING TO SUBPARAGRAPH B.2.1.10:

"B.2.1.10.1 Furnish one (1) copy of Certificates herein required for each copy of the Agreement, specifically setting forth evidence of all coverage required by this Agreement.

B.2.1.10.2 Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

PART 17.0 (Re: EXHIBIT B INSURANCE AND BONDS) - ADD THE FOLLOWING SUBPARAGRAPH B.2.1.10:

"11.1.4 The Design-Builder shall have the Owner named as an additional insured on the Comprehensive General Liability form or Commercial Liability form furnished by the Design-Builder. The certificate of insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance."

PART 18.0 (Re: B.3.2.4 LOSS OF USE INSURANCE) - DELETE THE LAST SENTENCE OF SUBPARAGRAPH B.3.2.4.

PART 19.0 (Re: EXHIBIT B PERFORMANCE BOND AND PAYMENT BOND) - SUBSTITUTE THE FOLLOWING FOR SUBPARAGRAPH B.2.2:

"B.2.2 The Design-Builder shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond, with amount payable conforming to the terms of the Contract. Surety shall be a company

licensed to do business in the State of New Mexico and executed by such sureties as are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds as published in federal circular 570 by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

B.2.2.1 Special attention is called to the requirements of §13-4-18 through §13-4-20, NMSA 1978, regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.

B.2.2.2 The right to sue on this Bond accrues only to the Owner and the parties to whom §13-4-18 through §13-4-20, NMSA 1978, grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

B.2.2.3 Subcontractor Bonding Requirements. It is the responsibility of each subcontractor submitting a bid to a Design-Builder to submit a faithful performance and payment bond if the subcontract exceeds \$50,000.

PART 20.0 (Re: TERMINATION OR SUSPENSION OF THE CONTRACT) - ADD THE FOLLOWING TO ARTICLE 13:

"13.2.5. **Termination for Lack of Appropriation.** The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the governing body for the performance of this Contract. If sufficient appropriations are not made by the governing body, this Contract shall terminate upon written notice being given by the County to the Contractor. The County's determination as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final."

PART 21.0 (Re: PARAGRAPH 14.3 MEDIATION AND PARAGRAPH 14.4 ARBITRATION) - SUBSTITUTE THE FOLLOWING FOR PARAGRAPH 15, INCLUSIVE OF ALL SUBPARAGRAPHS AND FOR PARAGRAPH 15.4, INCLUSIVE OF ALL SUBPARAGRAPHS:

15.3.3 Mediation and arbitration of controversies and claims. Should the procedures for dispute resolution provided in this Agreement fail to adequately resolve the claim, dispute or other matter in question, any such claim, dispute or matter in question shall be resolved by binding arbitration governed by the provisions of this Paragraph 14.3 and the New Mexico Uniform Arbitration Act. Before submitting a dispute to arbitration, the parties shall make a good faith effort to resolve the dispute through formal mediation or other agreed upon alternative dispute resolution technique. The arbitration shall be before a single arbitrator chosen by mutual agreement of the parties. If they cannot agree, then a list of seven potential arbitrators will be obtained from the New Mexico Counties and the parties shall utilize a striking process until an arbitrator is agreed upon. In the event this Contract results in dispute, mediation, arbitration litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and costs.

15.3.4 Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Design-Builder shall carry on the Work and maintain its progress during any claim, dispute, or other matter in question, and the Owner shall continue to make payments to the Design-Builder in accordance with the Contract Documents."

◆ ADDITIONAL CONDITIONS ◆

PART 1.0 EQUAL OPPORTUNITY

1.1 The Design-Builder, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Design-Builder shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, recruitment or recruitment advertising, upgrading, layoff or termination, demotion, rates of pay or other forms of compensation, transfer, selection for training (including apprenticeship)

1.2 The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

1.3 The Design-Builder, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

PART 2.0 MINIMUM WAGE RATES

2.1 The Design-Builder warrants and agrees that it will comply and will require all Subcontractors and Sub-subcontractors to comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than \$20,000. The Contractor and his Subcontractors shall deliver by mail copies of certified weekly payroll in accordance with the regulations under "Minimum Wage Rates" to the office of the State Labor Commission, Santa Fe, New Mexico 87503, address as stated in the Determination and to the Owner.

PART 3.0 CONTRACT AUDIT

3.1 The Owner shall be entitled to audit the books and records of a Design-Builder or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Design-Builder for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing (§13-1-16 NMSA 1978).

PART 4.0 DEBARRED OR SUSPENDED CONTRACTORS

4.1 A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17 NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

PART 5.0 BRIBES, GRATUITIES, AND KICKBACKS

5.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of contract for this Bid and for any person to offer or pay anything of value to any such public employee (§ 30-24-1 and 30-24-2 NMSA 1978).

5.2 Pursuant to Section 13-1-191 NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including §§ 30-24-1, 30-24-2, and 30-41-1 through 30-41-3 NMSA 1978), which prohibit bribes, kickbacks, and gratuities, and violation of which constitutes a felony. Further, the Procurement Code (§§ 13-1-28 through 13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

PART 6.0 NONRESIDENT DESIGN-BUILDER'S REQUIREMENTS: GROSS RECEIPTS TAX SURETY BOND

6.1 Section 7-1-55A NMSA 1978 provides that any person (as defined in § 7-1-3 NMSA 1978) engaged in the construction business who does not have his principal place of business in this state and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the Contract. The person shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

6.2 If the total sum to be paid under the Contract is changed by ten percent (10%) or more after the date the surety bond or other acceptable security is furnished to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within 14 days after the change (§ 7-1-55B NMSA 1978).

6.3 In addition to the above requirements, the Contractor will be subject to all the requirements of Section 7-1-55 NMSA 1978.

PART 7.0 DESIGN-BUILDER'S GROSS RECEIPTS TAX REGISTRATION

7.1 Section 7-10-4 NMSA 1978 provides that any person (as defined in § 7-10-3 NMSA 1978) performing services for the

State, as those terms are used in the Gross Receipts and Compensating Tax Act (§§ 7-10-1 through 7-10-5 NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

7.2 The identification number is needed to properly complete the approval process of the Contract; therefore, so as to cause no delay in the processing, the Contractor must register with the Division. For information, contact: Revenue Division, Taxation and Revenue Department, Manuel Lujan Sr., Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87503, Telephone: (505) 988-2290.

7.3 If any person who performs services for the State is not registered to pay the gross receipt tax, the State shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the gross receipts tax.

PART 8.0 ASSIGNMENT OF ANTITRUST CLAIMS

8.1 The Design-Builder agrees that any and all claims that the Design-Builder may have or that may inure to the Design-Builder for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. The Design-Builder further agrees to require each of its Suppliers, Subcontractors, and Sub-subcontractors to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed form shall be submitted prior to the commencement of the Work or the supplying of any materials by the Supplier, Subcontractor, or Sub-subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Design-Builder to obtain agreement in writing from his Supplier, Subcontractor, or Sub-subcontractor. Waiver by the Owner may not unreasonably be denied.

8.2 It is agreed that the Design-Builder 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.

PART 9.0 CONTRACTS WITH NONRESIDENT PERSONS OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

9.1 Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24 NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

PART 10.0 ADDENDA AND MODIFICATIONS

10.1 All Addenda and Modifications issued in writing during the Bidding period will become part of the Contract Documents.

-End-