



**REQUEST FOR PROPOSAL  
FOR  
DESIGN PROFESSIONAL SERVICES**

**RFP NO: 013-2021  
PSFA PROJECT NO: P20-001**

**For Contracting Agency: Alamogordo Public Schools**

**Contact Person: Chief Procurement Officer, Dillon Voss**

**Address: 1211 Hawaii Ave.**

**City/State/Zip: Alamogordo, NM 88310**

**Telephone: 575-812-6046**

**Fax: 575-812-6049**

**E-Mail: dillon.voss@alamogordoschools.org**

**Commodity Code Number(s): Class 906- Codes 90607, 90610**

**DEADLINE FOR RECEIPT OF PROPOSAL IS AS FOLLOWS:**

**DATE: March 10, 2021 TIME: 3:00 PM MST**

**DELIVER TO: Offerors are to send an email to dillon.voss@alamogordoschools.org requesting instruction for submission.**

**The date and time received will be logged by the District Offices. Late Proposals will not be accepted. It is the responsibility of the Offeror to ensure that proposals are delivered on time in the correct manner.**

**NON-MANDATORY PRE-PROPOSAL CONFERENCE WILL BE HELD  
February 16, 2021 @ 11:00 AM  
Virtually via Go to Meeting**

<https://global.gotomeeting.com/join/863805773>

**STATE OF NEW MEXICO  
PUBLIC SCHOOL FACILITIES AUTHORITY**

**I. INTRODUCTION**

**A. PURPOSE OF THIS REQUEST FOR PROPOSAL**

The Alamogordo Public Schools is requesting proposals for Design Professional services to perform the scope of work described herein. All potential Offerors are encouraged to read this Request for Proposal carefully, **especially mandatory requirements.**

The District, in cooperation with the Public-School Facilities Authority (PSFA) has funds to administer the projects described in Section IV, Detailed Scope of Work. The District owns the present facilities and has entered into a Joint Powers Agreement (JPA) with the PSFA to oversee the PSCOC work which will be applied to the site(s). In general, the work incorporates assisting the Owner with, programming, schematic design, design development, construction documents, bidding and construction administration of replacement of Chaparral Middle School.

Alamogordo Public Schools reserves the right to terminate any or all agreements prior to the end of the period.

(See Section IV for detailed scope of work.)

**B. PROJECT CONTACTS**

Any questions concerning the selection process for this Request for Proposal should be submitted to the Purchasing Agent listed below. Technical questions regarding the scope of work should be submitted to the District Representative.

For questions regarding the selection process:

Purchasing Agent Contact Name	<b><u>Dillon Voss</u></b>
Address	<b><u>1211 Hawaii Ave.</u></b>
City/State/Zip	<b><u>Alamogordo, NM 88310</u></b>
Phone Number	<b><u>575-812-6046</u></b>

For technical questions regarding the scope of work:

District Representative Contact Name	<b><u>Justin Burks</u></b>
Address	<b><u>PO Box 650</u></b>
City/State/Zip	<b><u>Alamogordo, NM 88310</u></b>
Phone Number	<b><u>575-812-6015</u></b>

**C. DEFINITION OF TERMINOLOGY**

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

**“75% Complete”** is when the construction document (working drawings and specifications) are complete and ready to bid and have received formal approval and acceptance by the owner.

**“Addendum” or “Amendment”** means a written change, addition, alteration, correction, or revision to an Invitation to Bid, Request for qualification, or contract document.

**“Adequacy and Planning Guide”** means the reference guide to be used in the programming and design of school projects. The purpose of this guide is to clarify the “Adequacy Standards” and to provide assistance through references and “best Practice” examples.

**“Adequacy Standards”** means the New Mexico Public School Statewide Adequacy Standards, which establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility’s size.

**“Architect”** means a New Mexico licensed architect and who is responsible for the architectural services.

**“Agreement”** means the agreement between The District, NMPSFA and the firm for the work covered by this solicitation.

**“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 resulting from this solicitation.

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

**“Close of Business”** means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.

**“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 § 1.4.1.25. As one example, no information that could be obtained from a source outside this solicitation can be considered confidential information.

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

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

**“Cost Reimbursement”** means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

**“Design Professional”** means the entity defined as an architect and or engineer, or the firm of architects, engineers, or both (and their consultants), which have undertaken to design the Project pursuant to a contract agreement with the Owner.

**“Desirable”** The terms “may”, “can”, “should”, “preferable”, or “refers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

**“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.

**“District”** means the School District.

**“e-Builder”** means the Construction Information Management System (CIMS) utilized by the Owner and Co-Owner, and which the Design Professional must also utilize.

**“Electronic Version/Copy”** means a digital form consisting of text, images, or both, readable on computers or other electronic devices that includes all content that the Original, Hard Copy proposals or bids contain. The digital form may be submitted using a compact disc (CD) or USB flash drive.

**“Energy Star”** is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum Federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. (See: <http://www.energystar.gov>) Compliance with ENERGY STAR is required on certain projects pursuant to NMSA 1978, § 15-3-36.

**“Engineer”** means a New Mexico licensed engineer and is responsible for the engineering services.

**“Evaluation Committee”** means a body appointed by the NMPSFA to perform the evaluation of Offeror 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 solicitation.

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

**“Firm Fixed Price Contract”** means a contract which has a fixed total price or fixed unit price.

**“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.

**“Local Public Works”** means a project of a local public body that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes.

**“MACC”** means the maximum allowable construction cost, which is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, owner’s contingency funds, acquisition costs, and other costs which are the responsibility of the Owner.

**“Mandatory”** The terms “must”, “shall”, “will”, “is required”, or “are required” identify a mandatory item or factor (as opposed to “desirable”). 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.

**“New Mexico Public School Facilities Authority” or “NMPSFA” or “PSFA”** is a statutorily created agency pursuant to NMSA 1978, § 22-24-9 which serves as staff to the Public-School Capital Outlay Council.

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

**“Procurement Manager”** means any person or designee authorized by the District to enter into or administer contracts and make written determinations with respect thereto.

**“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.

**“Proposal”** means an Offeror’s written offer or response to a Request for Proposal.

**“Public School Capital Outlay Council” or “PSCOC”** distributes funds from the Public Outlay Fund to school districts throughout the State of New Mexico as prescribed by NMSA 1978, § 22-24-1 through § 22-24-6.

**“Redacted”** means a version/copy of the proposal with the information considered confidential as defined by NMAC 1978, § 1.4.1.45 and defined herein and outlined in Section 2.2.9 this RFP, blacked out BUT NOT omitted or removed.

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

**“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, 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 “Responsive Proposal”** means an offer which confirms in all material respects to the requirements set forth in the Request for Proposal. Material respects of a Request for Proposal include, but are not limited to price, quality, quantity, or delivery requirements.

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

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

**“State (the State)”** means the State of New Mexico.

**“State Agency” or “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. “State Agency” or “Agency” includes the New Mexico Public School Facilities Authority.

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

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

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

#### **D. DOCUMENT LIBRARY**

A document library has been established for Offerors to review. The library contains the information listed below and the content of each item can be located at the NMPSFA website at <https://www.nmpsfa.org> using the path as indicated:

- [Governance > Rules and NM Statewide Adequacy Standards](#)
- [6.27.30 NMAC Statewide Adequacy Standards](#)
- [6.27.31 Special Purpose Schools Educational Facility Adequacy Adequacy Planning Guide \(including Change #20 Special Purpose Schools Adequacy Planning Guide](#)
- [6.27.1 PSCOC General Provisions](#)
- [6.27.2 PSFA Duties & Authority](#)
- [6.27.3 Application & Grant Procedures](#)
- [6.27.4 Post Grant Procedures](#)

[Operations > Project Development > Process & Procedures > Contract Documents & Forms > Other PSFA Standard Guide Specifications](#)

Guide Specifications Division 02-49, Division 07 Thermal & Moisture Protection, Roofing Program Handbook and Table of Contents:

Inclusive of all specification/requirements of Division 07 Thermal and Moisture Protection [if applicable].

[Operations > Project Development > PSFA Performance Assurance Programs and Forms](#)

The following documents are among those listed on the webpage:

[019113 – General Commissioning Specification](#)

[230593 – Test, Adjust, and Balance Specification](#)

[230800 – HVAC Commissioning Specification](#)

[NMPSFA Performance Assurance Manual Rev-07.30.2020](#)

[Performance Assurance Program Manual for TAB](#)

See also:

[Operations > Planning > Building Standards and Planning Guidelines > Adequacy Standard & Guidelines](#)

[Operations > Planning > Educational Master Planning and Procurement](#)

[Operations > Project Development](#)

## **E. BACKGROUND SUMMARY**

The Alamogordo Public School District currently owns, maintains and operates 14 school sites which incorporate 1,064,811 gross square feet of permanent educational facilities. APS owns, maintains and operates 3 support sites which comprise 105,953 gross square feet of permanent support facilities. APS also owns, maintains or operates 47 portable facilities totaling 42,112 gross square feet. District enrollment for the 2020-2021 school year is projected to be approximately 5,840 students in grades K-12.

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP describes the major procurement events as defined in the RFP Schedule Overview, and the conditions governing the procurement. The Procurement Manager will make every effort to adhere to the RFP schedule.

### **A. SEQUENCE OF EVENTS**

- |     |                                       |                                       |
|-----|---------------------------------------|---------------------------------------|
| 1.  | Issue RFP                             | <b><u>February 12, 2021</u></b>       |
| 2.  | Pre-Proposal Meeting                  | <b><u>February 16, 2021</u></b>       |
| 3.  | Acknowledgement of Receipt due        | <b><u>February 19, 2021</u></b>       |
| 4.  | Deadline for written questions        | <b><u>February 23, 2021</u></b>       |
| 5.  | Response to written questions         | <b><u>February 26, 2021</u></b>       |
| 6.  | Submission of Proposal                | <b><u>March 10 at 3:00 PM MST</u></b> |
| 7.  | Proposal Evaluation                   | <b><u>March 11, 2021</u></b>          |
| 8.  | Evaluation/Interviews with Finalists  | <b><u>March 15, 2021</u></b>          |
| 9.  | Notice of Intent to Award             | <b><u>March 18, 2021</u></b>          |
| 10. | Contract Negotiation/Prepare contract | <b><u>March 19, 2021</u></b>          |
| 11. | Issue Notice of Award/Contract        | <b><u>April 14, 2021</u></b>          |
| 12. | Protest of Award Deadline             | <b><u>April 30, 2021</u></b>          |

### **B. EXPLANATION OF EVENTS**

1. Issue RFP - This RFP is issued by the District in accordance with the provisions of Sections 13-1-120 and 13-1-121 NMSA 1978.
2. Pre-Proposal Meeting – Non-Mandatory. This meeting will occur virtually at the following ZOOM meeting link (see Page 1).
3. Acknowledgement of Receipt, Appendix A – This is the date and time set for submitting the completed Acknowledgement of Receipt form to the Procurement Manager.
4. Deadline to Submit Written Questions - This is the date and time set for submitting written questions regarding the RFP document and procurement process to the Procurement Manager.



5. Response to Written Questions - This is the date and time set for response of the written questions submitted regarding the RFP document and procurement process from the Procurement Manager.

6. Submission of Proposal – Offerors are to send an email to dillon.voss@alamogordoschools.org. Proposal Questions on submission to be directed to:

Procurement Contact Name:	<u>Dillon Voss, Chief Procurement Officer</u>
Address:	<u>1211 Hawaii Ave.</u>
City, State, Zip	<u>Alamogordo, NM 88310</u>
Phone Number:	<u>575-812-6046</u>

**Proposals can be submitted electronically. Offerors who attend the Mandatory Pre-Conference are to send an email to dillon.voss@alamogordoschools.org at which time the Business Office will provide instructions to the Offeror in order for the Offerors to upload their proposal prior to the deadline of 3 pm on March 10, 2021.**

**PROPOSALS RECEIVED AFTER THE DEADLINE ARE NON-RESPONSIVE.** District staff will time-stamp proposals at the district offices receptionist desk. A public log will be kept of the names and submittal times of all Offerors who submitted proposals.

Proposals will be reviewed, for completeness and compliance with requirements, by the Purchasing Office. If any proposal submitted is deemed non-responsive, the Offeror will be notified in writing of such determination and the method of protesting that determination.

7. Notice of Finalists: Each responsive Offeror selected for interviews will be notified in writing. A public log will be kept of the names and overall rankings of all Offerors short listed for interviews.

8. Proposal Evaluation/Interview: The Selection Committee will review each Offerors proposal. Points will be allocated, by each member, as outlined in Section V of this RFP. Each member's point totals will be translated into a numeric ranking of all proposals. The five (5) individual member's rankings will be totaled together to determine the overall ranking of proposals.

It is the general practice of the Selection Committee to hold interviews with the highest-ranked proposals. The Selection Committee may award the selection based on the results of the short listing. If interviews are held, rankings from the short listing are weighted 70% and the interview rankings are weighted 30 % to determine final award. If fewer than three proposals are received the Selection Committee may recommend an award or direct that the RFP be reissued.

8A. Interviews with Finalists: For those proposals selected for interview, notices to finalists will include the interview date and time. Interviews are generally held at the offices of the District. The interview location may be changed at the discretion of the Selection Committee. Scoring for the interview will be based on responses to the questions presented to each Offeror before the interview date. Interview scoring will total approximately 50 points. The points will be equally divided between the prepared questions and points will be allocated, by each member. Each member's point totals will be translated into a numeric ranking of all interviewed firms. The five individual member rankings will be totaled together to determine

the overall ranking of firms for the interview.

9. Notice of intent to Award: The District will notify finalists in writing of the final award(s).
10. Contract Negotiations: The Owner and the successful Offeror(s) will begin contract negotiations as soon as possible after Notice of Award. The PSFA Standard Agreement between the Owner and Design Professional will be available on the PSFA website at [www.nmpsfa.org](http://www.nmpsfa.org). Final DESIGN PROFESSIONAL fees are determined during contract negotiations and depend on such factors as project size and complexity as related to the approved DESIGN PROFESSIONAL Rate Schedule. If contract negotiations are not finalized within a reasonable period of time, the Owner will conclude negotiations with the selected firm and begin negotiations with the next ranked firm based on final ranking.
11. Issue Notice of Award/Contract: Upon the successful completion of contract negotiations and Board of Education approval, the Procurement Manager shall issue the Notice of Award and Contract.
12. Protest Deadline: The protest period for award of the contract shall begin the day after the date of the Notice of Award and run for fifteen calendar days. This date shall be determined by the Procurement Manager.

### C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with NMSA 1978, Chapter 13, and purchasing regulations.

1. Acceptance of Conditions Governing the Procurement: 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 setup 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 District 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 written approval from District awarding any resultant contract before any subcontractor is used during the term of this agreement.
5. Certifications and Licenses: Potential Offerors must have the proper certifications and licenses to do business in New Mexico as follows:

- a. Corporations:
    - i. File Articles of Incorporation with the Secretary of State's Office and record with the County pursuant to NMSA 1978, § 53-4-6.
    - ii. Name of registered agent pursuant to NMSA 1978, § 53-5-2.
    - iii. Certificate of Authority from the Secretary of State's Office indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, § 53-17-6 and § 53-17-8.
    - iv. Obtain a Federal Employer Identification Number.
    - v. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
  
  - b. Limited Liability Companies:
    - i. Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
    - ii. File and Application for Registration with the Secretary of State's Office to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Secretary of State's Office to conduct business in New Mexico.
    - iii. Obtain a Federal Employer Identification Number.
    - iv. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
  
  - c. Limited Partnerships:
    - i. Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-2-1 through § 54-2-48.
    - ii. File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.
    - iii. Obtain a Federal Employer Identification Number.
    - iv. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
  
  - d. General Partnerships:
    - i. File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.
    - ii. Obtain a Federal Employer Tax Identification Number.
    - iii. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
  
  - e. Sole Proprietorships and Joint Ventures:
    - i. Obtain a Federal Employer Identification Number.
    - ii. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
6. Amended Proposals: An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be replacements for a previously submitted proposal and must be clearly identified as such in the Letter of Transmittal. **District personnel will not merge, collate, or assemble proposal materials.**

7. 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.
8. 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.
9. Disclosure of Proposal Contents:
  - a. Proposals will be kept confidential until negotiations and the award are completed by the District. 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: Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
  - b. Confidential data is restricted to confidential financial information concerning the Offeror's organization; 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.
  - c. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the District 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.
10. No Obligation: This RFP in no manner obligates the District to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.
11. Termination: This RFP may be cancelled at any time. Any and all proposals may be rejected in whole or in part when the Procurement Manager determines such action to be in the best interest of the District.
12. Sufficient Appropriation: Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be affected by sending written notice to the Contractor. District's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.
13. Legal Review: The District 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.

14. 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.

15. Prohibited Bidding: Pursuant to NMSA 1978, § 10-16-13, no state agency or political subdivision of the State shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a State agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.

16. Consent to Jurisdiction and Venue: If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the District, they thereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from the contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP, which cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Lea County District Court shall have venue and jurisdiction over all matters arising or derived from this RFP.

17. Basis for Proposal: Only information supplied, in writing, by the District through the Procurement Manager or in this RFP should be used as the basis for the preparation of the Offeror's proposal.

18. Contract Terms and Conditions:

a. The contract between the District and a contractor will follow the format specified by the District and contain the terms and conditions set forth in the Sample Agreement (General Terms and Conditions), Appendix B. However, the District reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Agreement) with any Offeror.

b. The District discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Agreement. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgement of the District (and its evaluation committee), 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.

c. Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Agreement strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. District 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 Agreement are not acceptable to the District and will result in disqualification of the Offeror's proposal.

d. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Agreement. In the event the Offeror's proposal conflicts with the RFP, the RFP governs, and, in the event the Agreement conflicts with the proposal, the Agreement governs.

- e. 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 and successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.
19. Offeror's Terms and Conditions: Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the District.
20. Contract Deviations: Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the District and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.
21. Contract Negotiations: Contract negotiations may be held in accordance with applicable procurement laws, NMSA 1978, § 13-1-28 through § 13-1-199 and the District Procurement Regulations.
22. Offeror Qualifications: The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and § 13-1-85.
23. Right to Waive Minor Irregularities: The Evaluations Committee reserves the right to waive minor irregularities. The Procurement Officer reserves the right to waive mandatory requirements provided 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.
24. Change in Contractor Representatives: The District reserves the right to require a change in contractor representatives if the assigned representative(s) is not, in the opinion of the District, adequately meeting the needs of the District.
25. 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.
26. District Rights: The District, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offeror's proposal.
27. Right to Publish: Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the District written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or District 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.

28. Ownership of Proposals: All documents submitted in response to this Request for qualification shall become the property of the District.
29. Confidentiality:
- a. 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 District.
  - b. The contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the District's written permission.
30. Electronic Mail Address Required: A large part of the communication regarding this procurement will be conducted by electronic mail (email). Offeror must have a valid email address to receive this correspondence.
31. 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 District, the version maintained by the District shall govern.
32. Disclosure of Campaign Contributions, Appendix D: Offeror must complete, sign, date and return the Campaign Contribution Disclosure Form, Appendix D, 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. Failure to complete and return the signed and dated, unaltered form will result in disqualification.
33. 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:
    - i. Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any Federal entity, state agency, or local public body.
    - ii. Has within a three (3) year period preceding this offer, been convicted in a criminal matter or had a civil judgement rendered against them for:
      - 1. 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.
      - 2. Violation of Federal or state anti-trust statutes related to the submission of offers; or

3. The commission in any Federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violation, or Federal criminal tax law, or receiving stolen property.
  - iii. 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 NMSA 1978, 13-1-178: Causes for Debarment and Suspension.
  - iv. 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.
    1. 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.
    2. 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.
  - v. Have within a three (3) 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 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 District or 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 forgoing 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 the District or 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 District or Central Purchasing Officer may terminate the involved contract for cause. Still further, the District 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 District or Central Purchasing Officer.

34. New Mexico Preferences

a. 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 and Revenue.

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

b. New Mexico Business Preference and New Mexico Resident Veterans Business Preference.

c. The District shall not award a business both a Resident Business Preference and a Resident Veteran Business Preference.

d. The New Mexico preferences shall not apply when the expenditures for this RFP include Federal Funds.

35. Conflict of Interest: Government Conduct Act

a. The Offeror warrants that it presently has no interest and 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 Offeror certifies that the requirements of the Governmental Conduct Act, NMSA 1978, § 10-16-1 through § 10-16-18, regarding contracting with a public officer or state employee, or former state employee, have been followed.

36. Equal Employment Opportunity

a. In connection with this RFP and the Contract, Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.

b. Offeror shall take affirmative action to ensure that all applicants are treated fairly during employment, without regard to race, color, religion sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.

c. Such action shall include but not be limited to the following: layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**III. RESPONSE FORMAT AND ORGANIZATION**

**A. NUMBER OF RESPONSES**

Only one proposal may be submitted by each individual entity for the one project, which is the subject of this RFP. Proposals are to be submitted to the Alamogordo Public Schools by the submission deadline.

**B. NUMBER OF COPIES**

Offerors shall provide One (1) Original Hard Copy- labeled as “Original”, Five (5) identical copies, and One (1) electronic copy of their proposal to the location specified in Section II, paragraph B on or before the closing date and time for receipt of proposals.

**C. PROPOSAL FORMAT**

The proposal must be limited in format and length. Length of the proposal shall be limited to a maximum of 45 pages/slides of text and/or graphic material for project proposals. **If there is any question as to format requirements they shall be directed to the District Procurement Officer for clarification, prior to submittal of documents.**

Material excluded from the 45 pages/slides maximum count shall include and **shall be limited to:**

- Front cover (blank on back side)
- Submittal Letter – this letter should contain the address and instructions to obtain the digital proposal (one page maximum)
- Tables of Contents page (one page maximum)
- Divider pages (See Sections below)**
- Acknowledgement of Addenda
- Certificate(s) of Insurance
- Campaign Contribution Discloser
- W-9
- New Mexico Resident/Veteran Business Preference Certificate, if applicable
- Back cover (blank on one side)

**ANY SHEETS OR PAGES INCLUDED IN THE PROPOSAL, BUT NOT SPECIFICALLY EXCLUDED, AS NOTED ABOVE - SHALL BE COUNTED TOWARDS THE 45 PAGES MAXIMUM.**

**Divider Pages** are noted herein. The Selection Committee will score proposals based on these Sections. A more detailed description and points assigned to each Section is provided under V. EVALUATION. Reminder – Divider Pages do not count towards the 45-page maximum.

- Section 1 Business Profile
- Section 2 Capacity and Capability
- Section 3 Past Record of Performance
- Section 4 Design Work produced in-state
- Section 5 Volume of Work previously done
- Section 6 Evidence of Understanding of Scope of Work

**ANY SHEETS OR PAGES INCLUDED IN THE PROPOSAL, BUT NOT SPECIFICALLY EXCLUDED, AS NOTED ABOVE - SHALL BE COUNTED TOWARDS THE 45 PAGES MAXIMUM.**

Any proposal deemed non-conforming by the Procurement Officer in regard to format will be considered non-responsive. Offerors shall contact the District Representative to clarify any questions concerning format prior to submission.

1. Proposal Organization - All pages *should* be numbered except for those specifically excluded as noted above. All foldout pages shall be counted as two (2) pages and *should* be numbered as such. Proposals *should* be organized in the same order as the evaluation criteria. Tabs for each evaluation criteria, Sections 1 through 7, are helpful.

2. Submittal Letter - Each proposal must be accompanied by a submittal letter. The submittal letter (*the following information will be required in order to contract for the project*) should:

- a. identifies the submitting business;
- b. identifies name and title of the person(s) authorized by the company to contractually obligate the business for the purposed of this RFP;
- c. identifies the names, titles, and telephone numbers of persons to be contacted for clarification questions regarding this RFP;
- d. be signed by a person authorized to contractually obligate the Offeror;
- e. acknowledge receipt of any and all amendments to this RFP;
- f. contains a statement indicating a commitment to comply with all requirements of the Americans with Disabilities Act of 1990 for work performed as a result of this RFP;
- g. contains a statement indicating a commitment to comply with the ASHRAE STANDARD, ASHRAE/IES 90.1-2001, Energy Efficiency Design of New Buildings, and the New Mexico Model Energy Code. Also, that designs will incorporate water conserving fixtures and features.

## IV. SPECIFICATIONS

### A. DETAILED SCOPE OF WORK

The Scope of Work includes planning and design of a new replacement middle school facility that is 87,035 total square feet, for a design capacity of 658 students, grades 6-8. Design shall include the following key elements: Programming (site selection and investigation), Schematic Design, Design Development, Construction Documents, Bidding, Construction Administration, design of demolition plan for existing facility, and 12-month Warranty Inspection. The project team shall include as a minimum: Architectural, Engineering, and any other design consultants as may be required. This school should be designed to accentuate the natural landscape of Alamogordo with focus on an open architecture plan with a focus on the natural beauty of the surrounding environment. This must be a modern facility suited to the technological and safety needs of today's students and staff. The replacement school should draw on the rich history of the areas Aerospace and rustic southwest background. This campus will need to be utilized to be conducive to middle school learning and community use. Alamogordo Public Schools envisions this campus to be the "Crown Jewel" of the community.

Scope of Work to be performed by the Design Professional shall include any necessary services for a school facility to be fully operational for the intended use.

Project MACC: \$27,851,200.00

### B. SPECIFICATIONS – MANDATORY SPECIFICATIONS AND FORMS

Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

#### 1. General Information: Include the following in your proposal as Section 1, Tab 1.

Offerors must identify:

- a. The Principal member or officer of the firm who will be responsible for the administration of the contract, including their email address and phone number;
- a. Identify the business name, address, and phone number of the office(s) where the work will be performed for the prime Offeror and all sub-consultants;
- c. Indicate the type of firm: corporation, partnership, sole proprietor, joint venture or other;
- d. State the year the firm was established, and any former names by which the firm was known;
- e. Provide the names and registration numbers of the New Mexico Registered Professional Architect/Engineer who will be in direct responsible charge of the work, including their email address and phone number;
- f. Indicate whether or not the individual registration has ever been subject to disciplinary action by the Board of Examiners for Architects. If yes, include an explanation;
- g. List all applicable business licenses your firm holds that are required by the State of New Mexico, including the license number and jurisdiction and the name of license holder exactly as it appears on file.

**2. Specialized Design and Technical Competence: Include the following in your proposal as Section 2, Tab 1.**

Offerors must describe or provide a work plan to perform the services required by the project scope.

- a. Describe your firm's specialized problem-solving techniques or approaches, innovative practices/ideas, and advantages your team brings or offers to the project.
- b. Provide a bar chart schedule and describe all work proposed to fulfill the project scope.

**3. Capacity and Capability of the Offeror to Perform the Work: Include in your proposal as Section 2, Tab 2.**

- a. Offeror's must provide information about their business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements.
- b. Provide information that demonstrates your firm's ability to perform the services required for this project.
- c. Include an organizational chart indicating key project team members, including any sub consultants, and their specific roles on the project and/or area(s) of expertise.
- d. Clearly identify the lead engineer who will be directly responsible for the project.
- e. Include in the organizational chart, the percentage of time each team member will spend or commit to providing services toward the project.
- f. Provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this project, highlighting relevant project experience and knowledge.
- g. Indicate if a subcontractor is affiliated with the prime contractor as an affiliated company, firm, or business.
- h. Identify the firm's or team's list of current projects.

**4. Past Record of Performance: Include in your proposal as Section 3, Tab.**

- a. Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs.
- b. Project schedules should provide information about the progress of work as related to owner schedules and goals, as well as the overall success of projects and client satisfaction.
- c. Describe three to five (3-5) past projects, specifying their relevance to the current project, using the Reference Questionnaire, Appendix C, for each project. Provide the Job's title and location, the year the project's professional services were completed and the year the project construction was completed. Include the following for each project: the project manager's name, years of experience, years with your firm, education (degree or specialization), present position/job title, current professional registration number including State and Discipline, other professional qualifications.
- d. Include client references, including contact names, addresses, email address and telephone numbers for each project.

**5. Technical Approach to visioning programming and the presentation of each design phase: Include in your proposal as Tab 5.**

- a. Thoroughly discuss the process that will be implemented to capture and document the District's visions and desires related to the overall design and features of this project.

**6. New Mexico Produced Work (Does not apply to federally funded projects): Include in your proposal as Tab 6.**

It is in the District's best interest to support in-state businesses.

- a. Indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms.
- b. Identify any out-of-state consultant(s) or business relationships that will be involved on the project and the extent of services to be provided by that firm or firms.

**7. Design Experience: Include in your proposal as Tab 7.**

- a. Describe projects of similar size and scope. Describe specialized design concepts and out-of-the-box thinking that has been implemented on previous architectural design projects

**8. Evidence of Understanding of the Scope: Include in your proposal as Tab 8.**

- a. Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques. This would not preclude discussion of project parameters that may affect design decisions, concept approaches or design philosophies.

**9. Insurance and Claims History: Include in your proposal as Tab 9.**

- a. Answer the following question: Is your firm free of any court judgement, pending litigation, arbitration and final agency decisions filed within the last five (5) years in a professional service related matter in which the firm, or any officer, is or was a party? If the answer is "No," provide an explanation.
- b. Answer the following question: Does your firm have the ability to provide the required insurance in the limit state in the RFP, as well as \$500,000 Errors and Omissions insurance? If the answer is "No," provide an explanation.

**10. Judgements or Breach of Contracts/Protests: Include in your proposal as Tab 10.**

- a. List any judgements against the firm during the last five (5) years.
- b. List any breach of contract other than "for cause."
- c. List all mediations/arbitrations in the last five (5) years.

**11. Volume of Work Currently Being Performed.**

Firms shall list any project that has been previously awarded and is, on the date of the submittal, less than 75% complete (see definitions for clarification of "75% complete"). Information on the status of past project awards shall be included in the "Project Listing Form" as a requirement of this RFP.

**12. Examples of relevant work**

Offers shall submit a description of relevant work completed within the past 5 years that is of similar scope and size to the project called for in this RFP. For the purposes of this item "relevant work" is not limited to K-12 educational facilities.

**13. Completed Campaign Contribution Disclosure Form, Appendix D**

Offerors shall submit with their proposals a completed Campaign Contribution Disclosure Form with their proposal.

**14. Resident Business and Resident Veteran’s Preference (Does not apply to federally funded projects)**

Pursuant to NMSA 1978, 13-1-21, when a public body makes a purchase using a formal request for proposals Request for Proposal process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:

- a. five percent of the total possible points to a resident business; or
- b. ten percent of the total possible points to a resident veteran business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

To be awarded points for **Resident Business Preference**, or **Resident Veterans Preference**, Offerors must include a copy of their preference certificate in this section of your proposal.

*A resident veteran business shall not benefit from the preference for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference for more than ten consecutive years. A person shall not benefit from the provisions as specified in NMSA 1978, 13-1-21, on more than one business concurrently.*

*Pursuant to NMSA 1978, 13-1-21, Paragraph H, a State Agency shall not award an Offeror points for both a Resident Business Preference and a Resident Veteran’s Preference. If the Offeror qualifies for both he/she will only be awarded points for the Resident Veteran’s Preference. Veteran Businesses will receive the Resident Business Preference once the cap for Resident Veteran Preference has been exceeded.*

Applications for Resident Business Preference and Resident Veteran’s Preference are now being processed through the New Mexico Department of Taxation & Revenue. If you have a preference certification number that was issued by the New Mexico State Purchasing Division, please follow the link below to apply for a new Resident Business or Veteran Business Preference number.

<http://www.tax.newmexico.gov/businesses/pages/in-statepreferencecertification.aspx>

**IF YOU DO NOT QUALIFY FOR A RESIDENT BUSINESS OR RESIDENT VETERAN PREFERENCE PLEASE PROVIDE A STATEMENT STATING YOU DO NOT QUALIFY IN THIS SECTION OF YOUR PROPOSAL. IF YOU DO NOT QUALIFY FOR EITHER PREFERENCE YOUR PROPOSAL WILL BE ACCEPTED, HOWEVER YOU WILL NOT RECEIVE POINTS FOR PREFERENCE.**

**15. Format – Comply with requirements of Section III.**

**Errors and Omissions Insurance** – Documentation of current errors and omissions insurance is *a mandatory requirement* at the time of the contract execution in the amount of stated in the Sample Agreement at Appendix B of insurance *should* be included in the proposal in the form of a current Certificate of Insurance.4.

**16. Quality Assurance: Include in your proposal as Tab 7.**

State whether or not your firm has a written Quality Assurance Program. If the answer is “Yes,” include a copy under Attachment 7.

## 17. ARCHITECTURAL SERVICES:

**The design services for the Scope of Work for the projects listed shall include as a minimum:**

1. Foundation System design ranging from simple foundation systems to complex foundation systems (e.g. Simple slab on grade to complex drilled piers and grade beams with a structural slab) shall be considered as basic services. The foundation design services and associated investigations are inclusive in the MACC listed in this RFP. If requested, multiple options with associated budget estimates shall be provided to the owner(s) pending the outcome of the geotechnical report or owner requirements. Heating, Cooling, and Ventilation System design ranging from simple systems to complex HVAC systems (e.g. Simple roof top units to complex geothermal systems) shall be considered as basic services. The HVAC system design services and associated investigations are inclusive in the MACC listed in this RFP. If requested, multiple options with associated budget estimates shall be provided to the owner(s) pending the outcome of the LCCA or owner requirements.
2. Engineering design to provide life, health, and safety requirements for the school facility, especially fire suppression system design (e.g. Design of fire tank and pump components) necessary to provide a code compliant environment shall be considered as basic services. The design services of these life, health, safety components are inclusive in the MACC listed in this RFP.
3. Play area/Playground equipment design is included as part of the basic services rendered for this RFP and Contract.
4. Kitchen equipment design is included as part of the basic services rendered for this RFP and Contract.
5. Any increase in the MACC directly attributable to construction cost increase, inflation, bidding climates, or owners' requirements (not attributed to scope increase) shall not be considered as a basis for additional services for the Design Professional or an increase in fee.
6. The Design Professional is obligated per the general conditions of the Agreement between the Owner and Design Professional to notify the owner(s) in writing immediately if there is any conflict or incompatibility between the program requirements and the MACC. The Design Professional must notify the owner(s) and provide proposed recommendations to reconcile the incompatibility.
7. Programming efforts needed to reconcile the Educational Specifications with the design and Adequacy Standards shall not be considered as a basis for additional services for the Design Professional.

PSFA requires formal review meetings prior to submission of each design phase in conjunction with updated cost estimates. In addition to each design phase review meeting, PSFA will be implementing a 50% Design Development review meeting and 50% Construction Documents meeting. The purpose of these meetings is to review the design of the project and associated budgets at each phase:

- a. Programming phase – programming phase services**
  - i. Project administration
  - ii. Owner-supplied data coordination
  - iii. Establishment of program goals and needs
  - iv. Determination of space area requirements



- v. Establishment of space relationships
- vi. Site analysis for building location
- vii. Obtaining licensing agencies' or other regulatory entities' consultation/review
- viii. Project budgeting
- ix. Presentation to Owner
- x. Obtaining approval of programming documents from owner

**b. Schematic design phase – schematic design phase services**

- i. Project administration
- ii. Concept design for all applicable disciplines, including but not limited to:
  - 1. Architectural
  - 2. Civil
  - 3. Landscaping
  - 4. Structural
  - 5. Mechanical
  - 6. Electrical
  - 7. Other (*See Other/Associated Services and Conditions – Listed Below*)
- iii. Interim design presentation(s) to Owner
- iv. Preliminary alternative materials and systems recommendations, including:
  - 1. Life cycle maintenance briefing
  - 2. Feasibility of utilizing alternative energy sources
  - 3. Statement of probable construction cost
  - 4. Submittal and presentation of schematic design documents to Owner
  - 5. Obtaining approval of schematic design documents from Owner
  - 6. Other (list)

**c. Design development phase – design development phase services**

- i. Project administration
- ii. Finalization of design and selection of materials and systems for all applicable disciplines, including but not limited to:
  - 1. Architectural
  - 2. Civil
  - 3. Landscaping
  - 4. Structural
  - 5. Mechanical
  - 6. Electrical
  - 7. Other (*See Other/Associated Services and Conditions – Listed Below*)
- iii. Project scheduling
- iv. Statement of probable construction cost
- v. Outline of specifications, including equipment and furnishings
- vi. Obtaining licensing agencies' or other regulatory entities' review and approvals, as required
- vii. Submittal and presentation(s) of design development documents to Owner
- viii. Obtaining approval of design development documents from Owner
- ix. Other (*See Other/Associated Services and Conditions – Listed Below*)

**d. Construction document phase – construction documents phases services**

- i. Project administration

- ii. Preparation of final bidding and construction documents for all applicable disciplines, including but not limited to:
  - 1. Architectural
  - 2. Civil
  - 3. Landscaping
  - 4. Mechanical
  - 5. Electrical
  - 6. Other (*See Other/Associated Services and Conditions – Listed Below*)
- iii. Detailed cost estimate
- iv. Obtaining licensing agencies’ and other regulatory entities’ reviews and approvals
  - v. Presentation(s) of bidding and construction documents to Owner
- vi. Obtaining approval of bidding and construction documents from Owner

**e. Bidding phase – bidding phase services**

- i. Project administration
- ii. Bidding documents distribution which have been reproduced by Owner
- iii. Bidding inquiries review and disposition
- iv. Proposed substitution, pre-approval, or prequalification review and disposition
  - v. Issuance of addenda
- vi. Representation and assistance to Owner at bid opening
- vii. Analysis of bids and recommendation on award of contract
- viii. Assistance to Owner in preparation and execution of construction agreement

**f. Construction administration phase – construction administration phase services**

- i. Project administration
- ii. Administration of preconstruction conference
- iii. Periodic construction field observations
- iv. Administration of progress meetings
- v. Review and disposition of
  - 1. Submittals
  - 2. Change orders
  - 3. Contractor pay requests
  - 4. Other (*See Other/Associated Services and Conditions – Listed Below*)
- vi. Interpretation of documents
- vii. Monitoring of construction schedule
- viii. Coordination of applicable regulatory agency review and approvals
- ix. Determination of substantial and final completion
- x. Project closeout, including:
  - 1. Maintenance, operation, and start-up assistance
  - 2. Recording of construction and warranty documents

**g. Post construction – post construction services**

- i. Maintenance and operation services
- ii. Twelve-month warranty review

**h. Other/Associated Services and Conditions -** When specifically identified/selected by the Owners, the following services shall be deemed part of and incorporated into the Basic Services, Responsibilities, & Requirements of the Design Professional.

**i. Owner HVAC & Controls Performance Assurance Program**

The Design Professional shall incorporate the elements and requirements of the HVAC & Controls Performance Assurance Program into all phases of the project. The Design Professional shall responsibly and fully participate in the program, and coordinate with the Owner's Performance Assurance Contractor (PAC) during all stages of the Project. The PAC will submit reports to the Design Professional after reviewing the HVAC & Controls Design at all phases of the Project. The Design Professional shall then review each PAC report and issue a response to the PAC and Owner indicating action(s) to be taken in response to the PAC comments, in written form no later than 14 working days after receipt of each report.

**j. Energy Star**

This Project is required to qualify for the EPA ENERGY STAR, the Design Professional shall provide the professional and engineering services necessary for its design and construction to meet the related basic criteria indicated in this Project's Agreement.

The Design Professional shall coordinate with the Owner in developing an integrated design approach to establish an energy performance target that exceeds the ENERGY STAR rating of 75, generated from the U.S. EPA's Energy Performance Rating tool Target Finder, on the <http://www.energystar.gov/newbuildingdesign> web page. This approach shall be described as part of the Project Program Statement.

**k. Roofing Consultant**

The Design Professional shall responsibly, fully cooperate and coordinate with the Owner's Roofing Consultant during all stages of the Project which involve roof consultation, construction, or observation services. The State of New Mexico Public School Facilities Authority Roofing Program Handbook shall be followed by the Design Professional on the Project, when roofing is involved.

**l. Furnishings and Equipment**

The Design Professional shall provide all required work for design, selection, preparation of Construction Documents and bidding for the procurement of project related furniture, fixtures, and equipment. Related services shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner as indicated for Basic Services unless modified in writing by Owner. Following installation of furniture, fixtures and equipment, Design Professional shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Design Professional shall again inspect the site to confirm that corrections were properly done and to authorize final payment for the furniture, fixtures and equipment.

**V. EVALUATION**

**A. EVALUATION CRITERIA**

Short listing - A maximum total of 100 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the proposals and may conduct interviews with Offerors applying for selection.

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

- 1. General Information:.....Mandatory**
  - 18. Design and technical competence** of the business, including a joint venture or association, regarding the type of services required..... **15 points**
  - 3. Capacity and capability** of the business to perform the work, including any specialized services, within the time limitations.....**15 points**
  - 4. Past record of performance** on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.....**10 points**
  - 5. Technical Approach** to visioning, presentation of design phases.....**15 points**
  - 6. The amount of design work** that will be produced by a New Mexico business within the State.....**5 points**
  - 7. Design Experience** for projects of similar size and scope. Describe specialized design concepts and out-of-the-box thinking that has been implemented on previous architectural design projects .....**25 points**
  - 8. Evidence of understanding of scope of work**, the site, and existing conditions.....**15 points**
- TOTAL POSSIBLE POINTS     100**

- 9. New Mexico Resident Preference, if applicable 5% of total Possible Points.....5 points**

**OR**

- 10. New Mexico Resident Veteran Preference, if applicable 10% of total possible Points .....10 points**
- 11. Finalist Interview, if applicable.....50 points**

**TOTAL POSSIBLE AWARDED POINTS   100 – 160**

**B. EVALUATION PROCESS**

1. Notice of Non-Responsiveness - For any proposal submitted which is deemed non-responsive, the Offeror will be notified in writing of such determination and the method for protesting the determination.

2. Evaluation Meeting - The Selection Committee established by Section 131121 NMSA 1978 will meet to review the proposals. The Selection Committee will review each Offerors' proposal. Points will be allocated as outlined in Section V. A. of this RFP, by each member of the committee. Each member's point totals will be translated to a numeric ranking. The committee member rankings will be totaled to determine the overall ranking of the firms.

The Selection Committee may award the selection based on the results of the short listing alone. If fewer than three proposals are received, the Selection Committee may recommend an award or reissue the RFP.

3. Notice of interviews - Each responsive Offeror selected for shortlist interview will be notified in writing .

4. Final Rankings - The combined weighted rankings from shortlist and interview determine the final rankings.

5. Point Calculations - All calculations of point standings, including any addition or deduction of points to Offeror submittals shall occur at a meeting of the Selection Committee, with all members in attendance.

All overall committee rankings are public record and will be available for public inspection at the District after the successful Offeror's contract is signed by the District. Ties in ranking shall be scored using the sum of the ranking places, divided by the number of firms in a tie. The following is an example of scoring, for a tie at first:

<u>Scoring</u>	<u>Numerical Ranking</u>
Firm A Tie	$(1st + 2nd/2) = 1.5$
Firm B Tie	$(1st + 2nd/2) = 1.5$
Firm C 3rd	$= 3$

A tie for first, at the end of the final rankings after the completion of short listing and interviews, shall be broken by a separate ranking by the committee members, only ranking the firms involved in the tie. If a tie still exists after ranking only the tied firms, the tie shall be broken by the chairman of the DESIGN PROFESSIONAL Selection Committee.

6. Notice of Award - The Procurement Officer will notify all Offerors in writing of the final results of the solicitation by certified mail or by e-mail return receipt acknowledgement, after execution of the contract. After the written date of award, proposals will be available for public inspection by appointment only, at the District Offices. The District shall keep one each of all proposals submitted for the procurement file. Offerors may make arrangements with the District to pickup or mail the Offeror's cost the additional copies of the proposals as soon as possible.

**APPENDIX A**  
**ACKNOWLEDGMENT OF RECEIPT FORM**  
**RFP 013-2021**

In acknowledgment of receipt of this Request for qualification (RFP) the undersigned agrees that they have received a complete copy of this proposal consisting of forty five (45) pages.

This Acknowledgment of Receipt Form should be signed and returned to the Procurement Office no later than **5 PM** local time on February 19, 2021. 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 District’s written response to those questions, as well as RFP Amendments, if any are issued.

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

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

TITLE: \_\_\_\_\_

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

CITY, STATE, ZIP: \_\_\_\_\_

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

EMAIL: \_\_\_\_\_

The above name and address will be used for all correspondence related to this Request for qualification, i.e., Amendments, Questions & Answers, etc.

The above Firm     **DOES**     **DOES NOT**     intend to respond to this Request for Proposal.  
*(Circle One)*

Return this form to: Dillon Voss, Chief Procurement Officer  
1211 Hawaii Ave.  
Alamogordo, NM 88310  
575-812-6046  
dillon.voss@alamogordoschools.org

**APPENDIX B SAMPLE AGREEMENT (USED FOR DESIGN PROFESSIONALS)**



**State of New Mexico  
Public School Facilities Authority**

Agreement No. \_\_\_\_\_

THIS Agreement (“Agreement”) is made by and between the New Mexico Public Schools Facility Authority hereinafter referred to as “PSFA” and the [Contractor’s Business Name], hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the PSFA.

**WHEREAS**, the PSFA issued a Request For Proposals, titled “[RFP Title]”, RFP No. [RFP Number]” (RFP); and

**WHEREAS**, the Contractor submitted its Proposal, dated [Date]; and

**WHEREAS**, the RFP, Addenda, and the Proposal submitted by Contractor are incorporated by reference and made a part of this Agreement by way of this reference; and

**WHEREAS**, the Contractor has the experience and technical ability to provide the work/services; and

**WHEREAS**, this Agreement shall be utilized by the PSFA and school districts collectively, on an- as-needed basis, when the PSFA and school districts are Co-Owners of a project, or by the school districts acting on their own; and

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

**1. Scope of Work**

- A. The Contractor shall perform the work as described in **Exhibit A**.
- B. An individual scope of work and purchase order will be assigned for each task assigned pursuant to this Agreement. Each task assigned shall be issued pursuant to a fully executed Personnel Pricing Matrix Form (Matrix Form) as more particularly described in **Exhibit B**.

**2. Compensation**

- A. The Contractor shall be compensated in full payment for services satisfactorily performed according to the labor rates in the Matrix Form. Contractor shall be reimbursed for the printing costs for the final reports.

- B. Payment shall be made upon acceptance of each deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice.
- C. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of acceptance.
- D. All Payment Invoices MUST BE received by PSFA no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.
- E. The Contractor shall be reimbursed by the PSFA for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification Number. Contractor and all subcontractors shall pay all Federal, state and local taxes Applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold PSFA harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

### 3. Term

This Agreement shall begin on the date approved by the PSFA and shall end on [Date] unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The PSFA reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in any case the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

### 4. Termination

- A. Grounds. The PSFA may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the PSFA's uncured, material breach of this Agreement.
- B. Notice; PSFA Opportunity to Cure.
  - i. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, PSFA shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
  - ii. Contractor shall give PSFA written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (a.) identify all PSFA's material breaches of this Agreement upon which the termination is based and (b.) state what PSFA must do to cure such material breaches. Contractor's notice of termination shall only be effective (a.) if PSFA does not cure all material breaches within the thirty (30) day notice period or (b.) in the case of material breaches that cannot be cured within thirty (30) days, PSFA does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.



iii. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (a.) if the Contractor becomes unable to perform the services contracted for, as determined by the PSFA; (b.) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (c.) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the PSFA's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor'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 Contractor 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 PSFA'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

## **5. 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 PSFA to the Contractor. The PSFA's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the PSFA proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

## **6. Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional or general services for the PSFA and are not employees of the State of New Mexico. The Contractor 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 Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **7. Conflict of Interest; Governmental Conduct Act**

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

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

- i. in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any PSFA employee while such employee was or is employed by PSFA and participating directly or indirectly in PSFA's contracting process;
- ii. this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the 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;
- iii. in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor 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 Contractor 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 PSFA's making this Agreement;
- iv. this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor 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;
- v. in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- vi. in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of PSFA.

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

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

## **8. Amendment**

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

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

## **9. Merger**

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

## **10. Penalties for Violation of Law**

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

## **11. Equal Opportunity Compliance**

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

## **12. Workers Compensation**

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

## **13. 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, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

## **14. Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3)

years from the date of final payment under this Agreement. The records shall be subject to inspection by PSFA, the Department of Finance and Administration and the State Auditor. PSFA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of PSFA to recover excessive or illegal payments

**15. 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.

**16. 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.

**17. Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, neither directly nor indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the PSFA.

**18. Notices**

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

**To PSFA:**

Marilee Gallacher  
Contracts Administrator  
1312 Basehart Rd., SE Suite 200  
Albuquerque, NM 87106-4365

**To the Contractor:**

[Contact Name]  
[Title]  
[Business Name]  
[Address]  
[City, State, Zip]

**19. Succession**

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

**20. Headings**

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

## **21. Default/Breach**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, PSFA and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and PSFA and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

## **22. Equitable Remedies**

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

## **23. Indemnification**

**The Contractor shall defend, indemnify and hold harmless PSFA and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors, or agents resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of PSFA and the Risk Management Division of the New Mexico General Services Department by certified mail.**

## **24. Insurance**

Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the PSFA as an additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit.  
Employer's liability: \$100,000.
- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- i. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- ii. Property damage or combined single limit coverage: \$1,000,000.
- iii. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- iv. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the PSFA as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. 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.

## **25. Assignment**

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

## **26. Subcontracting**

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

## **27. Release**

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

## **28. Confidentiality**

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

## **29. Contractor Personnel**

A. Key Personnel. Contractor's key personnel shall not be diverted from those designated in the Matrix Form without the prior written approval of the PSFA. Key personnel are those individuals considered by the PSFA to be mandatory to the work to be performed under this Agreement.

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the PSFA. For all personnel, the PSFA reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the

reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to PSFA approval. The PSFA, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The PSFA reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the PSFA, meeting the PSFA's expectations.

### **30. Incorporation by Reference and Precedence**

- A. 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 PSFA response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.
- B. 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) Matrix; (2) 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 Contractor's best and final offer if such has been made and accepted by the PSFA; and (5) the Contractor's response to the request for proposals.

### **31. Product of Service – Copyright**

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

### **32. 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.**

### **33. Authority**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that they have the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.

**Contractor: (Name of Firm)**

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Title (printed)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Tax ID Number: \_\_\_\_\_

**New Mexico Public School Facilities Authority**

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Title (printed)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



## **Exhibit A – Sample Agreement**

### **Scope of Work**

[insert here]

**Exhibit B – Sample Agreement**

**Personnel Pricing Matrix Form**

[insert here]

**[END OF SAMPLE AGREEMENT]**

**APPENDIX C**  
**Reference Questionnaire**

**Complete one form for each project listed in Section IV, Paragraph B.4.**

**Project Description**

Project Name: \_\_\_\_\_ Project Location: \_\_\_\_\_

Project Type: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Owner: \_\_\_\_\_ Contact Title: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

Gross Building Area: \_\_\_\_\_ (\_\_\_) New (\_\_\_) Addition (\_\_\_) Renovation

**Design:**

Project Start Date: \_\_\_\_\_ Project Completion Date: \_\_\_\_\_

**Construction:**

Project Start Date: \_\_\_\_\_ Project Completion Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Owner Established Maximum Allowable Construction Cost (MACC): \_\_\_\_\_

Initial Construction Cost: \_\_\_\_\_ Final Construction Cost: \_\_\_\_\_

**Project Summary**

Provide a brief description of the Project and its relevance to this contract. Include specifics as requested in Section IV., Paragraph B.4.a. through 4.d. Include in Proposal under Attachment 4.

**APPENDIX D****CAMPAIGN CONTRIBUTION DISCLOSURE**

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 federal, 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 Proposal and ending with the award of the contract or the cancellation of the Request for Proposal.

“**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): \_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

– OR –

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

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

\_\_\_\_\_  
Offeror Business Name

