

City of Alamogordo, New Mexico
ALAMOGORDO – WHITE SANDS REGIONAL AIRPORT

3500 Airport Rd.
Alamogordo, NM 88310
Phone: 575-4439-4110

REQUEST FOR QUALIFICATIONS
NO. 2022-01
ALAMOGORDO WHITE SANDS REGIONAL AIRPORT
January 12th, 2022 3:00 PM MT

I. INVITATION

The City of Alamogordo, New Mexico (referred to herein as "Sponsor"), as owner of the Alamogordo-White Sands Regional Airport, is requesting proposals from consulting firms ("Proposers") qualified and experienced in the field of airport engineering.

The Sponsor plans to award a one year with 3 year renewal contract for engineering services for any and all engineering projects subject to federal assistance under the Airport and Airway Improvement Act of 1982 as amended. Contemplated projects under this contract may include:

1. Design reconstruction of taxiway A.
2. Reconstruct taxiway A connecting it to the approach end of Runway 04. This may be done in Phases.
3. Design Rehabilitate Runway 22-04, preservation.
4. Rehabilitate runway 22-04
5. Design replacement of all lights and signs on the runway 22/04 and all taxiways to 139 standards.
6. Construct all lights and signs on the runway 22/04 and all taxiways to 139 standards.

Projects not identified in the list above will not be eligible for FAA funding.

Other projects that may be required/approved by the FAA and the State Aviation Division over the period of this contract for services.

The above-contemplated projects are dependent upon federal AIP funding and State Aviation Division funding and approval of the Sponsor.

II. BACKGROUND

The Alamogordo-White Sands Regional Airport is located on the west side of the City of Alamogordo on Airport Road, approximately one mile southwest of Highway 70. The Airport has approximately 34,000 annual operations. Presently the tenants at the Airport consist of approximately 95 general aviation aircraft.

The Airport is not a Certificated FAR Part 139 airport. There is no control tower.

The contract issued to the successful consultant is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulation 49 CFR Part 26 (Disadvantaged Business Enterprise Participation). DBE firms are encouraged to participate. The Engineer, by submission of an offer and/or execution of a contract, certifies that it:

- A. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- C. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Engineer who is unable to certify the above. If the Engineer knowingly procures or subcontracts for the supply of any product or service of a foreign country on page 3 of 4, the said list for use on the project, the Federal Aviation Administration may direct through the sponsor, cancellation of the contract at no cost to the City of Alamogordo.

III. REQUESTS FOR CLARIFICATION

Any requests for clarification of additional information deemed necessary by any respondent to present a proposal shall be submitted to Barbara Pyeatt, Purchasing Manager, by either fax at (575) 439-4117 or e-mail bpyeatt@ci.alamogordo.nm.us referencing this request.

Requests must be received by **December 30th 2021 at 3:00 PM Mountain Time**. Any requests received after this deadline will not be considered. All requests received prior to the deadline will be responded to, in writing in the form of an addendum addressed to all prospective respondents.

IV. SCOPE OF WORK

Basic engineering services are utilized in four distinct and sequential phases. Proposers are required to set out their qualifications and to propose on the following scope of work.

- A. Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements including, but not limited to, the following:
 - 1. Conferring with the Sponsor on project requirements, programming, finances, schedules, early phases of the project, and other pertinent matters and meeting with FAA and other concerned agencies and parties on matters affecting the project.
 - 2. Assisting the Sponsor in the preparation of necessary pre-applications, applications, and required documents for federal grants, including Disadvantaged Business Enterprise (DBE) plan and goals, and exhibits.
 - 3. Planning, procuring, and/or preparing necessary surveys, field investigations, and architectural and engineering studies required for preliminary design considerations.

4. Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost.

B. Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design including, but not limited to, the following:

1. Meetings and design conferences to obtain information and to coordinate or resolve design matters.
2. Collecting engineering data and undertaking field investigations and surveys and engineering and environmental studies.
3. Preparing necessary engineering reports and recommendations.
4. Preparing detailed plans, specifications, and cost estimates.
5. Conducting a detailed value engineering analysis, if applicable and requested.

C. Bidding or Negotiation Phase: This phase, at a minimum, involves providing plans, specifications, and all bid documents. The phase also includes assisting the Sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

D. Construction Phase: This phase includes all basic services rendered after the award of a construction contract including, but not limited to, the following:

1. Providing consultation and advice to the Sponsor during all phases of construction.
2. Representing the Sponsor at pre-construction conferences.
3. Providing on site construction inspection and management involving the services of a full-time resident engineer, inspector, or manager during the construction or installation phase of a project and providing appropriate reports to the Sponsor.
4. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept.
5. Reviewing, analyzing, and approving laboratory and mill test reports of materials and equipment.
6. Preparing and negotiating change orders and supplemental agreements.
7. Observing or reviewing performance tests required by specifications.
8. Determining payment amounts to contractors and assisting Sponsor in the preparation of payment requests for amounts reimbursable from grant projects.

9. Conducting wage rate reviews of certified payrolls.
10. Making final inspection and submitting a report of the completed project to the Sponsor, including "as built" drawings.

E. Proposers may be required to provide other incidental services, or subcontract with third party individuals or companies for such services. Incidental services include, but are not limited to, the following:

1. Soils investigation, including core sampling, laboratory tests, related analyses, and reports.
2. Detailed mill, shop, and/or laboratory inspections of materials and equipment.
3. Land surveys and topographic maps.
4. Field and/or construction surveys.
5. Expert witness testimony in litigation involving specific projects.
6. Miscellaneous plans, studies, and assessment reports including environmental, noise, etc.
7. Assist Sponsor in preparing equipment (i.e. snow removal, Airport Rescue and Fire Fighting, etc.) specifications for procurement purposes.

V. SELECTION PROCESS

1. The selection process will be in strict accordance with Federal Aviation Advisory Circular 150/5100-14E, Architectural, Engineering and Planning Consultant Services for Airport Grant Projects and 49 CFR Part 18.
2. The Selection Committee shall consist of:

Three Sponsor representatives (to be determined)
3. Communication between Proposers and any member of the Selection Committee during the selection process, except when and in the manner expressly authorized by the proposal documents, is strictly prohibited; violation of this requirement shall be grounds for disqualification of the Proposers from the process. Contact with the Airport Manager is allowed for project information and airport visits.
4. Instructions to Proposers are attached hereto and incorporated herein.

VI. CONTENTS OF STATEMENT OF QUALIFICATIONS

1. Proposers interested in the provision of engineering services to accomplish the proposed projects should limit their Statements of Qualifications to 30 pages, exclusive of cover

letters or divider tabs. The Statement of Qualifications should include:

- a. A cover letter with proposal title, date, and firm's name (cannot include any other text); which is not included in the 30-page limitation.
 - b. A narrative statement detailing the Proposer's understanding of the requirements of the Sponsor and the capability to perform all or most aspects of the engineering projects and tasks contemplated.
 - c. A general description of the Proposer's firm, including company organizational structure, size of company, recent experience in comparable airport/aviation projects, and experience with projects funded by Federal Aviation Administration AIP grants.
 - d. Identification of those key individuals who will be involved in the contemplated projects and their qualifications, backgrounds, experience, and specific responsibilities.
 - e. A representative list of previous clients and representative projects comparable to the proposed planning and/or engineering projects listed above (include contact person, airport, brief project description(s), and phone numbers.
 - f. Demonstrated capability to meet schedules/deadlines, without delays, cost escalations or overruns, and contractor claims.
2. Format for Proposal:
- a. Back cover without any text – not included in 30 page limitation.
 - b. Bound on left-hand margin.
 - c. 8-1/2 inch by 11 inch paper.
 - d. Printed on one side of sheets only.
 - e. Transmittal letter, if any, to be included in the 30-page limit.
 - f. No other material to be included.
3. Proposers shall complete attachment Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count). **NOTE: failure to comply with this requirement shall result in rejection of the proposal.**
- 4 Interested firms shall submit one (1) original and five (5) copies of the proposal on or before January 12th 2022 at 3:00 PM Mountain Time to:

**City of Alamogordo,
Barbara Pyeatt, Purchasing Manager
2600 N. Florida
Alamogordo, NM 88310
575-439-4116**

Proposals received after the deadline, as determined by the Purchasing Agent, will not be considered.

5. All proposals must be submitted in a sealed envelope and clearly marked in the lower left hand corner: **“RFQ NO. 2022-01, Proposal for Engineering Design Services for the Alamogordo-White Sands Regional Airport.”**

6. Proposals must contain the name, address, and daytime telephone number for contact persons to whom additional selection process requests should be communicated.

7. Following the selection process, the proposal for the selected Proposer shall be made available for public review, except for any items that Proposer has requested, in writing, to remain confidential under applicable law.

VII. SELECTION CRITERIA

Selection criteria contained in FAA Advisory Circular 150/5100-14D Chapter Two, will be applied in the following order of importance:

- | | | |
|----|---|------------|
| 1. | Recent experience in airport planning and development projects. | 10 points |
| 2. | Capability to perform all aspects of project. | 10 points |
| 3. | Reputation. | 10 points |
| 4. | Ability to meet schedules within budget. | 10 points |
| 5. | Quality of previous airport project undertaken. | 15 points |
| 6. | Familiarity with Sponsor and project location. | 10 points |
| 7. | Understanding the airport and proposed projects. | 15 points |
| 8. | Understanding the Sponsor's special concerns. | 10 points |
| 9. | Interest shown. | 10 points |
| | Total | 100 points |

VIII. AWARD OF CONTRACT

The award shall be made to the responsible proposer or proposers whose proposal is most advantageous to the City of Alamogordo taking into consideration the evaluation factors set forth in this request for proposal. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

A schedule of fees will be negotiated with the selected consultant for the services to be performed under the initial NMDOT - Aviation Division or FAA grant. Subsequent fees will be negotiated on a task order basis as additional grants are obtained.

The consulting firm most qualified to perform engineering services for the contemplated projects will be selected and consulting fees for each project will be negotiated in accordance with FAA regulations.

IX. BRIBERY AND KICKBACKS

As required by Section 13-1-191, N.M.S.A., 1978, it is noted that it is a third degree felony under New Mexico law to commit the offense of bribery of a public officer or public employees (Section 30-4-1, N.M.S.A., 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, N.M.S.A.); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-40-1, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, N.M.S.A., 1978).

X. RESPONSIBILITY OF PROPOSER

At all times, it shall be the responsibility of the proposer to ensure the proposal is delivered to the City of

Alamogordo by the proposal due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

XI. INCURRING COST

Any cost incurred by the proposer in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFQ shall be borne solely by the proposer.

XII. NO OBLIGATION

This procurement in no manner obligates the City of Alamogordo or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

XIII. TERMINATION

This RFQ may be cancelled at any time, and any and all proposals may be rejected in whole or in part when determined that such action is in the best interest of the City of Alamogordo.

XIV. SUFFICIENT APPROPRIATION

Any contract awarded as a result of this RFQ process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

XV. RIGHT TO WAIVE MINOR IRREGULARITIES

The City Purchasing Manager reserves the right to waive minor irregularities. The Purchasing manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. The right is at the sole discretion of the Purchasing Manager.

XVI. AGENCY RIGHTS

The City reserves the right to accept all or any portion of a proposal.

XVII. OWNERSHIP OF PROPOSALS

All documents submitted in response to this RFQ shall become the property of the City of Alamogordo.

SECTION 7- CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) 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 (2) 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 (2) year period.

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

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

The following definitions apply:

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

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

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

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

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

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

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes 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 Contributions(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)

City of Alamogordo
Alamogordo-White Sands Regional Airport
Aviation Project Consultant Agreement

THIS AGREEMENT is entered into by City of Alamogordo, a New Mexico municipal corporation (“Sponsor”) and _____, a _____ corporation qualified to do business in the State of New Mexico (“Consultant”).

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

1. GENERAL

Based on the availability of Airport Improvement Project funding from the Federal Aviation Administration and/or the State of New Mexico Aviation Division, the Sponsor agrees to employ the Consultant to provide consulting services for any or all of the following projects.

1. Design reconstruction of taxiway A.
2. Reconstruction taxiway A connecting it to the approach end of Runway 04. This may be done in Phases.
3. Design Rehabilitate Runway 22-04, preservation.
4. Rehabilitate runway 22-04
5. Design replacement of all lights and signs on the runway 22/04 and all taxiways to 139 standards.
6. Construct all lights and signs on the runway 22/04 and all taxiways to 139 standards.
- 7.

Projects not identified in the list above will not be eligible for FAA funding.

Other projects that may be required/approved by the FAA and the State Aviation Division over the period of this contract for services.

_____, will represent the Consultant as Project Manager in the performance of this agreement. No one else will be assigned to act in this capacity without the Sponsor's prior written approval. The Project Manager shall be responsible for directing and coordinating all the activities necessary to complete this project.

The Consultant will provide all equipment and personnel necessary to do the tasks listed herein, except as otherwise provided. The Consultant shall be responsible for the quality, accuracy and coordination of the design, drawings, reports, surveys, and other items furnished as part of this agreement.

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between Consultant and Sponsor. Except as otherwise specifically set forth herein, neither Consultant nor Sponsor shall be authorized or empowered to make any representation or commitment or to perform any act which

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shall be binding on the other unless expressly authorized or empowered in writing.

2. GRANT DEVELOPMENT PHASE

Under this phase the consultant agrees to prepare and submit applications for Federal assistance for the above identified projects. The Sponsor will sign and distribute the applications to state and FAA. The grant application(s) will be submitted in timely fashion according to funding source requirements. This work will consist of the following major items.

- a. Confer with the Sponsor, the New Mexico Department of Transportation Aviation Division (NM Dot) and the Federal Aviation Administration (FAA) in accordance with FAA/ACE AIP Guide No. 910-Predesign Conference. The Consultant shall prepare a summary of the conference that highlights critical project issues.
- b. Prepare documents required to submit a request for aid. All documents will be prepared and submitted in accordance with FAA/ACE AIP Guide No. 610-Requesting Aid: ACIP, or in accordance with other applicable funding agencies and/or institutions or organizations.

This phase will be considered complete after the documents required to submit a request for aid have been submitted to FAA.

3. ADDITIONAL SERVICES: The Sponsor reserves the right to direct additional services not described in this Agreement. Such direction by the Sponsor shall not be a breach of this Agreement. In this event, a supplemental agreement will be negotiated and executed prior to the Consultant performing the additional or changed services, or incurring any additional cost, therefore. Any changes in the maximum compensation, or time and schedule of completion, will be covered in the supplemental agreement.

4. CONTINGENT ADDITIONAL SERVICES. The following services are not included in the scope of this Agreement:

- Preliminary Design Phase
- Design Phase
- Bidding Phase
- Construction Phase

A supplemental agreement will be negotiated and executed prior to the Consultant performing the Contingent Additional Services, or incurring any additional cost, therefore.

5. FEES AND CHARGES. The Sponsor shall pay the Consultant for the services described in this agreement as follows:

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Grant Development Phase. Consultant agrees to perform the services described in Section 2 for no compensation. Consultant understands and agrees that an award of a grant for each of the above identified items is a condition precedent to the Sponsor proceeding with any of the above identified items.

Direct non-salary costs incurred in fulfilling the terms of this Agreement, such as but not limited to travel and subsistence, reproductions, computer charges, materials and supplies, and other related items, will be charged at actual cost without any override or additives.

6. TERM AND EXTENSION. The initial term of this Agreement shall commence on _____, 2022 and expire on _____, 2026, unless sooner terminated in accordance with other provisions of this Agreement. Sponsor shall have three (3) consecutive renewal options of one (1) year each. Said renewals shall occur automatically, but be documented in writing, in the absence of contractual modifications or contract termination in accordance with other provisions of this Agreement.

7. OWNERSHIP OF DRAWINGS AND DOCUMENTS. All drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the Sponsor upon suspension, abandonment, cancellation, termination, or completion of the Consultant's services hereunder.

8. TITLE VI ASSURANCES. During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

1. Compliance with Regulations. The Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal

Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry.
4. Information and Reports. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Sponsor shall impose such contract sanctions as it, or the FAA may determine to be appropriate, including, but not limited to:
- a) withholding of payment to the Consultant under the contract until the Consultant complies, and/or
 - b) cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The Consultant shall include the provisions of paragraphs 1 through 5 of this Section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Sponsor to enter into such litigation to protect the interests of the Sponsor and, in addition, the Consultant may request the State of New Mexico or the United States to enter into such litigation to protect the interests of the State of New Mexico or the United States.

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9. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIRED STATEMENTS.** The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

10. **TRADE RESTRICTION CLAUSE.** The Consultant, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed

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when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. (Reference: 49 CFR Part 30).

11. RIGHTS TO INVENTIONS. All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the Sponsor. (Reference: 49 CFR Part 18).

12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION. The consultant certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. Where the consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this proposal or contract. (Reference: 49 CFR Part 29).

13. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES. No federal appropriated funds shall be paid, by or on behalf of the consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any fund's other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the consultant shall complete and submit

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Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

14. GENERAL CIVIL RIGHTS PROVISIONS. The consultant assures that it will comply with pertinent statutes, Executive orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, handicap, religion, marital status, physical or mental disability, political affiliation, national origin or ancestry, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the consultant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. The consultant assures that it will not discriminate against any employees or applicant for employment on the basis of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry. (Reference: Airport and Airway Improvement Act of 1982, Section 520 and State of New Mexico).

15. BREACH OF CONTRACT TERMS. Any violation or breach of the terms of this contract on the part of the consultant or subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement. (Reference: Sanctions - 49 CFR Part 18).

16. TERMINATION OF CONTRACT. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services. If the termination is due to failure to fulfill the consultant's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for additional cost occasioned to the Sponsor thereby.

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If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been affected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in the second paragraph of this Section. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract. (Reference: 49 CFR Part 18).

17. ACCESS TO RECORDS. The consultant shall maintain an acceptable cost accounting system. The Sponsor, the Federal Aviation Administration, the Comptroller General of the United States or any of their duly authorized representatives shall have access to any of the Consultant's books, documents, papers and records of the consultant which are pertinent to this contract, for the purposes of making an audit, examination, excerpt and transcriptions. The consultant shall maintain all required records for three years after the Sponsor makes final payment and all pending matters are closed.

18. INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant and its employees, agents, and subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: \$400,000.00 per claim up to \$2,500,000.00 per occurrence.

2. Automobile Liability: \$400,000.00 per claim up to \$2,500,000.00 per occurrence.

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000.00; and

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4. Professional ("Errors and Omissions") Liability: \$1,000,000.00, each claim and in the annual aggregate.

(D) The Consultant shall, upon request at any time, provide the Sponsor with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (16) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of New Mexico.

19. INDEMNIFICATION. City shall not be subject to any obligations or liabilities of Engineer incurred in the performance of this Agreement. Engineer expressly agrees to and shall defend, indemnify and hold harmless and defend City, its officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising from or relating to any acts or omission of Engineer, its principals or officers, agents, or employees in performance of this Agreement.

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

21. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT. Engineer 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. Engineer certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

22. LAW GOVERNING AGREEMENT. For the purpose of determining place of

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Agreement and the law governing same, this Agreement is entered into in City of Alamogordo, County of Otero, State of New Mexico, and shall be governed by the laws of the State of New Mexico. Venue shall be in the County of Otero, New Mexico.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Consultant the _____ day of _____, 2022.

CONSULTANT

By: _____

NM Taxpayer Identification Number:

Federal Taxpayer Identification Number:

Executed by the Sponsor the _____ day of _____, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____,

Brian Cesar, City Manager

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney