

**REQUEST FOR PROPOSALS  
FOR  
CONSTRUCTION QUALITY CONTROL SERVICES**

RFP No. 2018-25



Contracting Agency: City of Carlsbad

Address: 101 N. Halagueno, P.O. Box 1569  
Carlsbad, NM 88221

Telephone: (575) 887-1191

Release Date: 12/21/18  
Due Date: 1/11/2019  
Time: 5:00 PM (MST)

## NOTICE OF REQUEST FOR PROPOSALS

Qualifications-based competitive sealed proposals for professional services will be received by the contracting agency, City of Carlsbad, 101 N. Halagueno, Carlsbad, NM 88220 or P.O. Box 1569, Carlsbad, NM 88221-1569 for **RFP No. 2018-25**

The contracting agency is requesting proposals for professional Construction Quality Control Services **to perform specified services and testing associated with soil gradation, soil density, concrete, and asphalt, relating to the upcoming construction projects.** Proposals will be received at **City of Carlsbad, Purchasing Department, Room 115, 101 N. Halagueno St., Carlsbad, NM 88220, or P.O.Box 1569, Carlsbad, NM 88221 until 5:00 p.m. (MST) January 11, 2019.**

Copies of the Request for Proposals can be obtained in person at the office of the Purchasing department, Room 115, at the City of Carlsbad, 101 N. Halagueno, Carlsbad, NM or will be mailed upon written or telephone request to the Purchasing Department at (575) 887-1191 extension 7905.

A Pre-proposal Conference will not be held.

PURCHASING AGENT:

\_\_\_\_\_  
Matt Fletcher, CPO

Date: 12/21/18

(FOR CONTRACTING AGENCY'S USE ONLY)

Newspaper: Current-Argus

Publish: 12/21/18 P.O. No.

Newspaper: \_\_\_\_\_

Publish: \_\_\_\_\_ P.O. No.

Newspaper: \_\_\_\_\_

Publish: \_\_\_\_\_ P.O. No.

[Note: This Notice is issued pursuant to the requirements of 13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (13-1-113) and published in a newspaper of general circulation in the area.]

## 1. PROJECT DESCRIPTION (Project Description & Location)

The City of Carlsbad is requesting proposals from qualified laboratories to provide acceptance and assurance materials testing for construction projects administered by City. The City has multiple construction projects that require acceptance testing of materials for quality assurance. The testing is specific to asphalt, aggregate, soils, subgrade and concrete that is used in constructing roads, waterlines, sidewalks, drive pads, foundations, etc. The acceptance and assurance testing shall consist of, but not limited to, the following:

- **Laboratory Test Verification.** The service provider will be required to perform testing of materials at their laboratory facilities to verify that construction materials provided by the contractor meet specifications.
- **Field Quality Control Testing.** Service provider will be required to perform field quality control testing during construction in accordance with the project specifications. Specifications are in accordance to City of Carlsbad Standards, NMDOT, FHWA, and APWA.
- **Laboratory Personnel.** Service provider must employ field and laboratory technicians having 1 year or more of recent job experience in the type of sampling and testing required by each project and one of the following:
  - o NICET Level II certification in highway materials, or State (NMDOT) and FHWA or industry certification-related sampling and testing equivalent to the sampling and testing to be performed
  - o WAQCT or other nationally accepted certification program for intended sampling and testing responsibilities.
- **Coordinating and Reporting.** Service provider will be required to coordinate his work with the work of the contractor. The service provider shall establish direct communication with the contractor and the engineer. Service provider will be required to attend the preconstruction meeting and any other project meetings as determined by the Engineer. The service provider shall submit test reports in accordance with the specifications. In addition, the service provider shall provide monthly summaries of all tests performed and their results to the Owner, Contractor, and Engineer. Each test shall be properly identified as a new test or as a retest in accordance with the specifications.

## 2. SCOPE OF WORK

The Offeror shall perform the following professional services:

2.1 Provide standard Basic Design Services, consisting of:

Architects/Landscape Architects	Engineers
<input type="checkbox"/> Programming Phase	<input type="checkbox"/> Study and Report Phase
<input type="checkbox"/> Schematic Phase	<input type="checkbox"/> Preliminary Design Phase
<input type="checkbox"/> Design Development Phase	<input type="checkbox"/> Final Design Phase
<input type="checkbox"/> Construction Documents Phase	<input type="checkbox"/> Bidding and Negotiations Phase
<input type="checkbox"/> Bidding and Negotiations Phase	<input type="checkbox"/> Construction Phase
<input type="checkbox"/> Construction Administration Phase	<input type="checkbox"/> Operational Phase

2.2  Periodic or  FuU-time on-site observation during construction.

2.3  Other (list): Construction Quality Assurance Services

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# INSTRUCTIONS TO OFFERORS

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## I. DEFINITIONS AND TERMS

1.1 Addendum: a written or graphic instrument issued prior to the opening of Proposals which clarifies, edits, or changes the Request for Proposals. Plural: addenda.

1.2 Consultant: means the Successful Offeror awarded the Agreement/Contract.

1.3 Determination: means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (13-1-52 NMSA 1978).

1.4 Offeror: any person, corporation, or partnership legally licensed to provide professional services in this state, who chooses to submit a proposal in response to this Request for Proposals.

1.5 Procurement Manager: means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6 Request for Proposals: or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (13-1-81 NMSA 1978).

1.7 Responsible Offeror or Proposer: means an offeror or proposer 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 described in the proposal (13-1-83 NMSA 1978).

1.8 Responsive Offer or Proposal: means an offer or proposal which conforms in all material

respects to the requirements set forth in the request for proposals. Material respects of a request for proposals included, but are not limited to, price, quality, quantity or delivery requirements (13-1-85 NMSA 1978).

1.9 The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror's proposal.

1.10 The terms can, may, should, preferably, or prefers identify a desirable or discretionary item or factor.

## 2. REQUEST FOR PROPOSAL DOCUMENTS

### 2.1 COPIES OF REQUEST FOR PROPOSALS

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

### 2.2 INTERPRETATIONS

A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda

mailed or delivered to all parties recorded by the Contracting Agency as having received the Request for Proposals. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error that they may discover upon examination of the Request for Proposals.

### 2.3 ADDENDA

- A. Addenda will be mailed by certified mail with return receipt requested, by facsimile or hand delivered to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.
- B. Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.
- C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.
- D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

## 3. PROPOSAL SUBMITTAL PROCEDURES

### 3.1 NUMBER, FORM AND STYLE OF PROPOSALS

- A. Offerors shall provide six (6) copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8 1/2" x 11" paper and bound on the left-hand margin;

- C. A maximum of 10 pages, including title, index, etc., not including front and back covers.

- D. The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:

- 1) Letter of Transmittal, if any;
- 2) Response to Specialized Services and Technical Competence;
- 3) Response to Capacity and Capability;
- 4) Response to Past Record of Performance;
- 5) Response to Familiarity with the Contracting Agency;
- 6) Response to Proposed fee schedule for testing and services for General Services
- 7) Other supporting or resource material.

- E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.
- F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.
- G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

### 3.2 SUBCONSULTANTS

- A. The Offeror shall list and state the qualifications for each Sub-consultant the Offeror proposes to use for all subcontracted Work.
- B. The Offeror is specifically advised that any person or other party to whom it is proposed to

award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

### 3.3 PREQUALIFICATION PROCESS

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such prequalified businesses ( 13-1-134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

### 3.4 DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, ~~subcontractor~~ or supplier) that has either been debarred or suspended pursuant to the requirements of 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17 NMSA 1978 as amended, ~~shall not be permitted to do~~ business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

### 3.5 SUBMITTAL OF PROPOSALS

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project Title, Project No., Request for Proposals number, ~~date of opening~~, and time of opening. If the Proposal is sent by mail, ~~the sealed envelope shall have the notation~~ "SEALED PROPOSAL ENCLOSED" on the face thereof.

- C. Proposals received after the date and time for receipt of Proposals will be returned unopened.
- D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Agent or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.
- E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, ~~the names and addresses of the required~~ witnesses, and such other information as may be specified by the Purchasing Agent.
- F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

### 3.6 CORRECTION OR WITHDRAWAL OF PROPOSALS

- A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.
- B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

### 3.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

- A. In submitting this proposal, ~~the Offeror represents that the Offeror has~~ familiarized himself with the nature and extent of the Request for Proposals dealing with federal, ~~state and~~ local requirements which are a part of these Request for Proposals.
- B. Laws and Regulations: The Offeror's attention is

directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

### 3.9 REJECTION OR CANCELLATION OF PROPOSALS

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefor shall be made part of the project file ( 13-1-131 NMSA 1978).

## 4. CONSIDERATION OF PROPOSALS

### 4.1 RECEIPT, OPENING AND RECORDING

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (13-1-116 NMSA 1978).

### 4.2 PROPOSAL EVALUATION

A. Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) acceptable,
- 2) potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

B. The Contracting Agency shall have the right to

waive **technical irregularities** in the form of the Proposal of the Offeror which do not alter the quality or quantity of the services (13-1-132 NMSA 1978).

C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (13-1-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty-one days after an award is made (13-1-120 NMSA 1978).

D. Selection Process: (13-1-120 NMSA 1978)

1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:

- a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or
- b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to 13-1-104 NMSA 1978.

### 4.3 NEGOTIATIONS (13-1-122 NMSA 1978)

A. The Contracting Agency's designee shall

negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

- B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
- C. The designee shall then undertake negotiations with the third most qualified business.
- D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.
- E. The Contracting Agency shall publicly announce the business selected for award.

#### 4.4 NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (13-1-100 and 13-1-108 NMSA 1978).

### 5. POST-PROPOSAL INFORMATION

#### 5.1 PROTESTS

- A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may

protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (13-1-172 NMSA 1978).

- B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (13-1-173 NMSA 1978).
- C. The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174 NMSA 1978).
- D. The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:
  - 1) state the reasons for the action taken; and
  - 2) inform the protestant of the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978.
- E. A copy of the determination issued under 13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (13-1-176 NMSA 1978).

#### 5.2 EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.



### **5.3 NOTICE TO PROCEED**

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

### **5.4 OFFEROR'S QUALIFICATION STATEMENT**

Offeror to whom award of a Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (13-I-82 NMSA 1978)

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## GENERAL TERMS AND CONDITIONS

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### 1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exist.

### 2. INDEPENDENT CONTRACTORS

The Consultant and his agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

### 3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to 13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including 30-14-1, 30-24-2, and 30-41-1 through 30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (13-1-28 through 13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

### 4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

### 5. FEES

Fees will be based on the proposed schedule of fees submitted by the offeror selected.

### 6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

### 7. PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable professional legally licensed and registered by the state.

### 8. CONTACTS WITH CONTRACTING AGENCY OFFICIAL OR STAFF MEMBERS

Prior to, and after submittal of proposal, prospective Offerors shall not make contact with any official or staff member regarding this RFP, other than contact to obtain a copy of this

### 9. PROFESSIONAL LIABILITY INSURANCE

The Offeror will be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be \$2,000,000.

# EVALUATION CRITERIA

## CRITERIA AND POINT VALUES

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

	<u>Points</u>
<b>1. Specialized Services and Technical Competence</b>	<b><u>15</u></b>
Specialized services and technical competence of the business, including joint venture or association regarding the type of services required.	
<b>2. Capacity and Capability</b>	<b><u>20</u></b>
Capacity and capability of the business to perform the work, including any specialized services, Certificates, within the time limitations.	
<b>3. Past Record of Performance</b>	<b><u>10</u></b>
Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.	
<b>4. Familiarity with the Contracting Agency</b>	<b><u>5</u></b>
Proximity to or familiarity with the area in which the project is located.	
<b>5. Action Plan</b>	<b><u>10</u></b>
Plan of action for the project detailing services and approach in meeting the testing specifications.	
<b>6. Proposed Fee Schedule for Testing and Services</b>	
The offeror is required to submit a fee schedule for all the quality control testing and services to be performed:	
a) Services for general construction projects on an on-call basis	<b><u>20</u></b>
b) Services for the project	<b><u>20</u></b>
<b>Total Points this RFP = 100</b>	

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, 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 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 may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND 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 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 of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“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.

**“Prospective contractor”** means a person or business that 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 or business 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.

CURRENT CITY OF CARLSBAD ELECTED OFFICIALS

Mayor – Dale Janway  
Municipal Judge – Collis Johnson

City Council Ward 1  
Edward T. Rodriguez  
Lisa A. Anaya-Flores

City Council Ward 3  
Jason Chavez  
Leo Estrada

City Council Ward 2  
Jason Shirley  
Judith Waters

City Council Ward 4  
Wesley Carter  
Mark Waltersheid

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Name(s) of Applicable Public Official(s) if any:

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Contribution Made By:

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Relation to Prospective Contractor:

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Date Contribution(s) Made:

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Amount(s) of Contribution(s)

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Nature of Contribution(s)

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Purpose of Contribution(s)

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(Attach extra pages if necessary)

\_\_\_\_\_  
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)

## New Mexico Resident Business Preference

The State of New Mexico Procurement Code mandates a New Mexico Resident Business Preference on all bids and request for proposals (RFP).

Qualified resident businesses will be given a 5% preference on all bids. When bids are evaluated, New Mexico Businesses registered with the Department of Taxation and Revenue, will have its bid reduced by a factor of 5%.

Qualified resident businesses will be given a 5% preference on all RFP's. When proposals are evaluated, New Mexico resident businesses that are registered with the Department of Taxation and Revenue, will receive an additional points equivalent to 5% of the total points possible for award.

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. All resident businesses, veterans and contractors will have to obtain a preference number with the NM Department of Taxation & Revenue. For additional information please call 505-827-0951.

### Qualifications

- A. To receive a **resident business preference** pursuant to Section 13-1-21 NMSA 1978 or a **resident contractor preference** pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid **resident** business certificate or valid **resident** contractor certificate issued by the taxation and revenue department.
- B. An application for a **resident** business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:
- (1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a **resident** business or **resident** contractor certificate pursuant to this section during that time period;

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were **residents** of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a **resident** contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are **residents** of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are **residents** of the state is waived;



(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a **resident** business or **resident** contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were **residents** of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a **resident** business or **resident** contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a **resident** business or **resident** contractor **preference** for a bid or proposal and the **resident** business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate or a **preference** pursuant to Section 13-1-21 or 13-4-2 NMSA 1978 for a period of five years from the date on which the taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty of up to fifty thousand dollars (\$50,000) for each violation.

G. In a decision issued pursuant to Subsection E or F of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years.

**History:** 1953 Comp., § 6-5-32.1, enacted by Laws 1969, ch. 184, § 1; 1979, ch. 72, § 2; 2011 (1st S.S.), ch. 3, § 2.

### **Application of Preference**

A. For the purposes of this section:

(1) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(2) "formal bid process" means a competitive sealed bid process;

(3) "formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;

(4) "public body" means a 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 the state or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(5) "**resident** business" means a business that has a valid **resident** business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

(6) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a **resident** business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a **resident** business based on the **resident** business possessing a valid **resident** business certificate; or

(2) if the contract is awarded based on a point-based system, a **resident** business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the **resident** business possessing a valid **resident** business certificate.

D. When a joint bid or joint proposal is submitted by both **resident** and nonresident businesses, the **resident** business **preference** provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

E. When bids are received for both recycled content goods and non-recycled content goods, the public body shall deem the bids submitted for recycled content goods of equal quality to be five percent lower than the bids actually submitted. A bid calculation pursuant to this subsection for a **resident** business shall not also receive the bid calculation **preference** pursuant to Subsection B of this section.

F. The procedures provided in Sections 13-1-172 through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section.

G. This section shall not apply when the expenditure includes federal funds for a specific purchase.

**History:** 1978 Comp., § 13-1-21, enacted by Laws 1979, ch. 72, § 1; 1981, ch. 104, § 1; 1988, ch. 84, § 1; 1989, ch. 310, § 1; 1995, ch. 60, § 1; 1997, ch. 1, § 2; 1997, ch. 2, § 2; 1997, ch. 3, § 1; 2000, ch. 41, § 1; 2011 (1st S.S.), ch. 3, § 1.

## Resident Veterans Preference Certification

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business

The representations made in the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

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