

---

**REQUEST FOR PROPOSALS**

**FOR**

**ENGINEERING DESIGN AND CONSTRUCTION PHASE  
SERVICES FOR THE ARAGON POND**

As Requested by

***CITY OF BELEN***



**RFP No. 2021-05**

**PROPOSAL DUE DATE: June 18, 2021**

---

## Table of Contents

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
A.	PURPOSE OF THIS REQUEST FOR PROPOSALS.....	3
B.	SCOPE OF WORK TO BE PERFORMED.....	3
C.	SCOPE OF PROCUREMENT.....	3
D.	PROCUREMENT MANAGER.....	4
E.	DEFINITION OF TERMINOLOGY.....	4
<b>II.</b>	<b>CONDITIONS GOVERNING THE PROCUREMENT.....</b>	<b>7</b>
A.	SEQUENCE OF EVENTS.....	7
B.	EXPLANATION OF EVENTS.....	7
C.	GENERAL REQUIREMENTS.....	9
D.	ADDITIONAL FEDERAL TERMS AND CONDITIONS.....	13
<b>III.</b>	<b>RESPONSE FORMAT AND ORGANIZATION.....</b>	<b>21</b>
A.	Number of Responses.....	21
B.	Number of Copies.....	21
C.	Proposal Format.....	21
<b>IV.</b>	<b>SPECIFICATIONS.....</b>	<b>22</b>
A.	Scoring Criteria.....	22
B.	Required Documents.....	23
<b>V.</b>	<b>EVALUATION.....</b>	<b>24</b>
A.	Evaluation of Proposals.....	24
B.	Scoring Criteria Summary.....	24
C.	Volume of Work.....	24
D.	Oral Presentation/Interview.....	24
	<b>APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM.....</b>	<b>25</b>
	<b>APPENDIX B: CAMPAIGN CONTRIBUTION DISCLOSURE FORM.....</b>	<b>26</b>
	<b>APPENDIX C: PROFESSIONAL SERVICES CONTRACT SAMPLE.....</b>	<b>29</b>
	<b>APPENDIX D: SCOPE OF WORK.....</b>	<b>48</b>
	<b>APPENDIX E: REQUIRED INFORMATION FORM.....</b>	<b>51</b>
	<b>APPENDIX F: SUPPLEMENTAL FORMS.....</b>	<b>53</b>

---

## I. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The City of Belen, a political subdivision of the State of New Mexico, requests qualification based competitive sealed proposals for Engineering Design & Construction Phase Services for the Aragon Pond. This pond will protect City of Belen residents, City of Belen infrastructure, and MRGCD infrastructure from storm water inundation during future precipitation events.

During the summers of 2017 and 2018, The City of Belen (“City”) experienced flooding within residential areas within City limits on multiple occasions. The City is vulnerable to storm water runoff from the west mesa at several locations. The City had a Drainage Master Plan prepared in 2009 to help identify potential improvements to help mitigate drainage issues within the City. A storm water pond located southwest of the W. Aragon Lane/W. Frontage Road intersection was identified as a location for a potential pond.

This is a federally funded project. Funding for this project is administered by the New Mexico Department of Homeland Security and Emergency Management (“NMDHSEM”), the state agency that administers the Federal Emergency Management Agency’s Hazard Mitigation Grant Program.

### B. SCOPE OF WORK TO BE PERFORMED

The City is seeking Professional Engineering Design & Construction Phase Services for the Aragon Pond. This project will include storm water pond retention and controlled release to help alleviate downstream city flooding and breach of the adjacent Middle Rio Grande Conservancy District (“MRGCD”) irrigation canals. Complete details of the scope of work can be found in Appendix D (page 39) of this RFP.

### C. SCOPE OF PROCUREMENT

The scope of the procurement consists of identifying one Professional Engineering Consultant that can provide the services described herein. This procurement will result in the award of one Price Agreement. Such Price Agreement may be utilized by any state City or local public body within the State of New Mexico, if allowed by their governing directives, in addition to the Participating Agencies. The term of the Price Agreement shall be coordinated with the selected Consultant . An extension, if needed, shall be approved by the governing body of the City and NMDHSEM.

***Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms are encouraged to respond to this RFP.*** The City of Belen is required to take all necessary affirmative steps to assure that minority business, women’s business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth in 2 C.F.R. 200.321 (b). These steps are in addition to full and open competition and must include, at a minimum, developing a solicitation list to assure that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources. In

---

addition, per the funding agency requirements, the City of Belen used the SBA services and assistance to identify minority business, women’s business enterprises, and labor area surplus firms and notification was provided to the businesses on that list.

**D. PROCUREMENT MANAGER**

1. The City of Belen has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below.

Name: Roseann Peralta, Procurement Manager  
Address: 100 South Main St., Belen, NM 87002  
Telephone:(505) 966-2738  
Fax: (505) 966-2738  
Email: [roseann.peralta@belen-nm.gov](mailto:roseann.peralta@belen-nm.gov)

2. All RFP deliveries shall be addressed as follows:

Roseann Peralta, Finance Director  
City of Belen  
100 South Main St. Belen, NM 87002  
RFP # 2021-05  
[roseann.peralta@belen-nm.gov](mailto:roseann.peralta@belen-nm.gov)

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement. Other City employees or Evaluation Committee members do not have the authority to respond on behalf of the City.

**E. DEFINITION OF TERMINOLOGY**

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

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

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

“City” means the City of Belen.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

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

---

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

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

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

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal. “Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state City or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Procurement Manager” means any person or designee authorized by a state City or local public body to enter into or administer contracts and make written determinations with respect thereto.

---

“Procuring City” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

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

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

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

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

Action	Responsibility	Date	Time
1. Issue RFP	Procurement Manager	May 23, 2021	NA
2. Acknowledgement of Receipt	Potential Offerors	June 2, 2021	5:00 PM
3. Pre-Proposal Conference (Non-Mandatory)	CITY	June 3, 2021	10:00 AM
4. Deadline to Submit Written Questions	Potential Offerors	June 7, 2021	5:00 PM
5. Response to Written Questions	CITY	June 11, 2021	5:00 PM
6. Submission of Proposals	Offerors	June 18, 2021	3:00 PM
7. Proposal Evaluation (including time for Interviews, Oral Presentations, and Best and Final Offers)*	Evaluation Committee	June 21–July 2, 2021	NA
8. Finalize Contract (upon City Council approval)	CITY/Offeror	August 2, 2021 (Tentative, may be sooner or later upon funding concurrence)	NA
9. Contract Award	CITY	August 3, 2021	NA
10. Protest Deadline	Protester	15 days following notification of award	5:00 PM

*\*Offerors will be notified by the Fiscal Services Department if and when to expect interview and Best and Final Offer dates.*

### B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II. A., above.

#### 1. Issuance of RFP

This RFP is being issued on behalf of the City of Belen on May 23, 2021.

#### 2. Acknowledgement of Receipt Due

Offerors should return the "Acknowledgement of Receipt Form", APPENDIX A, to have their organization placed on the distribution list. The procurement distribution list will be used for the distribution of written responses to questions. The form should be returned to the Procurement Manager by 5:00 pm MST on June 2, 2021.

#### 3. Pre-Proposal Conference (Non-Mandatory)

A pre-proposal conference will be held June 3, 2021, beginning at 10:00 AM Mountain Standard Time/Daylight Time in the Council Room located at City Hall, 100 South Main St., Belen, NM 87002. Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager. Additional written questions may be submitted at the conference. All written questions will be addressed in writing on the date listed in the Sequence of Events.

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

---

#### 4. **Deadline to Submit Written Questions**

Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5:00 PM Mountain Standard Time/Daylight Time on June 11, 2021 as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

#### 5. **Response to Written Questions**

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and will be posted on the City's Web-Site: [www.belen-nm.gov](http://www.belen-nm.gov) by 5:00 PM MST on June 11, 2021.

#### 6. **Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MOUNTAIN STANDARD TIME/DAYLIGHTTIME ON **June 18, 2021**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to "**RFP No. 2021-05, Engineering Design and Construction Phase Services for Aragon Pond.**" Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public list will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded. Awarded in this context means the final required authorized City signature on the contract(s).

#### 7. **Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place from June 21<sup>st</sup> through July 2<sup>nd</sup>, 2021, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit potentially responsive proposals for the purpose of clarifying aspects of the proposals. Discussions SHALL NOT be initiated by the Offerors. Evaluation events may include:

- **Selection of Finalists:** The Evaluation Committee will select and the Procurement Manager will notify Finalist Offerors. Only finalists will be invited to participate in the subsequent steps of the procurement.
- **Best and Final Offers(If Applicable):** Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.
- **Oral Presentations (If Applicable):** Finalist Offerors may be required to



---

conduct an oral presentation at a location to be determined. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee and the City.

**8. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the City. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

**9. Contract Award**

After review of the recommendation from the Evaluation Committee Report, the governing board may approve or disapprove the contract award. The contract award means the final authorized signature on the contractual agreement. The City will award the contract agreement at the City Council Meeting to be held on August 2, 2021. This date is subject to change at the discretion of the City.

The contract shall be awarded to the Offeror whose proposal is most advantageous to the City of Belen, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points.

**10. Protest Deadline**

Any protest by an Offeror must be timely and in conformance with Section 13-1-172, NMSA 1978 and applicable procurement regulations. The 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to the Procurement Manager. Protests received after the deadline will not be accepted.

**C. GENERAL REQUIREMENTS**

**1. Acceptance of Conditions Governing the Procurement**

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

**2. Incurring Cost**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

---

### **3. Prime Contractor Responsibility**

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

### **4. Subcontractors/Consent**

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the City awarding any resultant contract, before any subcontractor is used during the term of this agreement.

### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City personnel will not merge, collate, or assemble proposal materials.

### **6. Offeror's Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

### **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

### **8. Disclosure of Proposal Contents**

(A) Proposals will be kept confidential until negotiations and the award are completed by the City. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

(B) Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

(C) Confidential data is restricted to:

- (1) Confidential financial information concerning the Offeror's organization;

---

(2) and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.

(3) PLEASE NOTE: The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

**9. No Obligation**

This RFP in no manner obligates the City to use any of the Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

**10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the State of New Mexico.

**11. Sufficient Appropriation**

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

**12. Legal Review**

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

**13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

**14. Basis for Proposal**

Only information supplied, in writing, by the City through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

**15. Contract Terms and Conditions**

The contract between the City and the contractor will follow the format specified by the City and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting City reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror.

**16. Offeror's Terms and Conditions**

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City.

**17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

---

## **18. Contract Negotiations**

Contract negotiations may be held in accordance with applicable provisions of 1.4.1.39 NMAC Procurement Code Regulations.

## **19. Offeror Qualifications**

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

## **20. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **21. Change in Contractor Representatives**

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

## **22. Notice of Penalties**

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

## **23. City Rights**

The City in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

## **24. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or City contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

## **25. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the City.

## **26. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City.

---

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring City's written permission.

**27. Electronic Mail Address Required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

**28. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the City, the Offeror acknowledges that the version maintained by the City shall govern.

**29. Campaign Contribution Disclosure Form**

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

**30. Conflict of Interest; Governmental Conduct Act.**

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies 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.

**D. ADDITIONAL FEDERAL TERMS AND CONDITIONS**

**1. Remedies**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**2. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the City. Either party may terminate this contract as follows:

**(A) Termination by the Contractor**

- (1) The contractor may terminate this contract only if the City fails to comply

---

with any provisions of this contract and after receiving notice of the noncompliance the City fails to cure the noncompliance within ten (10) days, or

(2) By written mutual agreement between the Contractor and the City.

**(B) Termination by the City**

(1) For Cause

- (a) The occurrence of either one of the following events will justify termination for cause:
  - i. Contractor's persistent failure to perform the work in accordance with the contract documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
  - ii. Contractor's violation in any substantial way of any provisions of this contract.
- (b) If either one of the events identified above occur, the City may, after giving Contractor (and the surety, if any) ten (10) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
- (c) Where Contractor's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the City will not release the Contractor from liability.

(2) For Convenience

- (a) Upon ten (10) days written notice to contractor, the City may without cause and without prejudice to any other right or remedy of the City elect to terminate the contract.
- (b) In such case, Contractor shall be paid (without duplication of any items):
  - i. for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
  - ii. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
- (c) Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**3. Equal Employment Opportunity**

During the performance of this contract, the contractor agrees as follows:

- (A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment

---

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (B)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (C)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (D)** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (E)** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (F)** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (G)** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (H)** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24,

---

1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**4. Compliance with the Davis-Bacon Act.**

- (A) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.



---

(B) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(C) Additionally, contractors are required to pay wages not less than once a week.

**5. Compliance with the Copeland “Anti-Kickback” Act.**

(A) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(B) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(C) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**6. Contract Work Hours and Safety Standards**

Compliance with the Contract Work Hours and Safety Standards Act.

(A) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(B) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (32)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (32)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (32)(1) of this section.

(C) *Withholding for unpaid wages and liquidated damages.* The City of Belen shall **upon** its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other

---

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

- (D) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (32)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (32)(1) through (4) of this section.

## **7. Rights to Inventions.**

All rights to inventions and materials generated under this contract are subject to regulations issued in 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

## **8. Clean Air Act**

- (A) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (B) The contractor agrees to report each violation to the City of Belen and understands and agrees that the City of Belen will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (C) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## **9. Federal Water Pollution Control Act**

- (A) 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (B) The contractor agrees to report each violation to the City of Belen and understands and agrees that the City of Belen will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (C) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## **10. Suspension and Debarment**

- (A) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. §

---

180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- (B) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (C) This certification is a material representation of fact relied upon by the City of Belen. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Belen, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (D) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**11. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

- (A) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**12. Procurement of Recovered Materials**

- (A) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (2) Meeting contract performance requirements; or
  - (3) At a reasonable price.
- (B) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (C) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

---

### **13. Access to Records**

The following access to records requirements apply to this Contract:

- (A) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (B) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (C) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (D) FTA does not require the inclusion of these requirements in subcontracts.

### **14. Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. This procurement and subsequent contract will be subject to regulations contained in 2 CFR part 200. Language from 2 CFR part 200 is incorporated into the attached template contract.

### **15. No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

---

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. Number of Responses**

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

#### **B. Number of Copies**

Offerors should deliver 1 original and 4 copies of their proposal in a sealed envelope or container.

Any proposal that does not adhere to the requirements described herein, may be deemed non-responsive and rejected on that basis.

#### **C. Proposal Format**

Proposals shall be limited to a maximum length of 15 numbered pages, not including the Table of Contents, dividers, the front and back cover, and any documentation listed in *Section IV.B. Required Documents*. Please identify the requirement number in the proposals when responding to each.

Proposals shall be clearly divided into unique sections, which shall include:

1. Cover Letter
2. Table of Contents
3. Response to Scoring Criteria
4. Required Documents

Proposals shall be printed on letter-size (8-1/2" x 11") paper and bound or assembled with spiral bindings, stapled, or in 3-ring binders. Graphics incorporated into the proposal may exceed the paper-size requirement. However, any 11" x 17" pages shall be numbered as two pages. Drawings on 24" x 36" sheets shall be numbered as four pages.

---

## IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

### A. Scoring Criteria

Failure to respond to a scoring category will result in zero (0) points being awarded for that requirement, except for *Section IV.A.4. Quality and Content of Proposal* (below).

#### 1. Qualifications and Experience with Scope of Services

A description of the Offeror's qualifications and experience with providing all of the services requested in this RFP. Include a description or brief resume of individuals or subcontractors performing major duties and functions under the proposed contract; include role, responsibility, and qualifications.

#### 2. Familiarity with Entity and entities within its boundaries

A description of the Offeror's experience, knowledge of and/or familiarity with the City of Belen, Valencia County, or other public agencies in Valencia County.

#### 3. Past Record of Performance

Please include a summary of three recent (within 7 years) flood control/drainage related projects completed by the Offeror that show experience with the scope of services required for this project. For each project, please provide:

- Client Contact (with phone numbers and/or email address);
- Source of project funding;
- Scope of services/work completed;
- Year(s) services provided;
- Initial cost estimate and final project completion cost;
- Project start and completion dates;
- List of key team members for each project; and
- A narrative explaining the project or specific items listed above, as needed for clarification.

#### 4. Quality and Content of Proposal.

The proposal will be scored on the overall quality of the assembly and presentation of information.

#### 5. Technical Approach

Describe the Offeror's technical approach to perform the design services required by the items listed under Appendix D: Scope of Work (page 39). Assume an approximate total project budget of \$2.0-2.5M, which includes the scope of services listed under this RFP and construction of the Improvements. Provide a narrative on proposed design solutions (narrative may include schematics, photos, exhibits, etc.).

---

## **B. Required Documents**

### **1. Appendix B: Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See Appendix B)

### **2. Appendix E: Required Information Form**

Offeror shall fill out and sign the Required Information Form (provided in Appendix E), which includes acknowledgement that funding is contingent upon compliance with all terms and conditions of the funding award.

### **3. Appendix F: Supplemental Forms**

Offeror shall fill out and sign the Supplemental Forms (provided in Appendix F).

### **4. Errors and Omissions Insurance**

Offeror must provide evidence of Professional Errors & Omissions Insurance coverage in minimum limits of \$1,000,000 per occurrence. Insurance certificates shall be attached to Proposal. No additional direct or reimbursable expense is allowed under Professional Services Agreements for this standard coverage. Insurance certificates shall apply to prime consultants only and must be attached to the proposal.

### **5. Disclosure of any Potential Conflicts of Interest (If Applicable)**

Offeror shall either state they have no conflict of interest or disclose any potential conflict of interest. A potential conflict of interest includes, but is not limited to:

- Accepting an assignment where duty to Entity would conflict with the Offeror's personal interest, or interest of another client.
- Performing work for a client or having an interest which conflicts with this contract.

---

## V. EVALUATION

### A. Evaluation of Proposals

Each Offeror and their proposal will be evaluated pursuant to the scoring criteria listed below and further detailed in Section IV.A on page 16, as applicable, to determine the highest-ranking Offeror.

### B. Scoring Criteria Summary

The following is a summary of evaluation factors and the maximum point factors assigned to each. These will be used in the evaluation of each Offeror proposal submitted.

Factor	Points
<b>Scoring Criteria</b>	
Qualifications and Experience with Scope of Services	<b>20</b>
Familiarity with Entity and entities within its boundaries	<b>5</b>
Past Record of Performance	<b>25</b>
Quality and Content of the proposal	<b>10</b>
Technical Approach	<b>40</b>
<b>Required Documents</b>	
Campaign Contribution Disclosure Form	Pass/Fail
Required Information Form	Pass/Fail
Certification of Liability Insurance	Pass/Fail
Disclosure of Conflicts of Interests	Pass/Fail
Supplemental Form	Pass/Fail
<b>TOTAL POINTS POSSIBLE</b>	<b>100</b>

### C. Volume of Work

Each Offeror will be ranked based on the volume of work previously done for Entity which is not seventy-five percent complete with respect to basic professional design services as of the due date for submittals for this RFP.

Value of work not completed on projects that are not 75% complete	Points
None	0
\$1 to \$100,000	-1
\$100,001 to \$200,000	-2
\$200,001 to \$300,000	-3
\$300,001 to \$400,000	-4
\$400,001 or greater	-5

### D. Oral Presentation/Interview.

Offerors who submit a written proposal in response to this RFP may be selected to give an oral presentation. Entity reserves the right to award a contract on the basis of proposals only or may require selected Offerors to be interviewed or make an oral presentation.



---

**APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM  
REQUEST FOR PROPOSAL 2021-05**

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than June 02, 2021. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM:

---

REPRESENTED BY:

---

TITLE:

PHONE:

---

E-MAIL:

FAX:

---

ADDRESS:

---

CITY:

STATE:

ZIP:

---

SIGNATURE:

DATE:

---

This name and address will be used for all correspondence related to the Request for Proposal. Firm does/does not (circle one) intend to respond to this Request for Proposal.

**Roseann Peralta, Procurement Manager RFP # 2021-05  
City of Belen 100 South Main St. Belen, NM 87002  
Fax: 505-966-2738  
E-mail: [roseann.peralta@belen-nm.gov](mailto:roseann.peralta@belen-nm.gov)**

---

## **APPENDIX B: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state City 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 City 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 City or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

The following definitions apply:

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

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

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

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

---

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

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By:

---

Relation to Prospective Contractor:

---

Name of Applicable Public Official:

---

Date Contribution(s) Made:

---

Amount(s) of Contribution(s):

---

Nature of Contribution(s):

---

Purpose of Contribution(s)

---

(Attach extra pages if necessary)

---

Signature

Date

---

Title (position)

---

—OR—

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

---

Signature

Date

---

Title (position)

---

## **APPENDIX C: PROFESSIONAL SERVICES CONTRACT SAMPLE**

CONTRACT # 2021-05

THIS AGREEMENT is made and entered into by and between the City of Belen hereinafter referred to as the "City" and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Procurement Manager and the City Council.

IT IS AGREED BETWEEN THE PARTIES:

### **1. Scope of Work.**

The Contractor shall perform the work outlined in the Scope of Work attached hereto as

**Appendix D** and incorporated herein by reference.

### **2. Compensation.**

- A. The City shall pay to the Contractor in full payment for services satisfactorily performed        dollars (\$) annually, to be invoiced in equal monthly amounts after performance of the services. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the City to the Contractor in equal monthly amounts. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). In no event will the Contractor be paid any amount in excess of the specified total amount payable without this Agreement being amended in writing.
- B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.
- C. Contractor must submit a detailed statement accounting for all services performed, specified on a minimum of a quarter hour basis, and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.
- D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

---

**3. Term.**

This Agreement is for one (1) year from the date of approval by the City Council. This Contract can be extended with approval of the City Council. In accordance with Section 13-1-150 NMSA 1978, no term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

See “Termination” in *Amendment 1: Federal Contract Provisions* attached to this contract.

**5. Appropriations.**

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

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City of Belen. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Belen as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City of Belen unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

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

**8. Subcontracting.**

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

---

City. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of Belen from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
  - 1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;
  - 2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because
    - i. the Contractor is not a public officer or employee of the City;
    - ii. the Contractor is not a member of the family of a public officer or employee of the City;

- 
- iii. the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or
  - iv. if the Contractor is a public officer or employee of the City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with Section 10-16-8(C) NMSA 1978,
- i. the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and
  - ii. the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City's making this Agreement;
- 4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- 5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.
- C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

### **13. Amendment.**

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



---

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Thirteenth Judicial District Court in the City of Belen. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The

---

City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**20. Disclaimer and Hold Harmless.**

The City of Belen shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the City harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the City in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

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

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the

---

power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

See “Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352” in *Amendment 1: Federal Contract Provisions* attached to this contract.

**26. Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the City are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the City. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the City shall retain the right to request the removal of any of the Contractor's personnel at any time.

**27. Survival.**

The agreement paragraphs titled “Patent, Copyright, Trademark, and Trade Secret Indemnification” and “Indemnification” shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**28. Succession.**

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

**29. Force Majeure.**

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

**30. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the City until it is executed by the Board of City Commissioners after voting on the contract at a public meeting or unless it is executed by the Belen City Manager, if the amount of the contract is \$10,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

---

**31. Mediation.**

See “Remedies” in *Amendment 1: Federal Contract Provisions* attached to this contract.

**32. Attorney’s Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

Request for Proposals No. 2021-05 and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- 1) Any contract amendment(s), in reverse chronological order; then
- 2) this contract itself; then
- 3) the Request for Proposals; then
- 4) the Contractors Best and Final Offer(s), in reverse chronological order; then
- 5) the contractor’s proposal; then
- 6) the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

- A. The contractor shall defend, at its own expense, the City of Belen against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of Belen based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the City of Belen for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of Belen shall:
  - 1) give the contractor prompt written notice of any claim;
  - 2) allow the contractor to control the defense or settlement of the claim; and
  - 3) cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- 
- 1) provide a procuring agency of the City the right to continue using the product or service;
  - 2) replace or modify the product or service so that it becomes non-infringing; or
  - 3) accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the City to the extent such modification is the cause of the claim.

**36. Professional Liability Insurance.**

Contractor agrees to maintain in full force throughout the duration of the Agreement a professional liability insurance policy with a minimum coverage of \$1,000,000.00 per occurrence/ \$2,000,000.00 aggregate.

**37. Contractor's Payment of Property Taxes.**

Contractor acknowledges that City has established a policy of ensuring that all individuals and businesses that benefit financially from City through contract are current in paying their property tax obligations to mitigate the economic burden otherwise imposed upon City and its taxpayers. Contractor warrants and certifies that it is presently not delinquent in the payment of its property tax obligations, and that it will not become delinquent during the term of this Contract.

**38. Termination for Failure to Comply with City's Tax Reduction Policy.**

Without limiting the rights and remedies available to City under any other provision of this contract, failure of Contractor to cure a property tax delinquency within 10 days of notice shall be grounds upon which City may terminate this Contract.

**39. Notices.**

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

To the City:

Roseann Peralta, Procurement Manager  
100 South Main St., Belen, NM 87002

To the Contractor: [insert name and address].

**40. Federal Contract Provisions.** The contractor agrees to comply with all Federal contract provisions as provided in Amendment 1 to this Agreement.

---

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the City Council below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Belen City Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Procurement Manager

---

**CITY OF BELEN GOVERNING BODY**

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Jerah R. Cordova  
Mayor

\_\_\_\_\_  
Ronnie Torres  
City Councilor, Mayor Pro-Tem

\_\_\_\_\_  
Frank F. Ortega  
City Councilor

\_\_\_\_\_  
Danny Bernal Jr.  
City Councilor

\_\_\_\_\_  
Robert Noblin  
City Councilor

Attest:

\_\_\_\_\_  
Dorothy Chavez  
City Clerk

---

## **Contract Amendment 1: Federal Contract Provisions**

### **1. Remedies**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

### **2. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the City. Either party may terminate this contract as follows:

#### **(A) Termination by the Contractor**

- (1) The contractor may terminate this contract only if the City fails to comply with any provisions of this contract and after receiving notice of the noncompliance the City fails to cure the noncompliance within ten (10) days, or
- (2) By written mutual agreement between the Contractor and the City.

#### **(B) Termination by the City**

##### **(1) For Cause**

- (a) The occurrence of either one of the following events will justify termination for cause:
  - i. Contractor's persistent failure to perform the work in accordance with the contract documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
  - ii. Contractor's violation in any substantial way of any provisions of this contract.
- (b) If either one of the events identified above occur, the City may, after giving Contractor (and the surety, if any) thirty (30) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
- (c) Where Contractor's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the City will not release the Contractor from liability.



---

(2) For Convenience

- (a) Upon thirty (30) days written notice to contractor, the City may without cause and without prejudice to any other right or remedy of the City elect to terminate the contract.
- (b) In such case, Contractor shall be paid (without duplication of any items):
  - i. for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
  - ii. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
- (c) Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**3. Equal Employment Opportunity**

During the performance of this contract, the contractor agrees as follows:

- (A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (B) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (C) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (D) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 
- (E) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (F) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (G) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (H) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

---

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**4. Compliance with the Davis-Bacon Act.**

- (A) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (B) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (C) Additionally, contractors are required to pay wages not less than once a week.

**5. Compliance with the Copeland “Anti-Kickback” Act.**

- (A) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (B) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (C) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**6. Contract Work Hours and Safety Standards**

Compliance with the Contract Work Hours and Safety Standards Act.

- (A) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such

---

workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (B) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (32)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (32)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (32)(1) of this section.
- (C) *Withholding for unpaid wages and liquidated damages.* The City of Belen shall **upon** its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (D) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (32)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (32)(1) through (4) of this section.

## **7. Rights to Inventions.**

All rights to inventions and materials generated under this contract are subject to regulations issued in 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

## **8. Clean Air Act**

- (A) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (B) The contractor agrees to report each violation to the City of Belen and understands and agrees that the City of Belen will, in turn, report each violation as required to

---

assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (C) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**9. Federal Water Pollution Control Act**

- (A) 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (B) The contractor agrees to report each violation to the City of Belen and understands and agrees that the City of Belen will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (C) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**10. Suspension and Debarment**

- (A) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (B) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (C) This certification is a material representation of fact relied upon by the City of Belen. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Belen, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (D) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**11. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

- (A) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

---

Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **12. Procurement of Recovered Materials**

- (A) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
- (4) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (5) Meeting contract performance requirements; or
  - (6) At a reasonable price.
- (B) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (C) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

## **13. Access to Records**

The following access to records requirements apply to this Contract:

- (A) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (B) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (C) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (D) FTA does not require the inclusion of these requirements in subcontracts.

---

**14. Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. This procurement and subsequent contract will be subject to regulations contained in 2 CFR part 200. Language from 2 CFR part 200 is incorporated into the attached template contract.

**15. No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

---

## APPENDIX D: SCOPE OF WORK

### **The Consultant must be a licensed Engineer in the State of New Mexico.**

The City is seeking professional Engineering Design and Construction Phase Services for the Aragon Pond. This project will include storm water pond retention and controlled release to help alleviate downstream city flooding and breach of the adjacent Middle Rio Grande Conservancy District (“MRGCD”) irrigation canals. Key features of this project will include:

- Identifying the area and volumes of the drainage basin discharging into the proposed pond location southwest of the intersection of W. Aragon Lane and the W. Frontage Road.
- Performing a boundary survey of the property and determine ponding size required. It is the City’s intent that the constructed pond will be accommodated within the existing City owned property. Should the existing site be inadequate in size alternative additional solutions are to be determined as part of this contract.
- Design of storm water infrastructure improvements to allow for safe accommodation and controlled passage of the 100-year, 24-hour peak discharge.
- Providing erosion control improvements.
- Coordinating with MRGCD for controlled discharge into the Conservancy canal as part of larger county westside storm water flooding control plan. Additional communication/coordination must occur with the city engineering consultants for possible continuation of stormwater flow east along Aragon Road to Main Street. Improvements to Aragon Road will be commencing in June 2021.
- Minimizing impacts to the pond functionality as habitat and aquifer recharge through infiltration.
- Incorporating the usage of arid low impact development (Arid LID) practices and concepts, where applicable, for the purpose of sediment and gross debris removal, promoting infiltration, and incorporating sedimentation limiting control.
- Incorporating naturalistic hardening features or coloration where feasible.

Deliverables will include a Technical Report, 30% design documents, 60% design documents, 90% design documents, and 100% final design documents.

The Consultant shall perform the following services for the City of Belen in meeting the project objectives outlined above.

### **Task 1: Project Management and Grant Assistance Services**

This effort includes, but is not limited to, the following selected activities:

- Initiate a project kick-off meeting that includes partners, stakeholders, and the City of Belen. This meeting will discuss the project scope, issues, opportunities, tasks timeline for completion, and vision for the project.
- Provide a proposed timeline schedule for the completion of the Scope of Work with planned dates of deliverables, personnel resources, and responsibilities.
- Provide quarterly Financial Progress Report and Performance Report in the State of New Mexico Department of Homeland Security and Emergency Management Excel Template format. These reports will be submitted to the City of Belen at a due date agreed to during the kick-off meeting.



- 
- Formal meetings will be required to discuss the preliminary engineering deliverable, the 30 percent design documents, 60 percent design documents, 90 percent design documents, 100 percent final design documents, and the CLOMR.

### **Task 2: Preliminary Engineering Services (Existing Conditions Overview)**

This effort includes, but is not limited to, the following selected activities:

- Gather, assemble, and review record data, maps, and preliminary engineering reports for site location.
- Complete at topographic survey as necessary.
- Perform field investigations of the property, including, but not limited to, surveying and mapping, existing environmental conditions, preliminary drainage study, subsurface utility investigations, and geotechnical investigations.
- Coordinate design locations with affected City/State departments, other utilities, and private entities that are impacted by the location of the proposed project.
- Represent Owner in making presentations to planning agencies, environmental groups, highway agencies, and other stakeholders and private groups impacted by the location of the proposed improvements.
- Research and assess the necessary permits (temporary and permanent) for the project and the anticipated time for approval from the associated regulatory authorities.
- Prepare a Technical Report summarizing the results of preliminary engineering services which quantifies the design storm event, provides a preliminary layout of infrastructure improvements and includes a plan for necessary project coordination with stakeholders and agencies.

### **Task 3: Design Phase Services**

- 30% Schematic Design Plan: Based on the kick-off meeting and existing conditions overview, the Contractor will prepare a 30% schematic conceptual plan for review and approval by FEMA and the City, including:
  - Estimate of probable cost
  - Preliminary design plans and specifications
  - Environmental and geotechnical engineering levels of effort
  - Right-of-way coordination if required
  - Permitting coordination and schedules
  - Any additional issues related to regulatory agencies and engineering issues
- 60% Preliminary Design Documents: The Consultant will prepare 60% design development drawings, including plans, outline specifications, and a second estimate of probable cost, for review and approval by FEMA, the City, and additional stakeholders/agencies (at the City's discretion).
- 90% Pre-Final Design Documents: The Consultant will prepare 90% design development drawings, including plans, outline specifications, and estimate of probable cost, for review and approval by FEMA, the City, and additional stakeholders/agencies (at the City's discretion).
- 100% Final Design Plan: The Consultant will prepare final construction documents, including plans, specifications, and an estimate of probable cost, for final review and approval by FEMA, the City, and additional stakeholders/agencies if required prior to construction.

---

**Task 4: Letter of Map Revision (CLOMR)**

- The Contractor will prepare a Federal Emergency Management Agency (FEMA) Conditional Letter of Map Revision (CLOMR) Application with supporting information in support of the requested change to the designated flood zone map.

**Task 5 Bid Phase Services**

The City may ask the consultant to complete Bid Phase Services. These services may include:

- Advertise the project for bid.
- Conduct the pre-bid conference.
- Respond to contractor questions and prepare addenda.
- Assist with bidding and contract award procedures including Recommendation of Award.

**Task 6: Construction Phase Services**

This project may include construction phase services at the option of the City. Such services will include, but may not be limited to, general coordination and administration and special services as required by the City. Selected activities may include:

- Hold Pre-Construction conference, develop agenda, list of invitees, and provide minutes of the conference to all attendees.
- Complete necessary coordination with City and Contractor during construction to ensure the project is constructed correctly.
- Monitor and approve monthly updates to the contractor's construction schedule.
- Review contractor's payment applications.
- Review, recommend, and process work directive changes and change orders.
- Review shop drawings and resolve design related construction problems .
- Provide construction observation.
- Complete closeout procedures including a substantial completion inspection, generation of a punchlist, and final walk through. Review closeout documentation and submittals.
- Assist the City staff in the start-up and acceptance of facilities.
- Provide evaluation of Contractor's performance on this project.
- Provide a warranty inspection of the project improvements prior to expiration of construction contract warranty and a written report.

---

## APPENDIX E: REQUIRED INFORMATION FORM

RFP: 2021-05

*Numbers 1-5 must be completed in full. Failure to respond to all seven items will result in the disqualification of the proposal!*

1. Identity the Name and Mailing Address of the submitting organization:

---

---

---

---

2. Name the person authorized by the organization to contractually obligate on behalf of this Offer:

**Name**

---

**Title**

---

**E-Mail Address**

---

**Telephone Number**

---

3. Name the person authorized by the organization to respond to queries and negotiate on behalf of this Offer:

**Name**

---

**Title**

---

**E-Mail Address**

---

**Telephone Number**

---

---

**4. Use of Sub-Contractors (Select one)**

No sub-contractors will be used in the performance of any resultant contract.

The following sub-contractors will be used in the performance of this contract:

---

---

---

**5.  On behalf of the submitting organization identified in number 1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.**

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

\_\_\_\_\_  
Name & Title

\_\_\_\_\_,  
Date

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

---

## **APPENDIX F: SUPPLEMENTAL FORMS**

---

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of all had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

---

Typed Name & Title of Authorized Representative

---

Date

---

Signature of Authorized Representative

---

**CERTIFICATION REGARDING LOBBYING**

The undersigned, [Company] \_\_\_\_\_ certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995(P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

---

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]*

---

The Contractor, [Company] \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

---

Signature of Contractor's Authorized Official

Date

---

Name and Title of Contractor's Authorized Official