

## PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Cooperative Educational Services (CES)/WHPacific, Inc.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall provide the following services for the City required for proposed improvements to the Salvador Perez Recreation Building, 601 Alta Vista Street, Santa Fe New Mexico, per the attached Fee Proposal dated October 5, 2018 (Exhibit A) and as procured under CES (Exhibit B):

A. Architectural and Engineering Services for CIP Project #503A, Salvador Perez Structural and Envelope Rehabilitation, to design structural repairs and building envelope modifications for the purpose of life safety, building longevity and energy efficiency. These services are predicated upon the assessment report and recommendations completed in September of 2018 (Exhibit C).

2. **Standard of Performance; Licenses.**

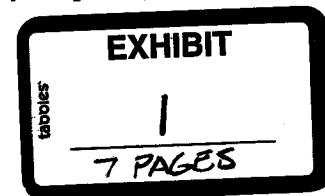
A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. **Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, a sum not to exceed **one hundred six thousand, three hundred fifty eight dollars and zero cents (\$106,358.00)**, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling **eight thousand, nine hundred seventy three dollars and ninety six cents (\$8,973.96)** shall be paid by the City to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed **one hundred fifteen thousand, three hundred thirty one dollars and ninety six cents (\$115,331.96)**. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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



1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty (30) 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 shall submit a detailed statement accounting for all services performed 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.

4. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June, 30 2022** unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract 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.

5. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B **Termination Management.** Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

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**6. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, 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.

**7. 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. 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 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 unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. 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.

**9. 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.

**10. Release.**

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

**11. 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.

**12. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City 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

**13. 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.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 13 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 13 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 section.

**14. Amendment.**

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**15. 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.

**16. 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.

**17. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such



**17. Equal Opportunity Compliance.**

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

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. 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.

**19. 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.

**20. Professional Liability Insurance.** Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**21. Other Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

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

coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation. The required insurance certificate is attached (Exhibit D).

**22. 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 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

**23. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City 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.

**24. 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.

**25. 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.

**26. 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:                      City of Santa Fe  
   P.O. Box 909  
   Santa Fe, New Mexico 87504-0909  
   ATTN: Facilities Division

To the Contractor:            WHPacific, Inc.  
   6501 Americas Pkwy NE, STE 400  
   Albuquerque, New Mexico 87110

27. **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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
ALAN WEBBER, MAYOR

DATE: 1/18/19

CONTRACTOR:

WHPacific, Inc.

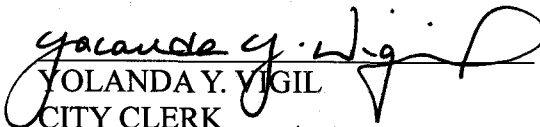
  
JON PEÑA PE, OPERATION MANAGER

DATE: 11-6-18

CRS# 03-122525-00-0

Registration # 18-00142086

ATTEST:

  
YOLANDA Y. VIGIL  
CITY CLERK  
cc mtg 1/9/2019

APPROVED AS TO FORM:

 10/22  
ERIN K. MCSHERRY, CITY ATTORNEY

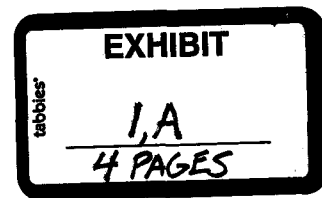
APPROVED:

  
MARY MCCOY, FINANCE DIRECTOR <sup>AM</sup>

Business Unit.Line Item  
32125.572960

October 5, 2018

Jason M. Kluck  
Facilities Division Project Administrator  
City of Santa Fe, Public Works Dept  
2651 Siringo Road Building E  
Santa Fe, NM 87505



**RE: City of Santa Fe— Fee for Salvador Perez Pool Phase II Rehabilitation Design**

Dear Mr. Kluck,

WHPacific is glad to offer engineering and architectural design services to the City of Santa Fe for the Salvador Perez Pool Phase II Rehabilitation Design project. WHPacific is a full-service firm with experts in their respective fields of work and experience in projects similar to the services requested by the City. An initial Structural and Building Envelope Rehabilitation Phase I Assessment and Recommendations report was provided to the City of Santa Fe on September 7, 2018. This proposed Phase II scope of work is to provide design services and construction support for the project, and the scope as we understand it is as follows:

**Salvador Perez Pool Phase II Rehabilitation:**

**\$ 106,358.00 excluding NMGR**  
(Please see attached for complete breakdown)

**Scope of Services:**

1. The purpose of this project is to implement the design and construction support phase services outlined in the Structural and Building Envelope Rehabilitation Phase I Assessment and Recommendations report for the Salvador Perez Pool natatorium in Santa Fe.
2. WHPacific is to address corrosion of the structural steel roof framing and steel columns in the natatorium as well as the building envelope's glazing, stucco and roof deficiencies as defined by the report. The main elements for repair of the natatorium include removal of corrosion and repainting of the all structural steel roof framing and steel columns, reinforcement of one bearing for the steel roof truss at the south side of the natatorium, and various repairs to the brick and masonry walls. The underside of the roof and all interior walls will be cleaned and painted.
3. Repair of brick walls will include removal and replacement of the brick coping at the top of the south wall of the natatorium. We also propose to cut access doors in the interior brick walls at the south side of the natatorium to provide access to the cavities between the interior and exterior brick walls. This will allow repointing and sealing of the interior walls and future inspection of these spaces.
4. Photographs by the City of Santa Fe indicate significant corrosion on the steel columns that are partially embedded in the brick walls. We were unable to access that space in our previous investigation. We propose to conduct further assessment of the columns and horizontal steel struts currently concealed by the brick walls. This will require removal of approximately eight feet of the light-weight end panels at the top of these walls. We request that the City of Santa Fe remove those panels prior to our investigation.

5. Various repairs will be made to the interior concrete unit masonry walls of the natatorium. The diagonal crack in the north wall will be re-pointed. Gaps between the masonry walls and steel columns at the north side of the natatorium will be infilled or concealed with steel angles. The latter is likely since access is very limited. The steel angles will be stitched welded to the column flange and connected to the CMU with masonry anchors. The gap at the top of the west wall will be infilled with new CMU. This will likely require partial removal of the roof.
6. Numerous architectural repairs are proposed for the remainder of the Salvador Perez complex. These include adding a new 3" inch layer of EIFS to exposed CMU exterior walls to improve thermal performance, improving roof drainage for the natatorium and reroofing the entire low roof, adding new ladders replacing the low bay roof hatch, replacing doors and windows, and painting ceilings and interior walls.

**Deliverables:**

1. WHPacific will provide an electronic submittal of drawings and specifications for the 60%, 90% and 100% submittals.
2. The 60% submittal will provide an outline Specification.
3. The 90% submittal will provide a full specification, and the 100% submittal will provide a complete set of contract documents for distribution to bidders.
4. Probable costs of construction estimates will be included in each submittal.
5. We assume a design review meeting will be held at your office after the 60%, and 90% submittals.

**Schedule:**

1. We anticipate approximately 12 weeks will be required for design phase service, 5 weeks for Bidding Phase services, and 16 weeks for Construction Phase services to Substantial Completion by the Contractor.
2. An additional two weeks is anticipated for final completion of construction by the Contractor.
3. This schedule excludes the time required for the City of Santa Fe to award and enter into a contract with the selected bidder.
4. This schedule does not account for the impact of construction work by others or additional coordination that may be required by the Contractor or WHPacific, or review of design submittals by the City of Santa Fe.

**Assumptions/Exclusions:**

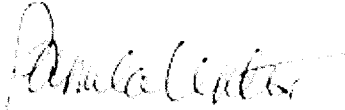
1. To facilitate construction in the natatorium, we recommend that the Contractor be allowed to remove and reinstall the large diameter duct at the perimeter of the walls after painting of the roof and walls. We recommend the existing bleachers be removed as well. We assume the City will remove the bleachers.
2. WHP anticipates that the Contractor will drain the pool such that a temporary work platform can be constructed to access the roof structure above.
3. WHP will include a copy of the lead paint testing report by CERL from our previous task order for Contractor's information only. We do not propose any abatement services as part of this design.
4. The project is for design and repair of structural and architectural aspects of the Salvador Perez complex. No mechanical or electrical design services are proposed and no site-work is proposed.
5. This proposal is based on conditions found at the time of our previous Structural Assessment.

10/5/18  
page - 3 -

6. If conditions are found to be significantly different in further investigation or during construction, a change in services may be required. Such services will need to be added by mutual agreement between the City of Santa Fe and WHPacific.

WHPacific is committed to meeting your expectations for this project and looks forward to the opportunity of working with you. If you'd like a discussion on the scope or costs related to this proposal please do not hesitate to contact me at 505.830-8752.

Sincerely,



Pam Lentini, PE  
Director of Facilities / Sr Mechanical Engineer  
505.830.8752  
plentini@whpacific.com

cc:

**WHPacific, Inc.**

PROJECT NAME City of Santa Fe-Salvador Perez Renovation  
PROJECT NUMBER N/A  
DATE 9/28/2018

Discipline	Bidding Phase				Total:	
	Construction Documents	& Construction Admin				
Project Specialist	418	418	0	0	0	836
Civil	0	0	0	0	0	0
Structural	32,870	14,233	0	0	0	47,103
Architectural	27,912	10,380	0	0	0	38,292
Mechanical	0	0	0	0	0	0
Electrical	0	0	0	0	0	0
Subtotal	61,200	25,031	0	0	0	86,231
Project Management	10.00%	6,120	2,503	0	0	8,623
Subtotal:	67,320	27,534	0	0	0	94,854
Contingency	10.00%	6,732	2,753	0	0	9,485
Subtotal:	74,052	30,287	0	0	0	104,339
Travel Expense	235	549	0	0	0	785
ODC - repro, etc	131	50	0	0	0	181
Subtotal w/o NMGR	74,419	30,886	0	0	0	105,305
CES Fee	1.00%	744	309	0	0	1,053
NMGR	0.00%		0	0	0	0
Totals	75,163	31,195	0	0	0	106,358

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Owner Signature / Date

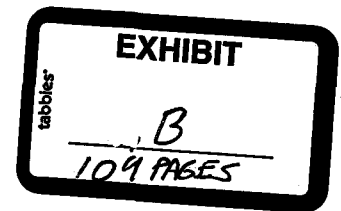
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WHPacific Signature / DateNotes:

See Fee Letter for scope and assumptions



## COOPERATIVE EDUCATIONAL SERVICES



October 26, 2018

### Contract Award Letter

Barry Roth  
WHPACIFIC, INC.  
6501 Americas Pkwy NE Ste 400  
Albuquerque, NM 87110

Re: ACCEPTANCE OF OFFER and CONTRACT AWARD For:

19-01B-C303-ALL Architect / Engineer / Survey services

Dear Mr. Roth,

On behalf of Cooperative Educational Services (CES), I thank you for responding to our 2019-001 solicitation. The responses have been reviewed and it is my pleasure to inform you that you have been selected to provide the products and services indicated in your response.

The enclosed Acceptance of Offer and Contract Award is from the RFP documents that you submitted in your bid. I suggest that you take this award and place it with your copy of the bid that you submitted. Please read carefully the paragraph above the authorized signature. It outlines the agreement and specifies the term of the award.

We would like to include information concerning your company in our procurement directory called the Blue Book. Each of our members and participating entities receives a copy of this Blue Book. It enables their staff to look up important information concerning each vendor before placing an order. Although space is limited, the description below is intended as a quick reference of your company. If you would like to revise the description, please provide any changes in writing to CES' procurement office.

WHPacific, Inc. is a 100% Native American owned full-service, multi-discipline architecture/engineering (A/E) firm. For over 70 years, WHPacific has provided government and educational clients with a wide variety of exceptional professional services. They offer a variety of services that contribute to the success of energy projects. They assist clients in evaluating equipment and systems and implementing renewable energy options.

On CES' website ([www.ces.org](http://www.ces.org)), you can download contact information for all of CES' members and participating entities. You are invited to send marketing materials directly to these institutions.

We look forward to working with you. Please let us know if you have questions or if we can be of any further assistance.

Sincerely yours,

Cooperative Educational Services

David Chavez,  
Executive Director  
Ofc: 505.344.5470  
Fax: 505.344.9343

*"Your New Mexico Procurement Partner Since 1979"*



**ACCEPTANCE OF OFFER  
and CONTRACT AWARD**

**RFP NUMBER** 2019-001

*See attached cover letter for specific awarded contract number(s).*

**OFFER TO BE COMPLETED BY VENDOR**

In compliance with the Request for Proposal (RFP), the undersigned warrants that I/we have examined the RFP documents and hereby offer and agree to furnish all labor, materials, and supplies in compliance with all terms, conditions, specifications and amendments in this RFP and any written exceptions as agreed to by CES. The contract shall consist of the RFP documents, the Offeror's Response and any other documents required by CES.

Company Name WHPacific, Inc.

Address 6501 Americas Parkway, NE, #400 City Albuquerque State NM Zip 87110

Contract Contact Person Barry Roth, PE

Authorized Signature  Printed Name Barry Roth

**OFFER EXTENDED TO TEXAS SERVICE AGENCIES**



If you are willing to enter into a contract with TexBuy (ESC16) Texas Educational Service Center Region 16 under the same terms and conditions as in this RFP, check the box.

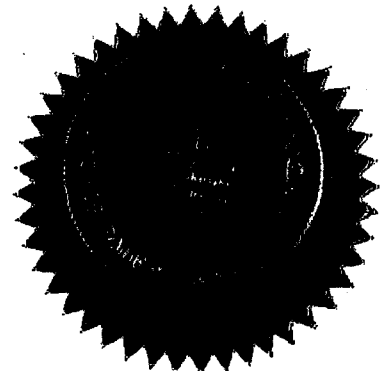
**ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY CES**

Contract period: It is CES' Intent to award a multi-term contract for the specified materials, equipment and services. The initial contract term shall be for one (1) calendar year from the date of contract award. By mutual written agreement between CES and contractor, the contract may be extended for up to three (3) consecutive additional 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension exists unless and until contractor is so notified by CES.

Month-to-month extensions: CES reserves the right to offer month-to-month extensions if that is determined to be in the best interests of Members/Participating Entities.

  
CES Authorized Signature

Awarded this 20th day of October 2018



**COOPERATIVE EDUCATIONAL SERVICES (CES)**  
**4216 Balloon Park Road NE • Albuquerque, New Mexico 87109-5801**  
**Phone (505) 344-5470 • Fax (505) 344-9343**

**REQUEST FOR PROPOSAL (RFP)**

**RFP Issue Date** **Monday, June 25, 2018**

RFP Number: **2019-001**

RFP Issue Date: **Monday, June 25, 2018 at 2:00 p.m.**

NIGP Commodity Codes	Category	Title
906, 906	1, Lot 1	Architectural Design Services
925, 906	1, Lot 2	Architectural Landscape Design and Consulting Services
906, 925	2, Lot 1	Engineering and Consulting Services
925, 925	2, Lot 2	Surveying and Consulting Services

**Non-Mandatory Pre-Proposal Conference Date** **July 10, 2018**

Day / Date: **Tuesday, July 10, 2018**

Time: **9:00 a.m. MDST**

Location/Mail Address: **Cooperative Educational Services  
4216 Balloon Park Road N.E.  
Albuquerque, NM 87109-5801**

Directions: **In Albuquerque, take I-25 Northbound. Take Exit 229, Jefferson and proceed 4/10<sup>th</sup> of a mile west. Turn left on Balloon Park Road N.E. The CES offices are the third building on the left.**

**RFP Due Date** **August 7, 2018**

Date: **Tuesday, August 7, 2018**

Time: **4:00 p.m. MDST**

Submission Type: **CES eProcurement website. Hard copies will not be accepted.**

**COOPERATIVE EDUCATIONAL SERVICES  
(CES)  
4216 Balloon Park Road NE • Albuquerque, New Mexico 87109-5801  
(505) 344-5470 • FAX (505) 344-9343**

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## **SECTION I. GENERAL INSTRUCTIONS TO OFFERORS for RFP 2019-001**

### **A. INTRODUCTION**

CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). Today, CES membership is comprised of all 89 New Mexico public k-12 school districts, all vocational, state and higher educational institutions that are parties to the Revised and Amended Joint Powers Agreement to Establish an Educational Cooperative, and Participating Entities (cities, counties, non-public educational institutions, not-for-profit associations and organizations) who participate through a participating entity agreement.

CES Members and Participating Entities will individually elect to participate or not participate in each category of the provided Scope of Work. No estimate or guarantee of services is made to the Offeror.

Per the NM Procurement Code, NMSA 1978, 13-1-154.1. Multiple source contracts; architectural and engineering services contracts; Para. A. states in part that "a local public body may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based request for proposals; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed six million dollars (\$6,000,000) over four years and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000). CES intends to make multiple awards, and reserves the right to accept or reject any or all offers.

CES is the 'local public body' responsible for tracking the volume of the Offeror's contract over the maximum four-year period the contract is in place. The Offeror and the CES Member or Participating Entity shall be responsible for ensuring a single project for a CES Member or Participating Entity does not exceed \$500,000 in design fees. A violation of this threshold may result in an audit finding for CES and the Member or Participating Entity, and may result in the Offeror's contract being suspended or canceled.

The Offeror is advised that each contract with a CES Member or Participating Entity for design services and hourly rates for a project shall include the CES 1% administrative fee. This fee will be increased to 1.25% of the total project cost effective January 1, 2019.

### **B. PURPOSE OF THIS REQUEST FOR PROPOSAL**

Cooperative Educational Services, on behalf of all parties to the Joint Powers Agreement (CES Members) to Establish an Educational Cooperative through its administering agency, and all Participating Entities (PE's) who have signed agreements on file, invites experienced qualified licensed professional (Offerors) to submit proposals to provide design, engineering, landscaping design, or surveying services for CES Members and Participating Entities in the State of New Mexico. Selection for award will go to the responsive Offerors whose proposal is most advantageous to CES, its Members and Participating Entities. The method by which the Offeror or Offerors will be selected is detailed further in the solicitation evaluation section. In preparing a response to this solicitation, the Offeror is creating the main contract document, if a contract is awarded.

CES reserves the right to make multiple awards. The contracts awarded may be utilized by any government entity per the New Mexico Procurement Code, 13-1-129 NMSA 1978.

### **C. SCOPE OF THE PROCUREMENT**

CES is a New Mexico Procurement Cooperative that was formed in 1979 to provide competitively solicited contracts of commodities, materials and services for use by CES Members and Participating Entities. CES membership is comprised of all 89 New Mexico public k-12 school districts, all vocational, state and higher educational institutions that are parties to the Revised and Amended Joint Powers Agreement to Establish an Educational Cooperative, and Participating Entities (cities, counties, non-public educational institutions, not-for-profit associations and organizations) who participate through a Participating Entity Agreement.

CES Membership will individually elect to participate or not participate in each category of the provided Scope of Work. No estimate or guarantee of services is made to the Offeror. Any work performed under this solicitation will be set forth in each Member or Participating Entity's project Scope of Work based on the professional services, services, deliverables and/or products made available and acquired through this solicitation. CES does not maintain a data base of Membership prospective projects. The Offeror is responsible for marketing their CES contract to obtain the work.

Under CES policy, CES charges a fee to the Educational Institutions and Local Public Bodies for use of its contracts. There are no other annual Membership fees or dues other than what CES collects for offering this procurement service. The Administrative Fee is included in the Offeror's quote to the Membership. CES then deducts that amount from the purchase order CES issues to the Offeror.

Any work performed under this solicitation will be set forth in each Member or Participating Entity's project Scope of Work based on the professional services, services, deliverables and/or products made available and acquired through this solicitation.

#### **1. Offeror Responsibilities**

If Offeror is awarded a contract, the Offeror shall:

- a. Monitor, verify, audit and ensure procurement transactions comply with the Scope of Work, Mandatory Requirements, Terms and Conditions of the Contract. The New Mexico Procurement Code and all other laws of the State of New Mexico as appropriate are a part of this solicitation and contract awarded by reference herein.
- b. Ensure that licensure, business information, professional liability insurance policies are kept current and on file with CES.
- c. Work with and assist CES Agencies' staff to become familiar with and utilize their CES contract through the CES procurement process.
- d. Obtain the necessary and/or required purchasing and transaction details and documentation required for CES and CES Agencies to execute, audit and track transactions processed through the awarded contract.
  - 1) Offeror shall provide the necessary resources to assist CES Agencies in assessing and determining the type and level of professional services, services and related products they need to meet their individual project's needs and requirements.
  - 2) Shall coordinate, supervise and be responsible for the activities, services, deliverables and products provided and/or performed by their employees/representatives, consultants and suppliers.

- 3) Shall support and assist the CES Agencies to resolve any concerns and/or issues that may occur before, during and after the procurement, contract, or project closeout process.
- e. Offeror's design fees negotiated with a CES Member or Participating Entity shall include the CES 1% administrative fee (administrative fee will increase to 1.25% effective January 1, 2019). It shall not be shown as a separate line item, but be integrated in the contract sum.
- f. Offeror hourly rates for additional services shall also include the CES 1% administrative fee (administrative fee will increase to 1.25% effective January 1, 2019). The administrative fee shall not be shown as a separate line item in the quote, but shall be integrated in the hourly rates. Hourly rates shall be submitted before final award of the contract and shall become part of the Offeror's procurement file. Hourly rates may be increased upon request at contract renewal.
- g. Offeror provides the CES Member or Participating Entity with a quote or an agreement between the owner and design professional. This document shall be attached to the purchase order that the CES Member or Participating Entity issues to CES for the work.

## 2. CES Responsibilities

If Offeror is awarded a contract, the general duties of CES shall include:

- a. Coordinating and working with the Offerors' designated representative and staff to:
  - 1) Communicate and assist the Offeror in being aware of and understanding how, when and by whom the various aspects of the CES procurement/purchasing process functions and operates on a day-to-day basis in relationship to the Offeror's own internal processes.
  - 2) Develop, establish and implement the processes and procedures to provide the information relating to their professional services, services, products, fee and price schedules to make the Offeror's services and products available to CES Agencies.
  - 3) Monitor, verify and audit procurement transactions conducted under this solicitation and ensure that projects performed follow and comply with the terms, conditions, stipulations and requirements of its solicitation, Offeror's response to this solicitation and federal, state and local rules, regulations, and statutes, and the individual project's contract documents.
  - 4) Assist Offeror in marketing and making their services and products available to CES Agencies.
  - 5) Work with and assist CES Agencies' staff to becoming familiar with and utilize the CES procurement process.
  - 6) Assist CES Agencies and Offerors with communicating, mediating and resolving concerns and issues that may occur before, during and after the CES procurement process.
  - 7) Conduct periodic assessments and reviews with the Offeror and CES Agencies to assess their performance and satisfaction and to receive feedback on how the awarded contract is working for all parties.
- b. When the CES procurement/purchasing process is utilized:
  - 1) Receive and verify Offeror's quotes.
  - 2) Assist in the preparation of information or documentation to conduct and complete the procurement transaction, i.e., cost proposal, contract documents, purchase order, CES Three-Party Agreement, etc.
  - 3) Issue CES purchase order to the Offeror with required backup documentation.
  - 4) Receive and process Offeror's invoices to CES Agencies.
  - 5) Receive and process payments from CES Agencies to Offerors.

- 6) Assist CES Agencies and Offerors with communicating, mediating and resolving concerns and issues that may occur during the procurement process. Follow up as needed with all parties during the procurement process.
- c. CES coordinates, manages, administers and audits both the procurement process and transactions completed under this solicitation.
- d. When CES receives the Member or Participating Entity's purchase order with the quote or contract attached, it will be reviewed for compliance to the CES contract. Upon approval, CES will issue a purchase order to the Offeror minus the administrative fee.

#### **D. PROPOSAL TERMINOLOGY AND DEFINITIONS**

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

**"Contract"** An agreement between a state agency (the Owner) and a firm for the work covered by this RFP.

**"Contract Documents"** means any one or combination of the following contract documents: contract, conditions of the contract, RFP and any amendments/addenda/written formal Q&A.

**"Contractor"** means any business having a contract with a state agency or a local public party.

**"Determination"** The written documentation of a decision made by the Evaluation Committee including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**"Finalist"** means an Offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that Offeror for further consideration by the Evaluation Committee.

**"Firm"** means the company or other business entity referenced under Section 1.4.8.7 NMAC for the purpose of identifying, individually or collectively; an architect or engineering company.

**"General Provisions"** The terms "can", "may", "should", "preferably", or "prefers" identifies a desirable or discretionary item of the RFP. Failure to comply with such an item will not result in the rejection of the Offerors proposal.

**"Cooperative Educational Services (CES)"** is the agency with the responsibility for the RFP documents, awards and contracts.

**"Mandatory Requirements"** The terms "must," "shall," "will," "is required," or "are required" identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor could result in the rejection of the Offerors proposal. Rejection of the proposal will be subject to review by the Evaluation Committee and a final decision on rejection will be made by the Selection Committee.

**"Offeror"** is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing services for this project.

**"Owner"** as defined in the Agreement between Owner and Contractor shall be the CES Member or Participating Entity.

**"Project Team"** All members of the firm, including consultants who will be responsible for the

completion of the project.

**"Proposal"** is the Offeror's response to this RFP.

**"Request for Proposals" or "RFP"** This document, any attachments incorporated by reference, and any amendments issued for use in soliciting proposals, for RFP 2019-001.

**"RFP documents"** means any one or combination of the following request for proposal documents: technical proposal; price proposal; financial proposal; contractor qualifications statement; subcontractor qualification statement, contracts or agreements.

**"Responsive Offer" or "Responsive Proposal"** An offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the Evaluation Committee. Material respects of an RFP include, but are not limited to quality, quantity or delivery requirements.

**"Selection"** A formal written notice by the CES CPO on behalf of the Evaluation Committee that firms have been selected to enter into a contract for services.

**"Selection Committee or Evaluation Committee"** A body constituted in accordance with Section NMAC 1.4.8.17 2013 to evaluate proposals and make selection recommendation and or selection. The Evaluation Committee consists of at least three members. The committee should collectively possess expertise in the technical requirement of the project, construction design and contracting.

#### **E. EXAMINATION OF DOCUMENTS**

You may view the solicitation documents on the CES eProcurement site, RFP 2019-001. However, you must be registered in the CES eProcurement system to respond to the RFP. Go to [www.ces.org](http://www.ces.org). On the menu bar, click on Procurement, then on eProcurement Login in the drop-down menu. If you are registered, you may access RFP 2019-001 documents. If you are not registered, please do so. All inquiries regarding the RFP process and the Scope of Work shall be submitted in writing through RFP 2019-001, Questions.

Offeror will carefully examine the Request for Proposal documents on the eProcurement website which includes the General Instructions and Scope of Work, Schedule of Events and Evaluation Criteria, Mandatory Forms, General Terms and Conditions, Qualifications Questionnaire and other information for Categories 1, 2, 3, and 4.

CES had divided the state into eight (8) geographical regions. Offerors may elect to only provide services in the region or neighboring regions they reside in, or they may elect to offer services state-wide. CES Members and Participating Entities will individually elect to participate or not participate in each category of the provided Scope of Work. No estimate or guarantee of services is made to the Offeror.

The work performed under this solicitation will be set forth in each Member or Participating Entity's project Scope of Work based on the professional services, services, deliverables and/or products made available and acquired through this solicitation.

#### **F. QUESTIONS AND ADDENDA**

Questions regarding this solicitation shall be submitted through the eProcurement System no later than the deadline set forth herein. Replies may be made via the website ([www.ces.org](http://www.ces.org)) as addenda and will become part of the proposal documents.



1. All questions submitted in the eProcurement System will be acknowledged. If warranted, the response may result in a formal addendum to the documents.
2. Questions that do not warrant an Addendum may be answered on an individual basis in the eProcurement System.
3. If CES issues an Addendum after you have submitted your response and before the deadline stated in the Schedule of Events, CES will un-submit your response to give you an opportunity to acknowledge the Addendum and re-submit your proposal. If your proposal is un-submitted by the Procurement Manager, you will be notified by e-mail to log into the eProcurement System, download, read, and acknowledge the Addendum.
4. Addenda issued will become part of the RFP and Offeror's proposal. Failure to acknowledge Addenda may result in your proposal declared non-responsive.

**END OF SECTION I. GENERAL INSTRUCTIONS TO OFFERORS**

**COOPERATIVE EDUCATIONAL SERVICES  
(CES)  
4216 Balloon Park Road NE • Albuquerque, New Mexico 87109-5801  
(505) 344-5470 • FAX (505) 344-9343**

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## **SECTION II. CONDITIONS GOVERNING THE PROCUREMENT FOR RFP 2019-001**

### **A. PROPOSAL SUBMISSION**

1. By submitting a proposal under this solicitation, the Offeror acknowledges that all documents requiring a signature have been reviewed and completed per the instructions stated herein of this solicitation. The Offeror shall be fully responsible and bound by all information, data, certifications, disclosures and attachments included in the RFP documents and the Offeror's response.
  - a. Documents requiring signatures:
    - Electronic Signature Verification Statement
    - Acknowledgement of CES General Terms and Conditions
    - Acknowledgement of Federal Terms and Conditions
    - CES Campaign Disclosure Form
    - W-9
    - CES Acceptance of Offer and Contract Award
    - Offeror Support for CES
  - b. The RFP documents shall be accessed, downloaded and submitted through the CES eProcurement System only. Hard copy proposals, telegraphic offers, electronic mailgrams or facsimile machine responses will not be accepted.
  - c. Mistakes and revisions to your RFP submission can be retracted, corrected and re-submitted prior to the RFP Submission deadline. The CES eProcurement system will not accept any corrections and modifications after the submission deadline.  
Periods of time stated as number of days will be in calendar days, not business days.
  - d. Local Time is stated as Albuquerque, New Mexico – Mountain Time Zone.

### **B. FORMAT OF THE PROPOSAL**

1. CES has provided electronic files of the solicitation thru the CES eProcurement System.
2. In preparing a proposal, the Offeror must provide written responses electronically thru the CES eProcurement System that shall include narratives and documentation required to address each relevant request for information relating to the Offeror's qualifications; capacity; abilities to meet specifications; desired deliverables; experience; delivery and support services which may include professional and consulting services.
3. Review and Acknowledge the General Terms and Conditions:
  - Either sign off on the acceptance form on the last page of the document to indicate "No Exceptions" taken or, for any "Exception(s)" taken on any item, clearly identify and provide written explanations and justifications for taking the exception.
  - Exceptions taken by your firm may be accepted, negotiated or rejected by CES.
  - Exceptions to the NM State Procurement Code and all applicable NM State Statutes will not be accepted by CES.
4. Review and Acknowledge Federal Terms and Conditions.  
The Federal Government does not recognize contracts that are awarded with 'preference'. Therefore, CES awards contracts with and without preference. The Offeror has an option, if awarded a contract, to provide commodities, services or construction that may be wholly or partially funded with Federal funds. If so, the Offeror must read, and acknowledge the documents where indicated without exceptions.

### **C. CONTENTS OF THE PROPOSAL**

1. The contents of the solicitation can be found in the Response Format Section as follows:
  - General Response

- Technical Response
- 2. All supporting documentation (licenses, certificates, etc.) must be scanned to PDF format and uploaded into the CES eProcurement System.

#### D. PROCUREMENT MANAGER

CES is responsible for the conduct of this procurement. The CES Chief Procurement Officer is:

David Chavez, Executive Director, CPO  
 c/o Cooperative Educational Services  
 4216 Balloon Park Road, NE  
 Albuquerque, NM 87109  
 505-344-5470, Ext. 109  
 e-mail: [DChavez@ces.org](mailto:DChavez@ces.org)

All inquiries or requests regarding this procurement shall be submitted in writing to the Procurement Manager. Offerors may **ONLY CONTACT** the Procurement Manager regarding this procurement. Reminder: Questions regarding the Scope of Work shall be submitted through the eProcurement system, RFP 2019-001, Questions tab. The Procurement Manager is:

Dotty McKinney, CPPB CSI CDT  
 c/o of Cooperative Educational Services  
 4216 Balloon Park Road, NE  
 Albuquerque, NM 87109  
 505-344-5470, Ext. 117  
 e-mail: [dotty@ces.org](mailto:dotty@ces.org)

#### E. SCHEDULE OF EVENTS

Note: CES will make every effort to adhere to the following schedule. You will be notified by an Amendment to the RFP through the eProcurement system if the schedule changes:

Action	Responsible Party	Due Date
1. Issue RFP	CES	Monday, June 25, 2018
2. Pre-Proposal Conference Non-Mandatory	CES	Tuesday, July 10, 2018 at 9:00 a.m.
3. Deadline to submit Questions	Potential Offerors	Tuesday, July 31, 2018 no later than 4:00 p.m.
4. Submission of Proposal	<i>Potential Offerors</i>	<i>Tuesday, August 7, 2018 at 4:00 p.m.</i>
5. Proposal Evaluations	Evaluation Committee	Tentative Dates: Tuesday, August 14, 2018 to Thursday, July 25, 2018
6. Preliminary Award Notice	CES on Behalf of the Evaluation Committee	Tentative Date: Monday, August 20, 2018
7. Protest Period	CES	Tentative Date: Tuesday, August 21 to

		Wednesday, September 5, 2018
8. Final Award Notice	CES	Tentative Date: Thursday, September 6, 2018
9. Preparation of Award Documents	CES	Tentative Date: Monday, September 10, 2018
10. Mandatory Finalists Orientation Meeting	CES	To be Determined. Contracts will be issued after attending Orientation

#### **F. EXPLANATION OF SCHEDULE OF EVENTS**

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

##### **1. Issue RFP**

This Request for Proposal is being issued on behalf of CES' Members and Participating Entities through the eProcurement System at [www.ces.org](http://www.ces.org), Procurement, eProcurement Log-in. You must have access to the internet and register with CES to submit a proposal.

##### **2. Non-Mandatory Pre-Proposal Conference**

Due to the nature and complexity of this Request for Proposal, CES has scheduled a non-mandatory pre-proposal conference at the CES offices at 4216 Balloon Park Road NE, Albuquerque, NM, 87109. Prospective Offerors are encouraged to attend in person or by phone to develop a clear understanding of the solicitation and to address any questions, concerns and/or issues they may have. For proposers who cannot attend, but would like to participate in the Pre-Proposal Conference by phone, contact CES' Procurement Office at (505) 344-5470 or by e-mail at [bids@ces.org](mailto:bids@ces.org) to request call-in information.

A public log will be kept of the names of potential Offerors that attend.

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

Potential Offerors shall submit written questions thru the eProcurement system only. Questions regarding the eProcurement website may be addressed on an individual basis. Questions regarding the Scope of Work or RFP documents may be addressed in the form of an Addendum. If CES issues an Addendum, the Offeror will be notified through the eProcurement system by e-mail to log-on and go to the Message Center to read and acknowledge receipt of the Addendum.

Written responses to questions are available on the eProcurement website, RFP 2019-001, Questions. CES reserves the right to extend the deadline to receive written questions and responses to those questions.

##### **4. Submission of Proposal**

All Offeror proposals must be submitted electronically through the CES eProcurement system prior to the date and time stated in the Schedule of Events. Late proposals will be rejected. Please allow ample time to submit your documents to avoid internet traffic which could result in your proposal not being accepted by the eProcurement System at the appointed date and time.

The eProcurement system maintains an active list of Offerors whose registered commodity codes match the solicitation. It also maintains an active list of Offerors who have indicated their 'intent to bid', and Offerors who submitted their documents. Please be advised that you must following the instructions carefully to submit your bid. After the deadline to submit proposals, CES may contact the Offeror(s) for clarification of information during the evaluation period.

**5. Proposal Evaluations- Tentative Date**

An Evaluation Committee comprised of CES Members and Participating Entities having experience in the scope of work perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received, and availability of committee members. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals to clarify aspects of the proposals. Discussions SHALL NOT be initiated by the Offerors.

**6. Preliminary Award Notice**

The Evaluation Committee will recommend the Offerors whose proposals meet the criteria described herein to the CES CPO/Executive Director for award of a contract. Upon approval of the Preliminary Award Notice. If interviews are held, a schedule of events for oral presentations will be prepared and sent to the finalists. Offerors will be notified by e-mail that includes a link to the eProcurement System. Go to the RFP 2019-001, Messages, to view the Preliminary Award Notice.

The Preliminary Award Notice will include the Technical Score Summary Sheet for all Offerors.

**7. Protest Period**

Pursuant to 13-1-172 NMSA 1978, an Offeror pay protest the solicitation or the award. In either case, CES will suspend the solicitation process or the award process until the protest is resolved. The protest period for the award cycle shall begin the day after the Preliminary Notice of Award is issued and it shall end fifteen (15) calendar days thereafter at the close of business. Protests must be submitted in writing to the CPO with a copy to the Procurement Manager. The formal protest shall state the name of the solicitation and the reason(s) for the protest. CES will respond within three (3) business days to the protest.

A hard copy of the letter must be delivered to CES. An electronic copy may be sent to the CPO and the Procurement Manager.

David Chavez, CPO, Executive Director  
RE: RFP 2019-001  
CES  
4216 Balloon Park Road, NE  
Albuquerque, NM 87109  
[DChavez@ces.org](mailto:DChavez@ces.org)

Protests received after the deadline will not be accepted.

**8. Final Award Notice**

CES will notify all Offerors whose proposals are most advantageous to the CES Members and Participating Entities, taking into consideration the evaluation factors set forth in the RFP. CES

reserves the right to make multiple awards to meet the needs of CES Members and Participating Entities.

The Final Award Notice will be issued through the eProcurement system. Offerors will receive an e-mail that includes a link to the eProcurement site. The Offeror will go to RFP 2019-001, Messages, to download the Final Award Notice. CES reserves the right to award multiple contracts to meet the potential needs of CES Members and Participating Entities, per 13-1-154.1 NMSA 1978.

**9. Finalize Contractual Agreements**

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

**10. Mandatory Finalists Orientation Meeting**

All firms listed on the Final Award Notice are required to attend a mandatory CES Orientation Meeting at the CES offices, including firms that are familiar with CES. If you cannot attend in person, contact CES at 505-344-5470, Ext. 116 or e-mail [bids@ces.org](mailto:bids@ces.org) to request call-in information. CES will review the terms and conditions of the contract, flow of paperwork and marketing. It is highly recommended that accounting staff attend as well. CES will not release a firm's Contract Award Letter until we verify attendance.

**G. GENERAL RFP REQUIREMENTS**

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

Potential Offerors that indicate 'Intent to Bid' in the eProcurement system constitutes acceptance of the General Conditions governing this Request for Proposal. By submitting a proposal under this solicitation, the Offeror acknowledges that all documents requiring a signature have been reviewed and signed by a director, officer or manager of the submitting firm who has sufficient knowledge, background and understanding to fully address all matters, respond to all inquiries and complete all documents required by the solicitation; the information and documents provided are truthful, accurate and complete; and that the firm and the individual responsible for the submittal shall be fully responsible and bound by all information, data, certifications, disclosures and attachments included in the RFP document and the Offeror's response.

Proposals will be submitted through the CES on-line eProcurement System only. Hard copies or facsimile machine offers will not be accepted. All mandatory proposal documents shall be signed by an official or duly authorized agent of the firm. Attach or submit any Powers of Attorney, which authorize agents or others to sign proposals properly certified by resolution of the board of directors, or attested to by the secretary of the corporation.

Mistakes can be corrected prior to submission of the proposal by 'un-submitting' the documents in the eProcurement System. Documents cannot be recalled after the due date and time stated in the Schedule of Events without the written consent of the Procurement Manager.



Periods of time stated as number of days will be in calendar days, not business days unless otherwise noted.

It is the responsibility of all Offerors to examine the entire RFP package and seek clarification of any item or requirement that may not be clear, and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due time and date.

**2. Incurring Cost**

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

**3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a CES Member or Participating Entity for a project or projects. The CES Member or Participating Entity entering into a contractual agreement with a Design Professional will make payments to only the CES unless the contract is amended otherwise to accommodate a State of NM or Federal government appropriation or grant.

**4. Offeror's Right 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 'un-submit' through the eProcurement System. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

**5. Proposal Offer Firm**

Responses to this RFP 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.

**6. Disclosure of Proposal Contents**

Proposals will be kept confidential until release of the Final Notice of Award. 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 requirement:

**Proprietary or confidential** data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal.

**Confidential data** is restricted to:

- confidential financial information concerning the Offeror's organization;
- 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.

Requests for disclosure of data for which an Offeror has made a written request for confidentiality, shall be examined by the Procurement Manager, who will then make a written determination that specifies which portions of the proposal should be disclosed. Unless the

Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

**7. No Obligation**

This RFP in no manner obligates the CES, or any of its Members or Participating Entities to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

**8. Termination**

This RFP may be canceled at any time and all proposals may be rejected in whole or in part when CES determines such action to be in the best interest of its Members and Participating Entities.

**9. Legal Review**

CES 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 through the eProcurement System, under Questions.

**10. 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 and CES Policies and Procedures.

**11. Basis for Proposal**

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

**12. Exceptions to CES General Terms and Conditions**

The contract between CES and the Offeror will follow the terms and conditions set forth in this solicitation. After award of a contract, the CES Member or Participating Entity may negotiate an industry Agreement Between the Owner and the Design Professional for a specific project. The Member or Participating Entity and other relevant provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Owner may negotiate certain aspects of an industry standard agreement. CES will review the agreement submitted with a Member or Participating Entity's purchase order for compliance with the CES contract. Exceptions may or modifications that may conflict with the CES General Terms and Conditions may be cause the proposed contract to be rejected.

The Offeror must propose specific alternative language to any exception to the CES General Terms and Conditions state herein. CES may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the CES General Terms and Conditions are not acceptable to the CES and will result in disqualification of the Offeror's proposal.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to

selection as successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

**13. 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.

**14. Right to Waive Minor Irregularities**

CES, on behalf of the Evaluation Committee, reserves the right to waive minor irregularities. CES also reserves the right to waive mandatory requirements if other 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 CES on behalf of the Evaluation Committee.

**15. Change in Offeror Representatives**

CES reserves the right to require a change in Offeror representatives if the assigned representatives are not, in the opinion of CES, adequately meeting the needs of the Members and Participating Entities.

**16. 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.

**17. Agency Rights**

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

**18. Right to Publish**

Throughout the duration of this procurement process and Contract term, Offerors must secure from CES for written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Member or Participating Entity 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.

**19. Ownership of Proposals**

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

**20. 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 Offeror without the prior written approval of CES.

The Offerors agree to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without CES' written permission.

**21. Campaign Contribution Disclosure Form**

Offeror must download, complete, sign, and upload the Campaign Contribution Disclosure Form found in the Mandatory Documents Section of the RFP as a part of their proposal. This requirement applies even though the CES Executive Board are not elected, but volunteer, for their positions. Due to the NM Procurement Code requirements, failure to complete and return the signed unaltered form will result in disqualification.

**22. Disclosure Regarding Responsibility**

- A. Any prospective Offeror and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with CES for professional services, tangible personal property, services or construction agrees to disclose whether the Offeror, or any principal of the Offeror's company:
- 1) is presently debarred, suspended, proposed for debarment, or declared ineligible for award of a Contract by any federal entity, state agency or local public body;
  - 2) has within a three (3) year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense relating to obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  - 3) is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  - 4) preceding this offer, has been notified of any delinquent Federal or state taxes in an amount that exceeds three thousand dollars (\$3,000) of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three (3) year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.
  - 5) Principal, for this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
  - 6) The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous due to changed circumstances.
  - 7) A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this

Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of

**23. New Mexico Preferences**

Applicants for In-State / Veteran Preference Certification for all resident business/ contractor preference and resident veteran's business preference must obtain preference numbers from the New Mexico Department of Taxation & Revenue to ensure adequate consideration and application of Section 13-1-21 NMSA 1978 (as amended). ***Offeror must submit a copy of their preference certificate with their proposal to receive the preference.*** Applications are available for download at the following website:

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

- A. New Mexico Residential Business – A business that has a valid resident business certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-2-22, NMSA 1978 but does not include a resident veteran business shall receive a 5% preference of the total available points.
- B. New Mexico Resident Veterans Businesses – A business that has a valid resident veteran business certificate issued by the NM Taxation and Revenue Department pursuant to Section 13- 1-22, NMSA 1978 shall receive a 10% preference of the total available points.
- C. **Preference and Preference Points are not cumulative.** Points will be awarded based on Offerors ability to provide a copy of a current Resident Business, Contractor or Veterans Certificate issued by the NM Taxation and Revenue Department. RFP's are to be evaluated on preference as follows:
- D. In addition to the total points in an RFP, preference must be added to the award. For example; an RFP has a total value of 1000 points. Five proposals are received; one from a resident business with a 5% preference, one from a resident Veteran's business with a 10% preference and three non-resident businesses. The resident business with 5 % preference would receive 50 points and the Veteran's business with a 10% preference would receive 100 points added to their evaluation score, making it possible for the highest score total 1100.

**24. Negotiations**

To obtain the most favorable support for CES Members and Participating Entities, CES reserves the right to enter negotiations with responsible Offerors. A public log will be kept of the names of all Offeror that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents

**H. Evaluation of the Solicitation and Contract Award**

**1. Contract Form**

The contract shall consist of the CES solicitation and award documents and the Offeror's response, and any other documents required by CES. The documents will reside in the eProcurement site, RFP 2019-001 and the Offeror's contract award by the name of the firm and the CES assigned contract number. The contract shall include the Award Letter, CES Terms and Conditions, Offeror information and response to the questions, current licensure and professional liability certificate.

**2. Electronic Submission**

Electronic Proposals shall be uploaded to CES eProcurement System until the designated solicitation deadline. Late proposals will not be accepted.

**3. Offeror Confidential Financial Statement**

**NOTICE TO OFFERORS:**

CES requires that you submit a current financial statement separate from your on-line proposal submission. **DO NOT SUBMIT YOUR FINANCIALS ON-LINE.** Your hard copy financial statement shall be delivered by common carrier or hand delivered to CES in a sealed envelope that clearly identifies the RFP number and CES Procurement Manager.

Financial statements may be stamped 'Confidential'. CES will not allow anyone other Offeror to view the documents. After award of contracts, CES will shred the financial statements unless you enclose a self-addressed stamped envelope for the return of the documents to you.

Mandatory - Confidential Financial Statements will be received until the designated solicitation deadline at the CES office, 4216 Balloon Park Road NE, Albuquerque, NM, 87109. Late financial statements will not be accepted.

**4. Mandatory Requirements**

Proposals will be reviewed by the CES Procurement Office for mandatory requirements. An evaluation committee selected from CES Members and Participating Entities, convened by CES will evaluate and score the proposals.

**I. Evaluation Criteria**

CES has utilized a Request for Proposal (RFP) to acquire various professional and consulting services, services and deliverable that are not project specific. This type of public solicitation allows CES and its Members/Participating Entities greater flexibility to achieve the best overall value while permitting CES to take into consideration certain provider qualifications and performance factors that add value to its contracts.

Any deviation from requirements indicated herein must be stated, identified and presented as requested in Section III, Terms and Conditions. Otherwise, it will be considered that proposals are in strict compliance with all requirements, and any successful Offeror will be held responsible therefore. Deviations or exceptions stipulated in an Offeror's responses, while possibly necessary in the view of an Offeror, can result in a penalty assessment being assigned during the evaluation process. Language to the effect that the Offeror does not consider this proposal to be part of a contractual obligation will result in that Offeror's proposal being disqualified. Due to the unpredictable nature of what any Offeror may take exceptions, exclusions or limitations of liabilities, CES reserves the right to assign any penalties it considers warranted. Terms of the RFP that any Offeror considers particularly unwarranted, and to which that Offeror would have to take significant exception in its response, should be stated in the proposal clearly and concisely as exceptions and/or deviations.

The evaluation criteria are based on the NM Procurement Code 13-1-120 NMSA 1978 Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection process.

Points are awarded by the CES Evaluation Committee based on how well the proposed Offeror's

response mancmeets our request, as evidenced in the overall qualifications, background, technical expertise, general information and performance of the Offeror.

**Maximum Available Technical Points = 1000**

1. **Specialized design and technical competence** of the business, including a joint venture or association, regarding the types of services required.....**150 Points**
2. **Capacity and capability** of the business to perform the work, including any specialized services information provided.....**200 Points**
3. **Past record of performance** on contracts with government agencies and private Industry with respect to such factors as control of costs, quality of work, and Ability to meet schedules .....**250 Points**
4. **Proximity to or familiarity** with the region(s) in which proposed work will be performed.....**50 Points**
5. **The amount of design work** that will be produced by a New Mexico business within the State..... **150 Points**
6. **The volume of work previously done** by the entity requesting proposals that is not 75% complete with respect to basic professional design services..... **0 to -50 Points**
7. **Evidence of understanding of scope of work** for previous projects of Record and any current project in process..... **150 Points**
8. **Interviews – if held**.....**250 Points**  
In the event the Evaluation Committee makes a determination to conduct interviews with the short-listed Offerors (Tentative Award Notice), an additional 250 points are allocated to scoring each interview for this RFP. Prior to conducting interviews, the Evaluation Committee will convene a pre-interview meeting to provide a list of questions relevant to the solicitation. The questions provided shall be addressed by the firms at the interview. Each question will carry equal point value. The interview will allow time for a question and answer session in response to the prepared questions.

**J. Explanation of Evaluation Criteria**

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each separate category.

All proposals must contain answers or responses to the items listed below that relate to the Category 1, 2, 3 or 4 Scope of Work and Specifications you are responding to. *Any Offeror failing to answer these questions completely may be considered non-responsive.* After the evaluation process is finished and a contract is awarded, the information may be provided to the CES Member or Participating Entity considering your Firm. This is your opportunity to present your company to the CES Evaluation Committee and, if awarded, our Members/Participating Entities.

NOTE: Generally, CES will not accept an offer from a business less than three (3) years old or which has failed to establish a proven record of business. If the Offeror has recently purchased an established business or has proof of prior success in either this business, a closely related business, or previous business endeavor, provide written documentation and verification. CES reserves the right to accept or reject newly formed companies solely based on information provided in this response and from its own investigation of the company.

**1. Specialized Design and Technical Competence – 150 Points**

- A. Provide documentation and information relating to your specialized design and technical competence including any joint venture or association, regarding the type of services required in relation to the Category 1, 2, 3 or 4 Scope of Work. Indicate the relevance of previous projects for a CES Member, Participating Entity, or any other government entity in New Mexico. Demonstrate the successful aspects of past design projects and the corresponding applications to the Scope of Work.
- B. Provide information that demonstrates your ability to provide sufficient professional competence project administration requirements. Indicate key project team members and their specific rolls, experience and background. Demonstrate or indicate project team organization and working relationships.

**2. Capacity and Capability to Perform the Work – 200 Points**

**A. Company Information**

- 1. Brief history of your company
- 2. Philosophy of doing business
- 3. Background and expertise in the chosen Category

**B. Organization**

- 1. What year was your organization first licensed as a professional service provider in the State of New Mexico?
- 2. How many years has your organization been in business?
- 3. List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.  
List jurisdictions in which your organization's partnership or trade name is filed.
- 4. Provide the physical location of the main office and any branch offices in NM including the address, city, state, and main phone number. State how long has your company has provided design services at these locations listed.
- 5. How many years has your organization been in business under its' present business name?
- 6. Where are the headquarters of the company physically located? Provide address, city, state and zip code. Provide same information on any branch offices in New Mexico. How long has your company resided at these locations? For what period and in what parts of New Mexico has your organization provided the services/products requested in this solicitation?
- 7. Under what other or former names has your organization operated?
- 8. If your organization is a corporation, answer the following:
  - a. Date of incorporation
  - b. State of incorporation
  - c. President's name
  - d. Vice-President's name(s)
  - e. Secretary's name
  - f. Treasurer's name



9. If your organization is a partnership, answer the following:
  - a. Date of organization
  - b. Type of partnership (if applicable)
  - c. Name(s) of general partner(s)
10. If your organization is individually owned, answer the following:
  - a. Date of organization
  - b. Name of owner
11. If the form of your organization is other than those listed above, describe it and the name of the principals.

**C. Insurance, Claims, Suits and Disputes**

The General Terms and Conditions under insurance of this RFP state the minimum and maximum coverage for liability, vehicle and property damage. CES will require proof of your Commercial Liability Insurance complying with the limits Insurance. Upon award of a contract, and prior to the signing of/engaging in a project, if applicable, the Offeror must provide a certificate of insurance that names CES and/or its Member/Participating Entity as a certificate holder.

1. Are there any judgments, claims, arbitration proceedings, suits or disputes pending or outstanding against your company or its' officers in New Mexico or any other jurisdiction?
2. Has your company filed any lawsuits or requested arbitration regarding similar programs as being proposed herein within the last five (5) years?
3. If the answer to items 1. or 2. above is yes, please provide complete details, including, but not limited to:
  - a. Name and location of group involved
  - b. Name and location of coordinating entity
  - c. Nature and amount of dispute
  - d. Forum in which dispute was presented, that is mediation; district court (state, file name, and number)
  - e. Way dispute was resolved

**D. Litigation, Mediation, Arbitration**

1. Within the last five (5) years, has your firm or associated firm(s) been a party in civil litigation or administrative proceedings which have alleged a violation of any of the following: law or regulation; law banning workplace discrimination; law governing labor or employment standards; conduct of occupations; law governing professions or regulated industries; or any other law which would reflect, if convicted, a lack of business integrity or honesty? If yes, give complete details.
2. Within the last five (5) years, has your firm/Subcontractor/partners had a tax lien filed against it by any taxing authority? If yes, provide the following: when, by what tax authority and has the lien been released. If no, describe action your company has taken with respect to the lien.
3. Within the last five (5) years, has your firm/Subcontractors/partners been debarred from bidding on or performing work for any public agency (federal, state or local public body) as a Contractor or Subcontractor? If yes, provide complete details, including actions your company has taken to prevent such debarment in the future.

**E. Background Checks**

Per 22-10A-5 NMSA 1978, the New Mexico Public Education Department (NMPED) mandates security and background checks for individuals working and/or providing services within public

school buildings. Specifically, part C of the section of law states, *"Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a Contractor or a Contractor's employee with unsupervised access to students at a public school."*

Describe your company's policies and procedures regarding background checks and provide a sample of the type of background check conducted to comply with this requirement.

**F. Financial Statement - Mandatory**

Note: A firm that is awarded a CES contract may experience growth that can affect cash flow. For purposes of determining an Offeror's capacity and ability to perform financially, the Offeror is asked to provide a financial statement, including your company's latest balance sheet and income statement.

Please provide a brief statement to confirm that your Financial Statement was submitted to CES in a sealed envelope at the appointed date and time.

Confidential Financial Statements will be received until the designated solicitation deadline at the CES office, 4216 Balloon Park Road NE, Albuquerque, NM, 87109. Late financial statements will not be accepted. DO NOT SUBMIT YOUR FINANCIAL STATEMENT IN THE E-PROCUREMENT SYSTEM.

**G. Assignment of Payments**

If applicable, state if your firm must assign payments to a financial institution to perform under this contract. If so, please name any financial institutions that you may use for assignments or for factoring. If you enter into any assignment agreements, will you sign a notarized Power of Attorney that grants the company receiving the assignment the right to endorse payments from CES? Please attach a sample assignment or factoring agreement with your bid if you intend to use these financial services. The fact that a company uses these services will not reflect on the credit stature of the CES vendor. Since CES requires a 45-day term rather than the more traditional 30 days, such payment arrangements may be necessary.

**H. Bankruptcy**

Within the last seven (7) years, has your company been the subject of any voluntary or involuntary bankruptcy, insolvency or receivership proceeding? If so, please state the case name(s) and court file number of each proceeding, the nature of the proceeding, whether such proceeding is ongoing and the resolution of each completed proceeding.

**3. Past Record of Performance – 250 Points**

- A. Demonstrate through historical documentation that the firm can meet schedules and budgets. Include information regarding owner budgets, construction estimates, bidding and completed project cost including change order information. Project schedules should provide information about the progress of work as related to owner schedules and goals, as well as the overall success of project and client satisfaction. References from past clients can be include in this section.
- B. Please provide a list of five key projects your firm has completed in the last three (3) years, and describe your firm's role to include the following information:
  - 1. Project name
  - 2. Owner of the project

3. Owner representative or contact
4. Original bid amount and final project cost (include all change orders)
5. Original scheduled completion date, the completion and acceptance date

**4. Proximity to or Familiarity with the Region(s) Proposed Services Will be Provided – 50 Points**

1. CES has divided the state into eight (8) geographical regions that includes k-12 districts, charter schools, BIE schools and higher education, and cities and counties. Please provide a description of any project your firm has completed for a CES Member (k-12, charter schools, BIE schools and higher education) or Participating Entity (city, county or non-profit) since January 1, 2017, that includes your firm's proximity to the project, or your familiarity with the project location and owner.

- a. Project name
- b. Owner of the project
- c. Owner representative or contact
- d. Location of the project and your firm's proximity to the site

Note: You may include additional narrative regarding a project that was unique or that you are particularly proud of, the interior, exterior, site, schedule, etc. that you want to share with the Evaluation Committee.

**5. Amount of Work That Will be Completed in New Mexico – 150 Points**

Please state the amount of potential design work that will be produced by a New Mexico business within the state. Pursuant to NMSA 1978 13-4-3, Residential Contractor preference is not allowed on federally funded projects.

**6. Current Volume of Work with Cooperative Educational Services Not 75% Complete – 0 to -50 Points**

The volume of work previously done through a current CES contract which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of CES Members and Participating Entities in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business is not violated.

- A. Please provide a list that indicates the volume of work your firm currently has underway on a CES contract that is less than 75 percent complete. The purpose of this criterion is to help distribute projects among qualified firms. An example of how points can be assigned is provided below:

Combined Total Fees For Projects Less Than 75% Complete	Points to be deducted
Less than \$ 75,000	0
\$75,001 to \$100,000	10
\$100,001 to \$150,000	20
\$150,001 to \$200,000	30
\$201,001 to \$250,000	40
Greater than \$250,001	50

**7. Evidence of Understanding of the Scope of Work to Include Supporting Documents - 250 Points**

This solicitation is to provide on-call design services for CES Members and Participating Entities. It is not project specific. If awarded a CES contract, it is the Offeror's responsibility to work with Members and Participating Entities to market the CES contract to obtain work. To evaluate the Offeror's proposal and be compliant with the Procurement Code 13-1-120 NMSA 1978, please provide the following information that is evidence of your understanding of the industry and clients you serve.

**A. Added Value**

Professional services offered herein must be of good sound quality, and meet or exceed the end user's expectations and requirements. Your response to the questions below will be evidence of your understanding of the industry you serve and your ability to meet your clients' needs.

**1. Special Project**

In the last three (3) years, has your company provided any special assistance on a listed project upon owner's request that allowed the owner to overcome any unforeseen or unordinary circumstance or condition? If yes, describe the issues and outcomes to include the following information:

- a. Project name
- b. Owner of the project
- c. Owner representative or contact
- d. Date of date of incident and/or event
- e. Type of unforeseen and unordinary circumstance or condition
- f. How you resolved or assisted the owner in overcoming the incident/event

**2. Industry Organizations, Associations, Special Projects**

Provide a listing of the industry organizations and associations with which you or team members hold a current membership and/or have recently participated in their training seminars, conferences or certification programs to enhance your firm's standing.

**3. Boards or Commissions**

If applicable, provide a listing of the federal, state and/or local commissions, government agencies or other institutions in which you or your team members serve on advisory groups and/or are under contract as a consultant in the areas/disciplines in your industry.

**4. Familiarity with CES Construction, Commodities and Services Contracts**

CES has solicited for and awarded several contracts for various construction and facility products and services that have been bid competitively and can be utilized within individual CES Agencies' construction projects. Indicate your firms' familiarity with these and how you would use CES to meet the needs of future projects utilizing these contracts. Give evidence of using this "pullout" model in previous contracts, if applicable.

<i>Summary of Evaluation Factors</i>	<i>Points Available</i>
1. Specialized Design	100
2. Capacity and Capability	200
3. Past Record of Performance	250
4. Proximity	50
5. Design Work in NM	150
6. Volume of Work Previously Done	0, -10, -20, -30, -40, -50

7. Evident of understanding of Scope of 7a. Added Value	250
<b>Total before preference and optional interv</b>	<b>1000</b>
New Mexico Preference, Business or	+ 50 or +100
<b>Optional - Interviews</b>	<b>+250</b>

**END OF SECTION II. CONDITIONS GOVERNING THE RFP**

**COOPERATIVE EDUCATIONAL SERVICES  
(CES)**

**4216 Balloon Park Road NE • Albuquerque, New Mexico 87109-5801  
(505) 344-5470 • FAX (505) 344-9343**

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### **SECTION III. SCOPE OF WORK for RFP 2019-001**

#### **A. RFP CATEGORIES**

CES has identified two major categories of services. Category 1 - Architectural/Landscape Architecture and Category 2 - Engineering/Surveying. It is understood that firms will respond that are multi-disciplined, such as Architectural/Engineering, or Engineering/Surveying, or that provide all disciplines in both categories. It is also understood that there are firms that provide only one discipline such as Architectural, Landscape Architecture, Engineering or Surveying professional services.

The Regional Declaration Form located in the Mandatory Documents section of the eProcurement RFP 2019-001 includes a breakdown in each category for the various combinations of disciplines. CES will evaluate the proposals in a manner that competes like disciplined firms against other like disciplined firms such as A/E firms will be evaluated and scored against other A/E firms, Engineering/Surveying firms against other Engineering/Surveying firms, etc. It is imperative that you correctly identify the category or categories you are responding to.

#### **B. GENERAL REQUIREMENTS**

CES, on behalf of CES Members and Participating Entities, desires to contract with highly qualified responsible firms that possess the necessary qualifications, certifications, knowledge, background, experience, capabilities and resources to prepare and submit proposals to offer and provide professional architectural, landscape architectural, engineering, surveying and related services to CES Agencies located throughout the State of New Mexico on a project-by-project basis. Service disciplines/areas may include, but are not limited to:

1. Basic architectural, architectural landscape, site surveys, infrastructure, water, sewer and drainage system, educational, recreational, medical and health public buildings and facilities, building interior and exterior, project and construction management, facility master planning and master plan updates, program development, environmental and deficiency investigation, LEED, energy star, alternative and renewable energy consulting, modeling and visual simulation, geotechnical, materials testing, bidding and contract administration, etc.
2. Engineering and surveying - structural, civil, electrical, mechanical, fire protection, geotechnical, instrumentation and control, site and subsurface investigation and analysis, emergency assessment and recovery services, etc.
  - a. The professional services, services and products offered by an Offeror in response to this solicitation will depend on the Offeror's qualifications, background, experience and available resources. Therefore, the Categorical scopes of work, terms, conditions, specifications and listing of potential projects are provided as general and minimal specifications and expectations. The Offeror is encouraged to propose their entire array of services.
  - b. Under this solicitation, a master contract is established with technical specifications and pricing-based on a negotiated fee and price schedule(s) accepted and approved by CES. When a specific individual project is requested by a CES Member or Participating Entity, they will select from the available CES Offerors who are qualified and awarded a contract to provide and perform the scope of work for the requested project. The selected Offeror(s) will jointly review the project and develop and prepare a proposal to complete the project with the associated cost based on the project scope as defined in the General Terms and Conditions, Architectural Fee Schedule, Engineering Schedule, etc.

**C. PROJECT NEGOTIATIONS**

The Offeror, when negotiating with the CES Member or Participating Entity is unable to assess, evaluate and/or conduct the necessary investigations required to be aware of, understand and/or determine the project's existing status, conditions and/or establish the detailed scope of work due to the project's components location and/or accessibility, the Offeror must, as part of its proposal, identify the costs associated with performing the necessary investigation to determine and establish the services and/or deliverables required to complete the project's scope of work.

1. Due to these unforeseen conditions, the Offeror must communicate to the CES Member or Participating Entity that the actual project cost cannot be determined until such investigations/discovery is completed.
2. The CES Member or Participating Entity can ask the Offeror to provide a cost proposal/estimate to identify and state what needs to be done to address the assumptions and conditions that need to be resolved to develop the final scope of work. The CES Member or Participating Entity reserves the right to accept or reject the Offeror's offer.
3. The CES Member or Participating Entity may contract with another Offeror to conduct and perform the necessary investigation and then ask the Offeror to quote the project.

**D. PROJECT SPECIFICATIONS**

Because all work under this solicitation is on a project-by-project basis, exact project specifications are not available. General specifications and requirements are listed under each Category. Firms whose statements of qualifications and offerings are accepted, approved and awarded will be used to develop and establish the specifications for any work to be performed under individual projects.

**E. LEVEL OF SERVICES**

Based on the individual needs of CES Agencies and the type, kind and level of professional, consulting and related services required to meet these needs, this is an indefinite quantity qualification-based solicitation seeking firm(s) who possess the required qualifications, background, experience, and human, physical and financial resources required to obtain, create, provide, perform and deliver the services and deliverables requested and described herein in accordance and complying with federal, state, local and industry standards and best practices. The professional and consulting services, related services and deliverables may include, but is not limited to:

1. Due to the nature and scope of this Category, CES and its Agencies understand that a single firm may not possess the necessary qualifications, expertise, experience and resources to offer and perform the various professional services solicited for within this solicitation. To assist in this effort, the solicitation has been broken down into multiple Categories.
2. It is the Offeror's responsibility and obligation to conduct and perform the investigation and research and seek clarification necessary to develop and achieve a complete and comprehensive understanding of the following:
  - a. The types, levels and kinds of professional services, consulting services and related services, as well as, the various types of projects that fall within the above-noted scope of work and which are applicable, allowed, permitted and feasible to be undertaken and completed by CES Agencies under the solicitation.
3. To be aware of and understand any/all federal, state and local governing authorities'/jurisdictions' rules, regulations, codes, policies, procedures and/or requirements that are applicable to the services and deliverables offered in response to this solicitation.



4. To certify that they, the Offeror, possess the knowledge, background and expertise in the particular disciplines, technologies and areas of services offered to assess, evaluate, analyze, interpret and understand all aspects of the types of projects they may be performing under this solicitation in order to consult, advise, recommend and provide the CES Agencies with the necessary technical assistance, cost data, the pros and cons with their justifications in order for them and their governing boards to make a sound, economic and data driven decision to accomplish their projects goals and objectives.
5. To understand the various types of resources required and have the capacity to have them in place to respond timely to single and/or multi requests.

**F. GENERAL CATEGORY 1 AND CATEGORY 2 DEFINITIONS**

The following definitions, terms, abbreviations and acronyms are used to identify procedures, guidelines, standards, minimum service deliverable specifications, and recognized organizations' and agencies' names, phone numbers and websites. It should be noted that the names and contact information is subject to change.

**AA:** Aluminum Association (703) 358-2960 [www.aluminum.org](http://www.aluminum.org)

**AABC:** Associated Air Balance Council (202) 737-0202 [www.aabchg.com](http://www.aabchg.com)

**AAMA:** American Architectural Manufacturers Association (847) 303-5664  
[www.aamanet.org](http://www.aamanet.org)

**ABAA:** Air Barrier Association of America (866) 956-5888 [www.airbarrier.org](http://www.airbarrier.org)

**ACCE:** Association for the Advancement of Cost Engineering. ACCE provides professionals (estimators, cost engineers, schedulers, project managers) in all cost and management areas  
[www.acei.org](http://www.acei.org)

**ADA:** Americans with Disabilities Act

**AEE:** Association of Energy Engineers [www.aeecenter.org](http://www.aeecenter.org)

**Adequacy Planning Guide:** The companion document to the Public School Capital Outlay Council Statewide Adequacy Standards (6.27.30 NMAC) provided by the State of New Mexico for use in the programming and design of new projects to meet adequacy standards (document available at [www.nmpsfa.org](http://www.nmpsfa.org)).

**AIA:** American Institute of Architects (The) (800) 242-3837 [www.aia.org](http://www.aia.org)

**ANSI:** American National Standards Institute (202) 293-8020 [www.ansi.org](http://www.ansi.org)

**Approval of School Construction:** Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted shall, prior to advertisement of bid or request for proposal for the project, must be first authorized by Public School Facilities Authority (PSFA/NMPSFA) Approval of School Construction (ASC) per Section 22-20-1 NMSA 1978.

**Approved:** Is defined as conveying authorization or action on the Offeror's submittals, applications, and/or Requests. The CES Member or Participating Entity shall identify and establish, within the contract documents, whom its' designated representative is and the parameters of the individual's duties, responsibilities and authority.

**Architect:** A person who, due to his knowledge of the mathematical and physical science and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture as attested by his registration as an architect.

**ASCE:** American Society of Civil Engineers (800) 548-2723 [www.asce.org](http://www.asce.org)

**ASHRAE:** American Society of Heating, Refrigerating and Air-Conditioning Engineers (800) 527-4723; (404) 636-8400 [www.ashrae.org](http://www.ashrae.org)

**ASME:** The American Society of Mechanical Engineers International (800) 843-2763; (973) 882-1170 [www.asme.org](http://www.asme.org)

**ASTM:** American Society for Testing and Materials International (610) 832-9585 [www.astm.org](http://www.astm.org)

**AWWA:** American Water Works Association (800) 906-7387 [www.awwa.org](http://www.awwa.org)

**Calculated Risk:** Is recognized and for which costs are calculated and included in an estimate by making an allowance based on a best estimate of cost and then including in the estimate a proportion of those calculated costs based on probability of risk materializing, company strategy, or other factors.

**Capital Outlay, Facility Construction, Maintenance and Operations Consultant:** A person by reason of special knowledge in the assessing, evaluating, constructing, maintaining, operating and managing various types of facilities, construction and capital outlay programs found within CES Member or Participating Entity's jurisdiction, with such specialization and expertise acquired by professional education, training, and practical and extensive experience in all aspects of planning, programming and managing capital outlay and facility maintenance and operational programs.

**Certified Cost Engineer:** An individual who has extensive education, training, understanding, and experience in a discipline and who is a member of AACE International and is certified by AACE for proven experience, ability, and knowledge.

**CES Member or Participating Entity Representative:** An individual identified by the Member/Participating Entity as their contact person for an individual project. The representative has authority to act on behalf of the CES Member or Participating Entity, make decisions and to authorize any actions as defined for the project.

**CFR:** Code of Federal Regulations (866) 512-1800; Available from Government Printing Office (202) 512-1800 [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).

**Conceptual Estimate:** An estimate made from rudimentary design information such as a schedule of space requirements, preliminary design sketches, outline specifications, or desired unit of production or output.

**Conceptual Estimating:** The process of developing an estimate by substituting for absent design information data from an estimator's experience, and by judging design requirements, construction costs, etc., from other criteria such as similar projects, past experience, facility/equipment output or class of facility/equipment.

**Construction Documents:** Shall include the project manual containing the project specifications and shall also include at a minimum bid forms, wage determination (if required), general conditions of the contract for construction, project requirements and the CES Member or Participating Entity and Offeror agreement. The project manual shall also include, as a part of division 1, the required submittals list, indexed by master format divisions identical to indexing of items (or categories of items) of work within the specifications for which shop drawings or other submittals will be required. The required submittals list shall indicate the submittal items that must be submitted together as a package for the Design Professional's efficient review of like or interrelated items to be compared or correlated one to another. Original of the Required

Submittals List shall be loaded by the Design Professional into the PSFA Construction Information Management System (PSFACIMS) prior to bid.

**Construction Manager:** A person who by reason of special knowledge in the construction industry, acquired by professional education and practical experience, is qualified to assist the CES Member or Participating Entity, architect, engineer and project Offerors in all phases of a project, from pre-construction to post-construction.

**Contingency:** A value added to an estimate to allow for unforeseen problems. This may be derived either through statistical analysis of past-project costs or by applying experience gained on similar projects. Contingency is not intended for changes in scope.

**Cost-Benefit Analysis:** A technique for evaluating investments in projects that attempts to identify and evaluate all their costs and benefits.

**Cost Estimate:** Is defined as a compilation of all the costs of a project or effort included within an agreed upon scope. To an Offeror, this is the cost that will most likely be incurred in completing the project defined in the contract documents. The Offeror's cost includes internal costs, as well as those of sub Offerors, suppliers, and third parties.

**Costs in Use:** All the costs incurred by an Owner as a result of his ownership of a building, facility or other development over and above the initial costs of the construction, including the costs of the land, integration, and implementation, to bring it to occupancy and operational status, the development costs, and the day-to-day operational costs, including depreciation, maintenance, taxes, insurance, cost of financing, management, and all other operating costs.

**CPSC:** Consumer Product Safety Commission [www.cpsc.gov](http://www.cpsc.gov)

**CSI:** Construction Specifications Institute (The) (800) 689-2900 [www.csinet.org](http://www.csinet.org)

**Deficiencies Correction Program (DCP):** A program administered by the PSFA to correct life, safety and health deficiencies in school buildings throughout the State.

**E\*:** EPA Energy Star ([www.energystar.gov](http://www.energystar.gov))

**EMCI:** Engineering Management Certification International [www.engineeringcertification.org](http://www.engineeringcertification.org).

**Energy Star:** Building and systems standards, performance, rating and energy management strategies [www.energystar.gov](http://www.energystar.gov).

**EPA:** Environmental Protection CES Member or Participating Entity [www.epa.gov](http://www.epa.gov).

**Feasibility Study:** The study of the economic feasibility and/or constructability of a project, based on conceptual estimates, anticipated development costs, and the estimated costs in use.

**FCC:** Federal Communications Commission [www.fcc.gov](http://www.fcc.gov)

**Fees:** The fee will be based upon the approved Architect/Engineer Rate Schedule as per New Mexico Administrative Code (NMAC) 1.5.18.

**Final Design Review, Bidding and Permitting:** Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted must first be authorized by a Public School Facilities Authority (PSFA) Approval of School Construction (ASC) prior to advertising for bid, letting, of contracts or purchase orders. The PSFA will, as a function of the Construction Documents review, coordinate its final review with Construction Industries Department (CID) permit review. Upon joint PSFA and CID approval, the PSFA will issue a PSFA-ASC to the public k-12 educational institution, or Design Professional as its agent, along with three (3) sets of permit ready documents. An appropriately licensed Offeror for the Project will submit the two permit

ready documents, along with the building permit application; appropriate permit fee and a copy of the PSFA-ASC and Building Permit will be immediately issued without further review.

**Fitness:** Offeror warrants that services supplied to CES or its Agencies shall conform to all requirements of the contract and all representations of Offeror, and shall be fit for all purposes and uses required by the contract, and shall generally conform to the written promises or affirmations of fact made by Offeror.

**FS:** Federal Specification (215) 697-6257; Available from General Services Administration (202) 619-8925 [www.gsa.gov](http://www.gsa.gov); National Institute of Building Sciences (202) 289-7800 [www.nibs.org](http://www.nibs.org)

**FTMS:** Federal Test Method Standard (See FS)

**GS:** Green Seal (202) 872-6400 [www.greenseal.org](http://www.greenseal.org)

**ICEA:** Insulated Cable Engineers Association, Inc. (770) 830-0369 [www.icea.net](http://www.icea.net)

**IEC:** International Electro-technical Commission [www.iec.ch](http://www.iec.ch)

**IEEE:** Institute of Electrical and Electronics Engineers, Inc. (The) (212) 419-7900 [www.ieee.org](http://www.ieee.org)

**IES:** Illuminating Engineering Society of North America – Organization which establishes recommendations and practices for sports lighting facilities.

**IESNA:** Illuminating Engineering Society of North America (212) 248-5000 [www.iesna.org](http://www.iesna.org)

**IENT:** Institute of Environmental Sciences and Technology (847) 255-1561 [www.ient.org](http://www.ient.org)

**International Association of Plumbing and Mechanical Officials Uniform Plumbing Code:** An association that publishes and recommends standards and guidelines relating to plumbing and mechanical system design and installation.

**ISO:** International Organization for Standardization [www.iso.ch](http://www.iso.ch) Available from ANSI (202) 293-8020 [www.ansi.org](http://www.ansi.org)

**LEED:** (Leadership in Energy and Environmental Design) Green Building Rating System® is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings, created and administered by the U.S. Green Building Council.

**MACC (Maximum Allowable Construction Cost):** The maximum allowable construction cost as defined within each Design Professional contract executed and the total sum, excluding gross receipts tax, available for construction purposes and may include furnishings, fixtures and equipment. MACC shall not include professional fees, testing fees, project contingency funds, acquisition costs or other soft costs that may be stipulated.

**Market Value:** The value which would be equaled by a selling price arrived at by a seller and a buyer (supply/demand) acting prudently and at arm's length in an open market environment.

**NAAMM:** National Association of Architectural Metal Manufacturers (312) 332-0405 [www.naamm.org](http://www.naamm.org)

**NACE:** National Association of Corrosion Engineers International (281) 228-6200 [www.nace.org](http://www.nace.org)

**NAESCO:** National Association of Energy Service Companies [www.naesco.org](http://www.naesco.org)

**NEC:** National Electrical Code [www.nfpa.org](http://www.nfpa.org)

**NETA:** International Electrical Testing Association (888) 300-6382 [www.netaworld.org](http://www.netaworld.org)

**NFPA:** National Fire Protection Association (800) 344-3555 [www.nfpa.org](http://www.nfpa.org)

**NICET:** National Institute for Certification in Engineering Technologies  
[www.nicet.org](http://www.nicet.org)

**NMPED:** New Mexico Public Education Department [www.ped.state.nm.us](http://www.ped.state.nm.us)

**NMPSFA:** New Mexico Public School Facility Authority [www.nmpsfa.org](http://www.nmpsfa.org)

**NTP:** Notice to Proceed. Notice issued to the Offeror authorizing the commencement of work, issued in the form of a CES purchase order.

**OSHA:** Occupational Safety and Health Administration [www.osha.gov](http://www.osha.gov)

**Physical Depreciation:** The reduced value caused by aging, usage, and wear and tear.

**Professional Technical Advisory Board (PTAB):** Board consisting of design professionals created as a result of New Mexico Procurement Code (Section 13-1-117.2) to serve as a clearinghouse to receive requests for assistance from communities within New Mexico.

**Professional Technical Advisor (PTA):** A licensed, senior member with at least ten (10) years' experience in responsible charge of an engineering, architectural, surveying or landscape architectural business, with experience appropriate to the individual type of public works project proposed.

**Program Statement:** An abbreviated document that shall affirm the overall project budget and MACC, and establish goals, facts, regulations, conditions and concepts that bound the project and clearly state and describe such information as how the project serves the needs of the school(s) and district, including number of students to be served, number of classrooms, support spaces, infrastructure requirements, educational programs, and so on.

**Project Manager:** A person, who because of special knowledge in the capital outlay area, facility utilization, evaluation, and management acquired by professional education and practical experience, is qualified to assist the Member in contract and information management, quality control, cost control, and schedule control, and will represent the Member in all matters relating to the management and upkeep of facilities capital outlay projects.

**Project Team:** All Members including consultants, Offeror's staff, sub-Offerors, suppliers, and construction crews, who will be associated with and responsible to provide products, construction services and/or professional services to complete any/all phases of the proposed project.

**Public School Facility Authority Construction Information Management System (PSFACIMS):** An information management system utilized by the PSCOC and NMPSFA to collect, organize, store, manage and report various types of k-12 public school facility, maintenance and construction data. The Design Professional must be willing and able, when projects deal with k-12 public schools, to coordinate, interface and provide the necessary information required by the PSCOC/NMPSFA.

**Schematic Design Documents:** The Schematic Design Documents submittal should include preliminary schematic drawings and a preliminary project description (PPD) that together clearly indicate the extent and relationship of the project components. A PPD shall include lifecycle costing for HVAC and controls to help the CES Member or Participating Entity and the Design Professional understand the various components and systems proposed for the project. It shall also serve as an early basis for discussion of the overall building and site systems, including site drainage and other geotechnical considerations.

**UBC:** Uniform Building Codes

**UL:** Underwriters Laboratories is an independent organization whose responsibilities include rigorous testing of electrical products. When products pass these tests, they can be labeled (and advertised) as "UL listed." UL tests for product safety only. (877) 854-3577 [www.ul.com](http://www.ul.com)

**USGBC:** U.S. Green Building Council (202) 828-7422 [www.usgbc.org](http://www.usgbc.org)

**USPH:** U. S. Public Health Service

**Value Engineering:** Comparison and economic evaluation of alternative energy sources, products, equipment, materials, and construction methods for a given project to increase and result in a more energy efficient and cost-effective system, building and/or facility.

**WASTEC:** Waste Equipment Technology Association (800) 424-2869 [www.wastec.org](http://www.wastec.org)

#### **G. LANDSCAPE ARCHITECT DEFINITIONS**

As stated in the Landscape Architects Act, the following words and phrases shall have the following meanings in context with an award of a CES Landscape Architect contract:

**"Accredited"** means accreditation by the landscape architectural accreditation board (LAAB) or a recognized equivalent accrediting agency.

**"Act"** means the Landscape Architects Act, Section 61-214B-1 through 61-24B-17 NMSA 1978.

**"Administrator"** means the staff person assigned certain express or implied executive and administrative functions of the board as defined in board regulation or as required to carry out the provisions of the act.

**"Board"** means the New Mexico board of landscape architects

**"Board regulation"** or "regulation" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation. "Rule" means board regulation.

**"Certificate holder"** or "certification" means an individual certified under the Landscape Architects Act as a landscape architect in training.

**"CLARB"** means the council of landscape architect registration boards or its successor.

**"CLARB certification"** means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

**"CLARB council record"** means the verified documentation of an individual's education, experience, examination, licensure and professional conduct compiled by CLARB.

**"Client"** means a NM government entity that is the recipient of landscape architectural services.

**"Consultant"** means a licensed landscape architect who provides professional advice or opinion to a licensee and who has no professional relationship with the client, has no authority over the project or has no responsibility for the services performed for the client.

**"General administration of a construction contract"** means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic

observation of construction to facilitate consistency with the general intent of the construction documents.

**"Good cause"** means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. Those asserting good cause shall have the burden to demonstrate good cause.

**"Inactive status"** means a procedure of the board to affirm that a licensee is not engaged in active practice.

**"Landscape architect"** or "registered landscape architect (RLA)" means an individual registered under the Landscape Architects Act to practice landscape architecture.

**"Landscape architecture"** means the act, profession, or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts to protect the health, safety and welfare of the public. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined in Sections 61-15-2, 61-23-2.1 and 61-23.27.9 NMSA 1978.

**"Licensed"** means licensed, registered or any other term when such terms identify a person whose professional behavior is subject to regulation by the board.

**"License in good standing"** means a licensee who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended or revoked in New Mexico or any other state or licensing jurisdiction.

**"Licensee"** means a person licensed pursuant to the provisions of the act of board regulations.

**"NCARB"** means the national council of architectural registration boards.

**"Practical experience"** means experience that demonstrates an essential understanding of the practice of landscape architecture pursuant to the act. Practical experience shall begin after graduation from a degree program as set forth in the act.

**"Professional relationship"** means a mutually agreed upon relationship between a landscape architect and a client for the purpose of the client(s) obtaining the landscape architect's professional services.

**"Professional services"** means all actions of the landscape architect in the context of professional relationship with the client.

#### **H. ENGINEER AND SURVEY DEFINITIONS:**

**"approved"** or "approval" means acceptable to the board;

**"board"** means the state board of licensure for professional engineers and professional surveyors;

**"conviction"** or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

**"engineer"** means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

**"engineering"**, **"practice of engineering"** or **"engineering practice"** means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The **"practice of engineering"** may include the use of photogrammetric methods to derive topographical and other data. The **"practice of engineering"** does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

**"engineering committee"** means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

**"engineer intern"** means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

**"fund"** means the professional engineers' and surveyors' fund;

**"incidental practice"** means the performance of other professional services that are related to a licensee's work as an engineer;

**"person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

**"professional development"** means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

**"professional engineer"**, **"consulting engineer"**, **"licensed engineer"** or **"registered engineer"** means a person who is licensed by the board to practice the profession of engineering;



**"responsible charge"** means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

**"surveying"**, "practice of surveying" or "surveying practice" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

- (1). the monumenting of property boundaries and for the platting and layout of lands and subdivisions;
- (2). the application of photogrammetric methods used to derive topographic and other data;
- (3). the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to layout horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, construction surveys of engineering and architectural public works projects; and
- (4). the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

**"surveying committee"** means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

**"surveyor"** or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

**"surveyor intern"** means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act;

**"surveying work"** means the work performed in the practice of surveying; and

**"supplemental surveying work"** means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way,

easements and the dependent or independent surveys or resurveys of the public land system.

The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services.

**I. CONDUCT OF THE CONTRACT**

Offerors shall adhere to the professional conduct of each category per the Laws of New Mexico. CES requires that in the event of a dispute with a CES Member or Participating Entity, that the Offeror contact CES in lieu of the CES Member or Participating Entity. CES will make every effort to resolve any issues that may arise.

## **CATEGORY 1**

### **Lot 1 - Architectural Design Services**

### **Lot 2 - Landscape Architecture Services**

#### **GENERAL**

CES seeks to acquire full service professional design Architectural and/or Landscape Architecture design services. The NMAC 1.5.18, Architect Rate Schedule definitions, policy, procedures, and Appendices A and B are incorporated herein by reference and are a part of the contract. Fully qualified, licensed, professionals must provide documentation that they have met all State of NM educational and licensing requirements. Award of a contract shall comply with the Procurement Code, 13-1-154.1 NMSA 1978 thresholds for on-call design professional services. Design fees for a single project shall not exceed \$500,000, and the contract term shall not exceed four (4) years or \$6,000,000 whichever occurs first. CES will track the volume on each Offeror's contract to ensure that no violation of the Procurement Code occurs.

Please identify the category(s) you are responding to on the Regional Declaration Form in the Mandatory Technical Documents and upload into your response.

#### **A. ARCHITECTURAL DESIGN BASIC SERVICES**

"Architectural services" means the services, as defined by rule of the board, performed in the practice of architecture. These services include predesign services, programming and planning, providing designs, drawings, specifications, other technical submissions, administration of construction contracts, coordination of technical submissions prepared by others and such other professional services as may be necessary to the planning, progress and completion of any architectural services. An architect who has complied with all the laws of New Mexico relating to the practice of architecture has a right to engage in the incidental practice of activities properly classifiable as engineering; provided that the architect does not hold himself out to be an engineer or as performing engineering services and further provided that the architect performs only that part of the work for which the architect is professionally qualified and used professional engineers, architects or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an architect's professional seal.

1. Additionally, firm(s) to provide services that may include, but are not limited to:
  - a. Interior and exterior design services; space planning services; office, instructional, vocational and specialty areas space design; furniture, fixtures and equipment selection and layout;
  - b. Structural, mechanical, electrical and environmental engineering;
  - c. Facility master plan development, review and updating;
  - d. Program development and implementation;
  - e. Site, infrastructure, facility, building and building systems assessment and evaluation;
  - f. Deficiencies investigation, physical and environmental;
  - g. LEED and building commissioning services;
  - h. Miscellaneous services associated with and related to the above services.

#### **B. LANDSCAPE ARCHITECT BASIC SERVICES**

Landscape architecture means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts to protect the health, safety and welfare of the public. Nothing contained in the definitions stated herein shall be construed as authorizing a landscape

architect to engage in the practice of architecture, engineering or land surveying as defined in Sections 61-15-2, 61-23-2 and 61.23.27. NMSA 1978.

Per NM Title 16-44-7, Offerors shall adhere to the Code of Professional Conduct for Landscape Architects as set forth in 16.44.7.8. CES requires that in the event of a dispute with a CES Member or Participating Entity, that the Offeror contact CES in lieu of the CES Member or Participating Entity. CES will make every effort to resolve any issues that may arise.

1. Additionally, firm(s) to provide services that may include, but are not limited to:
  - a. Design of outdoor areas, landmarks, and structures to achieve environmental, social or aesthetic outcomes.
  - b. Investigation of and site planning, taking into consideration ecological and soil conditions and the design of interventions that will produce the desired outcome.
  - c. Storm-water management, environmental restoration, parks, recreational areas.
  - d. Visual resource management, green infrastructure planning and provisions.
  - e. Sustainability of the project to include hard and soft planted materials.
  - f. Technical expertise in the design, organization and use of landscaped spaces,
  - g. Preparation of plans, drawings, technical specifications and project oversight.  
Preparing design impact assessments, conducting environmental assessments and audits, and familiarity with land use issues.

#### **C. PROJECT PHASES**

Each individual project's scope of work performed will be subject to the individual CES Member or Participating Entity engaging, assessing, evaluating, selecting and negotiating with the Offeror that possesses the qualifications, background, experience, attributes and resources that best fit their project's goals, objectives and outcomes, and to assist them in developing, implementing, executing, conducting and completing the identified project in the most cost effective and timely manner. The project phases may include, but is not limited to:

1. Programming phase;
2. Conceptual design and alignment studies;
3. Schematic design phase;
4. Design development phase;
5. Construction documents phase;
6. Procurement and/or bidding phase;
7. Construction phase;
8. Project acceptance and close-out; and
9. Project warranty phase.

#### **D. DESIGN ACTIVITIES**

The tasks and activities to be performed may relate to and include, but are not limited to:

1. New infrastructure, facility and building construction.
  - a. Educational (administrative, classroom, science, vocational, food service, athletic, playground, maintenance, transportation, etc.) facilities;
  - b. Utility plant and infrastructure (electricity, gas, water, sewer, communications, etc.) generation, distribution, storage and related facilities;
  - c. Historical facility preservation and restoration;
  - d. Drainage, storm water and flood control systems;
  - e. Medical and healthcare facilities;

- f. Public landscape, parks and recreational facilities;
  - g. Transportation, (transit, street, parking lots, pedestrian walkways, bikeways, trails, walkways, etc.) infrastructure and facilities;
  - h. Urban Design (Architectural, Planning and Engineering Services);
  - i. Design and project management services of new additions to a public safety/law enforcement facility.
2. Renovation, remodeling, repair, replacement and upgrading of existing infrastructure, facility, building and building systems.
- a. Educational (administrative, classroom, science, vocational, food service, athletic, playground, maintenance, transportation, etc.) facilities
  - b. Reconfiguring and modifying existing spaces to meet current program needs and requirements;
  - c. Updating and replacing of the building's envelope (roof, exterior walls), interior walls and fixtures, doors, windows, etc.
  - d. Renovating, upgrading and replacing existing electrical (generating, distribution, lighting, communications, etc.) systems
  - e. Renovating, upgrading and the replacing of existing mechanical (HVAC, plumbing, etc.) systems;
  - f. Renovating, upgrading and replacing existing specialty systems, fire, security, intercom and communications (voice, data, fiber, Ethernet, cable TV, etc.)
  - g. Renovating, remodeling and upgrading existing infrastructures, facilities, buildings, to comply with ADA, health and safety standards, codes, and regulations
  - h. Renovation and restoration of existing historical facilities to preserve the physical and historical integrity of the original facility (fabrics, colors, and styles shall be consistent with the building's history, design, and architecture)
  - i. Utility plant and infrastructure
  - j. Renovating, updating and replacing existing utility infrastructure and facilities (electric, gas, water, sewer, communications, etc.)
  - k. Respond to, manage, and address emergency repair and recovery events involving these utility assets
  - l. Drainage, storm water and flood control systems
    - 1) Renovating, updating and replacing existing systems to meet current and future needs.
    - 2) Respond to, manage and address emergency repair and recovery events involving these systems.
  - m. Medical and healthcare facilities
    - 1) Renovate, remodel and reconfigure the facility for a change in its function and operations.
    - 2) Renovating, updating and replacing existing medical and healthcare furniture, fixtures, equipment and delivery systems.
  - n. Public landscape, parks and recreational facilities - Renovating, updating, replacing and reconfiguring existing facilities, structures, fixtures and equipment to meet current use.
  - o. Transportation – renovate, refinish and repair existing roadways, streets, parking lots, pedestrian walkways, bikeways, trails, etc.

## **CATEGORY 2**

### **Lot 1 - Engineering Design Services**

### **Lot 2 - Surveying and Related Services**

#### **GENERAL**

CES seeks to acquire full service professional Engineering and/or Surveying services per the State of NM Engineering and Surveying Practice Act, 61-23-1 et.al. The NMAC Fully qualified, licensed, professionals must provide documentation that they have met all State of NM educational and licensing requirements. Award of a contract shall comply with the Procurement Code, 13-1-154.1 NMSA 1978 thresholds for on-call design professional services. Design fees for a single project shall not exceed \$500,000, and the contract term shall not exceed four (4) years or \$6,000,000 whichever occurs first. CES will track the volume on each Offeror's contract to ensure that no violation of the Procurement Code occurs.

Please identify the category(s) you are responding to on the Regional Declaration Form in the Mandatory Technical Documents and upload into your response.

#### **A. ENGINEERING BASIC SERVICES**

Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the practice, shall bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through joint stock association or corporation, services or work involving the practice of engineering may be offered through that joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute engineering practice is a professional engineer who has authority to bind such joint stock association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, issued by or for such joint stock association or corporation, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

1. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice engineering in accordance with the requirements in this section.

The purpose and scope of work for Category 2 is to acquire a full-service engineering firm(s) or surveying firms to provide services that may include, but are not limited to:

- a. Electrical engineering services;
- b. Mechanical engineering services;

- c. Structural engineering services;
- d. Civil engineering and surveying services;
- e. Instrumentation and control engineering;
- f. Geotechnical engineering and scientists' services;
- g. Traffic engineering;
- h. Land surveying,
- i. Preliminary and final engineering studies, environmental, historical reports, preliminary and final design services.
- j. Provide engineering and technical assistance (project evaluations, field inspections and investigations, analysis, recommendations, system design, cost and time estimates, testing, reports, studies, etc.) to other professional Offerors contracted by the CES Member or Participating Entity to perform professional design and assessment services;
- k. Provide quality control and assurance services relating to the review of project and system design documents, specifications, recommendations and cost estimates prepared by others;
- l. Sub-surface investigation;
- m. System assessment, material condition review, reliability analysis, testing and design services;
- n. On-call engineering services necessary for providing emergency/disaster operations, damage and repair assessment and emergency recovery engineering services.

#### **B. PROJECT PHASES**

Each individual project's scope of work performed will be subject to the individual CES Member or Participating Entity engaging, assessing, evaluating, selecting and negotiating with the CES-awarded engineering firm that possesses the qualifications, background, expertise, experience, and resources to meet the individual project's scope of work, specifications, requirements and outcomes desired and expected by the CES Member or Participating Entity in the most cost effective and timely manner. The type of project may include, but is not limited to:

1. Inspection, field investigations and verifications of specific geotechnical conditions and/or concerns relating to new construction, renovation of existing infrastructure, facility or building project.
2. Preparing preliminary and final engineering studies, environmental, historical reports, preliminary and final design to include traffic, roadway, signalization plans, and traffic studies. Additionally, both preliminary hydraulic/storm water studies, designs to include wetland rehabilitation and management, plus modeling reports; also, preparation of utilities, right of way, landscaping, irrigation plans.
3. Providing the necessary services to evaluate and assess (floodplain study, hydrologic & hydraulic studies, feasibility study) the efficiency of an existing site's storm water drainage and prepare preliminary documents, working drawings, specifications and construction cost estimates for improving the current storm water management structures to meet existing conditions and future conditions.
4. Conducting preliminary studies and investigations to prepare reports and special designs as related to the modification of existing facilities, redesigns, alternate designs, and other miscellaneous engineering work.
5. Performing and accomplishing such measurements of existing facilities, field surveying, checking and plotting of field data as is necessary to complete the design of the individual new or renovation project.
6. Emergency operations, damage and repair assessment and recovery engineering services to include engineering, planning, and surveying services; environmental investigations; architectural and landscape design services; as well as administration of FEMA/FHWA projects,

debris reduction contracts and debris removal contracts.

7. Providing the necessary engineering services relating to renovating, updating and bringing an existing waterworks system and its related facilities (raw water facilities, treatment plants, storage facilities, pump stations, related support and monitoring facilities) to current federal, state and local standards while improving its efficiency and productivity.
8. Performing, supervising and directing exploratory excavations, borings, or soundings to determine the nature of the subsoil and to determine the location and character of underground foundations, structures, and utilities.
9. Providing the required engineering, observation, inspection, testing, and support services during the construction and/or renovation of new or existing infrastructure, facilities, buildings and building systems to ensure compliance and adherence to construction project documents.

#### **C. SURVEYOR BASIC SERVICES**

Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the provisions of the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor pursuant to that act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through the joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports that are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

1. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section.
2. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:
  - (a) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or
  - (b) the absence of professional liability insurance coverage."

#### **END OF SECTION III. SCOPE OF WORK**



**SECTION IV. Acceptance of General Terms and Conditions**

## Acceptance of General Terms and Conditions

Rather than duplicate each general term and condition and indicate acceptance, Offeror may sign the statement below. Any exceptions must be listed on this page (additional pages may be attached, if necessary). Please check the appropriate item, scan and upload this document in your Technical Response.

\_\_\_\_\_ *I have read and hereby accept the General Terms and Conditions of this RFP*

\_\_\_\_\_ *I have taken exceptions to the General Terms and Conditions as listed below.*

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature (should match cover signature) List exceptions taken below:

#### **SECTION IV. CES GENERAL TERMS AND CONDITIONS GOVERNING THE CONTRACT 2019-001**

##### **A. INTRODUCTION**

If you are awarded a CES contract, the RFP documents and the Offeror response shall constitute the contract. Please note that the Federal Terms and Conditions include several areas that must be signed, initialed, acknowledged or deemed Non-applicable (N/A) by the Offeror.

##### **B. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS FORMS**

If you have exceptions to the General Terms and Conditions you shall note them on the Acknowledgement Form or attach a separate document and upload into the eProcurement system in your electronic response. CES will not issue a Final Award to an Offeror until the exceptions are reviewed. CES will provide a written response to accept, reject, or modify the exceptions within the laws of the State of NM.

##### **C. CES FLOW OF TRANSACTIONS UNDER THIS SOLICITATION ARE AS FOLLOWS:**

1. The CES Member or Participating Entity requires the services of an architectural, engineering, consulting or other professional services invite a CES Offeror to review the project scope of work, project schedule and available funds for developing a proposal for the work.
  - a. Based on the developed detailed scope of work, the CES Offeror will prepare and provide a project proposal identifying the type, kind and level of professional, consulting and associated services required that includes a project schedule, phases, tasks, consultants, estimated reimbursable expenses, gross receipts tax, and any other deliverables to be provided and their associated costs, including the CES one percent (1.25%) administration fee;
  - b. If acceptable, the Member/Participating Entity issues CES a purchase order and, if applicable, completes and provides CES with a copy of a professional services contract with the Offeror for the quote/proposal amount;
  - c. CES verifies the cost quote/proposal in relation to their Hourly Rates and Reimbursable Expenses Cost Schedule, in the Offeror's solicitation response and issues a purchase order to the Offeror for one percent (1.25%) less than the Offeror's quote to the Member/Participating Entity;
  - d. The Offeror provides the items or services and invoices the amount of CES' purchase order or progress payments to the Offeror;
  - e. CES invoices the Member/Participating Entity;
  - f. The Member/Participating Entity pays CES;
  - g. After receipt of the Member/Participating Entity payment, CES pays the Offeror for items and services delivered and accepted by the Member/Participating Entity, not to exceed the purchase order amount.
2. To accommodate governing boards and commissions that require a competitive process, a CES Member or Participating Entity may invite Offerors to interview for discussion and distribution of the project scope of work, agencies expectations, the project's timelines and budget. The CES Member or Participating Entity shall provide an informal solicitation schedule and invite those interested Offerors to submit a proposal for the work.
  - a. The proposal shall include the following:
    - i. The types, kinds, and level of services to be provided and the staff that will be assigned to the project;
    - ii. The firm's history, background and experience as it relates to the project's scope of work;

- iii. The project's proposed deliverables and timelines;
- iv. Any terms, conditions, stipulations and/or other items relating to the project that the Offeror feels the CES Member or Participating Entity needs to consider.
- b. The CES Member or Participating Entity's selection committee will review the CES Offerors' submitted proposal and select the most qualified Offeror to perform the project utilizing the selection criteria established. As part of this process, the CES Member or Participating Entity may conduct interviews.
- c. The CES Member or Participating Entity and the selected CES Offeror negotiate and jointly create and sign a project contract between the CES Member or Participating Entity and the CES Offeror.
- d. The CES Member or Participating Entity issues CES a purchase order for the contract, provides CES a copy of the summary of selection criteria results and the signed professional services contract.
- e. CES verifies the information with the CES Offeror's solicitation response and issues a purchase order to the Offeror, which is considered a notice to proceed with the design.
- f. The CES Offeror delivers the deliverables and services and invoices.
- g. CES verifies the Offeror's invoice and invoices the CES Member or Participating Entity.
- h. CES Member or Participating Entity certifies the deliverables and services have been received and accepted, then the CES member or Participating Entity pays CES.
- i. Upon receipt of payment from the CES Member or Participating Entity, CES shall pay the Offeror.

#### **D. PROPOSAL TERMINOLOGY AND DEFINITIONS**

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

**"Contract"** An agreement between a state agency (the Owner) and a firm for the work covered by this RFP.

**"Contract Documents"** means any one or combination of the following contract documents: contract, conditions of the contract, RFP and any amendments/addenda/written formal Q&A.

**"Contractor"** means any business having a contract with a state agency or a local public party.

**"Determination"** The written documentation of a decision made by the Evaluation Committee including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**"Finalist"** means an Offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that Offeror for further consideration by the Evaluation Committee.

**"Firm"** means the company or other business entity referenced under Section 1.4.8.7 NMAC for the purpose of identifying, individually or collectively; an architect or engineering company.

**"General Provisions"** The terms **"can"**, **"may"**, **"should"**, **"preferably"**, or **"prefers"** identifies a desirable or discretionary item of the RFP. Failure to comply with such an item will not result in the rejection of the Offerors proposal.

**"Cooperative Educational Services (CES)"** is the agency with the responsibility for the RFP documents, awards and contracts.

**"Mandatory Requirements"** The terms "must," "shall," "will," "is required," or "are required" identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor could result in the rejection of the Offerors proposal. Rejection of the proposal will be subject to review by the Evaluation Committee and a final decision on rejection will be made by the Selection Committee.

**"Offeror"** is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing services for this project.

**"Owner"** as defined in the Agreement between Owner and Contractor shall be the CES Member or Participating Entity.

**"Project Team"** All members of the firm, including consultants who will be responsible for the completion of the project.

**"Proposal"** is the Offeror's response to this RFP.

**"Request for Proposals" or "RFP"** This document, any attachments incorporated by reference, and any amendments issued for use in soliciting proposals, for RFP 2019-001.

**"RFP documents"** means any one or combination of the following request for proposal documents: technical proposal; price proposal; financial proposal; contractor qualifications statement; subcontractor qualification statement, contracts or agreements.

**"Responsive Offer" or "Responsive Proposal"** An offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the Evaluation Committee. Material respects of an RFP include, but are not limited to quality, quantity or delivery requirements.

**"Selection"** A formal written notice by the CES CPO on behalf of the Evaluation Committee that firms have been selected to enter into a contract for services.

**"Selection Committee or Evaluation Committee"** A body constituted in accordance with Section 1.4.8.16 NMAC 2005 to evaluate proposals and make selection recommendation and or selection. The Evaluation Committee consists of at least three members. The committee should collectively possess expertise in the technical requirement of the project, construction design and contracting.

#### **E. GENERAL TERMS AND CONDITIONS GOVERNING THE CONTRACT BETWEEN CES AND THE OFFEROR**

If you are awarded a CES contract, the General Terms, Conditions and Definitions listed below will be part of the contract.

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

**Acceptable Quality Level (AQL):** CES expects that the level and quality of professional services and deliverables offered under this solicitation will adhere to, comply with and meet or exceed those standards and/or expectations established, adopted and published by federal, state and local regulatory, licensing and governing authorities and the various professional associations and organizations. The AQL for professional services performed and/or deliverables provided under contracts resulting from this solicitation shall be free of errors, and defects, and the level of competency and/or performance shall not fall below the standards and expectations referenced herein. If the AQL of services performed and deliverables provided for three (3) or more individual contracts covered by this solicitation falls below the acceptable level, CES reserves the right to cancel the contract following the procedures described in this RFP.

**Acceptance of Delivered Services:** The CES Member or Participating Entity will be the determining judge of whether services and deliverables provided under the contract satisfy the requirements as identified and agreed to within the individual projects contract documents/order. If there is a dispute between the Offeror and the CES Member or Participating Entity, CES will assist the parties to come together to reach a solution.

**Accounts Payable:** This is the amount owed to an Offeror by CES upon acceptable delivery of products or services to a Member/Participating Entity as a result of a contract through this RFP. CES has established a Collections Department for the purpose of collecting past due payments. The Offeror agrees to contact CES in lieu of a CES Member/Participating Entity unless CES has specifically requested assistance in collecting a past due payment.

**Addendum:** Written changes, responses to questions and/or drawings issued before the closing date and time for an RFP or RFB. An addendum may interpret or modify the solicitation documents by making additions, deletions, clarifications or corrections to the original documents. Addendum will be issued through the CES eProcurement System. The Offeror shall acknowledge that they have read and understood the information.

**Administrative Fee:** CES' one percent (1.0%) administrative fee (will increase to 1.25% on January 1, 2019) must be included in Offeror's net price for all services and deliverables (design fees, material, labor rates, reimbursable expenses and other fees/charges). The CES administrative fee will be taken as a deduction off the amount of the cost quote/proposal when CES prepares its' purchase order to the Offeror, unless an alternative pricing method has been approved by CES.

**Amendment of Contract:** CES reserves the right to amend an awarded contract to accommodate the flow of transactions when a CES Member/Participating Entity is utilizing funds appropriated by the State of NM or the Federal government for a project.

**Announcement of Successful Offerors:** Selection will be made via written communication in the form of a Preliminary Award Notice issued through the eProcurement System to successful Offerors.

**Applicable Law:** This contract will be governed by the laws of the State of New Mexico, both as to interpretation and performance. Suits pertaining to this contract can be brought only in courts in the State of New Mexico. Offerors doing business with CES must comply with the Federal Civil Rights Acts of 1964 and Title VII of that Act, Rev. 1979. All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or

code that relate to these laws. Where conflict among the requirements or these specifications exists, the most stringent requirement will be used.

**Arbitration:** This contract is subject to arbitration to the extent required by the New Mexico Procurement Code.

**Assignment:** No right or interest in this contract will be assigned or transferred by the Offeror without prior written permission by CES, and no delegation of any duty of the Offeror will be made without prior written permission by CES. CES will not unreasonably withhold approval and will notify the Offeror within fifteen (15) days of receipt of written notice by the Offeror. It is understood that any firm assigned the CES contract shall agree to the terms and conditions of the contract. If an agreement cannot be met, the contract will be canceled.

**Assignment of CES Payments:** If the Offeror requests that its payment from CES be issued to a third party or that a joint check be issued to the Offeror and a third party, CES will assess a special handling charge of Thirty-Five Dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the Offeror wishes to have all payments under this contract made to a third party, Offeror must state this in its response.

**Audit Rights:** In accordance with applicable New Mexico law, the Offeror's books, records and documentation related to this RFP and any contract/transaction thereof may be audited at a reasonable time and place. The Offeror agrees to provide CES, within a reasonable time frame, copies of requested audit information.

**Authority:** This RFP, as well as any resultant agreement, is issued under the New Mexico Procurement Code, CES Board Policies and CES Procurement Guidelines.

**Awarding of Contract:** CES reserves the right to make multiple awards on a state-wide or region by region basis, or to reject any proposal that is considered non-responsive. A response to the RFP is an offer for an award with CES based upon the terms, conditions, scope of work and specifications contained in this Request for Proposal. A contract based on this RFP does not become an award contract until CES signs the Acceptance of Offer and Contract Award document, eliminating the need for a formal signing of a separate document. The Contract Award document is bound by the Request for Proposal terms and conditions.

**Best and Final Offer:** After initial receipt of proposals, CES reserves the right to conduct discussions with responsible Offerors who submit responsive proposals for clarifications.

**Billing:** All invoices will be from the Offeror to CES and will be organized, detailed and contain the following: the purchase order number(s) issued by CES, the name of the CES Member or Participating Entity where the products/services were delivered, and an itemized and detailed listing of all products and services being billed with their CES contract price. The Offeror will not invoice a CES Member directly. CES will invoice the CES Member/Participating Entity with payment to be made to CES. The Offeror will not accept an order from or issue an invoice to any New Mexico public CES Member or Participating Entity based on their contract unless authorized by CES in advance and in writing.

**Bonds:** All performance bonds, if required, are to be issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and be a surety listed in the US Treasury Circular 570.

**Bribes, Gratuities and Kickbacks:** Sections 13-1-191 and 13-1-198 Procurement Code, NMSA, 1978, prohibits bribes, gratuities and kickbacks and provides for criminal prosecution for the violation thereof. See 'Penalties' in this section.

**Buyer:** Refers to CES as an CES Member or Participating Entity that conducts and performs procurement activities on behalf of CES Agencies in accordance with CES Joint Powers Agreement, Participating Entity Agreement, and all policies and procedures.

**Campaign Contribution Disclosure Form:** Documents used to disclose whether they, a family member or a representative of the prospective Offeror 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 Offeror submits a proposal (Chapter 81, Laws of 2006). Prior to the Offeror entering into a contract with an individual CES Member or Participating Entity, the Offeror must provide the CES Member or Participating Entity with a Campaign Contribution Disclosure Form.

**Cancellation:** CES may, by written notice stating the extent and effective date, cancel this contract for convenience in whole or in part at any time. CES will pay Offeror as full compensation for performance until such termination as follows:

1. The unit or pro-rata order price for the delivered and accepted portion; and
2. A reasonable amount, not otherwise recoverable from other sources by Offeror as approved by CES with respect to the undelivered or unaccepted portion of the service, provided compensation will in no event exceed the total contract price.

CES reserves the right to cancel in whole or any part the contract due to the failure of the Offeror to carry out any obligation, term or condition of the contract. CES may issue written notice to the Offeror for acting or failing to act under the following conditions:

1. The Offeror provides deliverables that does not meet the specifications of the contract.
2. The Offeror fails to complete the services set forth in the specifications of the contract.
3. The Offeror fails to complete the services required or to furnish the deliverables required within the specified time.
4. The Offeror fails to make progress in the performance of the contract, and/or gives CES cause to believe that the Offeror will not or cannot perform the requirements of the contract.
5. The Offeror fails to observe any or all of the terms and conditions of the contract.
6. The Offeror accepts purchase orders, based on this contract, directly from a CES Member and then invoices them directly without CES approval.
7. The Offeror fails to promote the contract, CES Agencies have not used the contract within the last 12-month period, or if purchase orders total less than \$10,000 per year.
8. Any other conditions that, in the opinion of CES, warrants such action.

Upon receipt of a written Notice of Concern, the Offeror will have ten (10) days to provide a satisfactory response in writing to CES. Failure on the part of the Offeror to satisfactorily respond may result in CES canceling the contract.

Offeror can, by written notice at least thirty (30) days in advance, terminate the contract issued as a result of this RFP for convenience in whole or in part. CES reserves the right to cancel or suspend the use thereof of any contract resulting from this RFP if the Offeror files for bankruptcy protection or is acquired by an independent third party.

**Cancellation for Non-Performance or Offeror Deficiency:** CES, on behalf of a CES Member or Participating Entity, reserves the right to cancel in whole or any part of any individual project contract based on this RFP due to failure by Offeror to carry out any obligation, term or condition of the contract. CES may issue a written deficiency notice to Offeror for acting or failing to act in any of the following:

1. Providing deliverables that does not meet the specifications of the contract;
2. Failing to adequately perform the services set forth in the scope of work and specifications;
3. Failing to complete required work or furnish required deliverables within a reasonable amount of time;
4. Failing to make progress in performance of the contract and/or giving CES reason to believe that Offeror will not or cannot perform the requirements of the contract; and/or
5. Performing work or providing services under the contract prior to receiving a purchase order from CES for such work.

Upon receipt of a written deficiency notice, Offeror will have ten (10) days to provide a satisfactory response to CES. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all deliverables, work, documents, data and reports prepared by Offeror under the contract will become the property of the CES Member or Participating Entity on demand.

**Certificate of Insurance:** Prior to commencing services under this contract, the Offeror must furnish CES and CES Member or Participating Entity with certification from insurer(s) for minimal coverage to be maintained in full effect during the term of this contract. The certificate will be issued by the Offeror's insurance company and name CES as the certificate holder. In addition, Offeror must be willing to provide, upon request, certification of insurance to any CES Member or Participating Entity using this contract. If the Offeror will use vehicles and workers at the CES Member or Participating Entity's location, evidence of workmen's compensation and auto liability insurance must be provided.

**Certification:** By signature in the offer section of the offer page, the Offeror certifies:

1. The Offeror has examined and understands the terms, conditions, scope of work, specifications and other documents in this RFP solicitation.
2. The submission of the offer did not involve collusion or other anti-competitive practices.
3. The Offeror will not discriminate against any employee or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246).
4. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gratuity, special discount, trip, favor or service to a public servant relating to the submitted offer.
5. The Offeror agrees to promote and offer to CES Members only those materials and/or services allowed under resultant contract(s) as CES contract items.



**CES Member or Participating Entity:** For the purpose of this solicitation, the term "CES Member or Participating Entity" are entities that may utilize any contract created through this solicitation. Therefore, CES Member or Participating Entity, Member and Participating Entity are interchangeable.

**CES Members:** Are the parties to the CES JPA and consist of public educational institutions within the State of New Mexico and include public school districts as defined in NMSA 1978 § 22-1-2, State Institutions as defined in NMSA 1978 § 22-1-2, State Educational Institutions defined under Article XII, Section 11 of the New Mexico Constitution, most of the community colleges defined by the "Community College Act" as defined in NMSA 1978 § 21-13-1 et seq., their branch community colleges as defined in NMSA 1978 § 21-14-1 et seq., technical and vocational institutes defined in NMSA 1978 § 21-16-1, area vocational schools defined in NMSA 1978 § 21-17-4, off campus community colleges or instructional facilities as defined in NMSA 1978 § 21-14A-1, charter schools as defined in NMSA 1978 § 22-8A-1, Regional Center Cooperatives as set forth in Section 22-2B-1 et seq., and 638 schools and grant schools. Each public educational institution is authorized by its governing body and the Procurement Code 13-1-135 NMSA 1978 to enter into cooperative purchasing agreements, pursuant to Sec. 11-1-1 et seq. 1978 Comp. and Sec. 108 of Ch. 65 of the Laws of 1984 (The Procurement Code).

**CES Regions:** New Mexico is a large state geographically. For this solicitation, CES is dividing the State into eight (8) service regions Any CES Member, such as public educational institutions, i.e. BIA schools, charter schools, colleges, universities, community colleges or CES Participating Entities, such as cities and counties, physically located within these regions are considered a part of that region. See Form A, Offeror's Declaration Form to identify the region(s) and Categories you propose to cover if awarded a contract.

Within the Participating Entity users, there are Native American tribal governments/agencies that have requested to utilize CES-awarded contracts. Because these tribal governments/agencies are sovereign nations and have their own laws, rules, regulations and procurement processes/procedures that may use our contracts. The BIE entities that have agreements to use are contracts can be found in the Directory on the CES website at [www.ces.org](http://www.ces.org).

**Clarification:** As used in the RFP, clarification means communication with an Offeror for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in the Bid. It is achieved by explanation or substantiation either in response to an inquiry by CES or as initiated by the Offeror.

**Codes:** Federal and state health or safety laws, codes, standards and regulations applicable to the locale where the project is located. The Building Code shall be the current New Mexico and local Building Code, and the Fire Code shall be the current New Mexico and local Fire Code. If there is a conflict between the Building Code and the Fire Code, the Building Code shall always prevail. K-12 Projects shall adhere to and comply with PSCOC/NMPSFA standards and requirements unless approved by NMPSFA. Local codes shall not be more restrictive than State-adopted codes on any K-12 public school project.

**Compensation Variables:** May include, but are not limited to:

1. Overhead - direct labor and expenses are incurred during the development of designs and plans or in the observation of construction. A secondary cost is overhead. This cost is usually shown as a

percentage of direct salary cost. Direct salary overhead for the firm includes such items as federal FICA, employment taxes, group insurance, and unemployment benefits. General overhead costs include administrative salaries, bookkeeping, office supplies, insurance, etc. Total overhead may be expected to vary from 150% to 200% of direct labor costs. Specialty firms may have higher overhead, but may be more efficient in direct labor charges.

2. Direct Salary - Gross wage paid excluding employee benefits or employer burden.
3. Other Direct Costs - The professional may incur other direct costs for the project. These include the costs of information, such as maps or reports, and the cost for sub-consultants, such as aerial photography, geotechnical investigations, and environmental and cultural resource specialists. It is customary for the professional to add an overhead charge (typically 10%) to their direct cost to cover their expenses for administration of the subcontracts.
4. Lump Sum - Lump sum payment arrangements are usually best when the scope of the service is well defined. A schedule of payments for various phases of the project's development is a part of the lump sum agreement. For ease of administration, try and select easily identified milestones for payment, such as "submittal of preliminary plans" and "submittal of final plans". The contract clearly describes the scope of work to be performed for the lump sum fee.
5. Time and Materials - Cost-based arrangements are more desirable when the scope of particular services is less well defined. These may take the form of direct and overhead costs plus a fixed fee, salaries times a multiplier (typically 2.75 to 3.50) plus expenses, or standard billing rates plus expenses. Cost-based arrangements should have a maximum agreed-upon limit that is not exceeded without Owner approval, which may contain a contingency for unexpected costs.
6. Other Methods - Retainers, per diem or other systems of reimbursement are sometimes used. If public funding is anticipated for the project, check with the funding CES Member or Participating Entity to determine if it has specific requirements for method of payment or other required contract conditions.

**Competitive Range:** CES reserves the right to establish a competitive range of acceptable proposals as part of the evaluation process as defined herein. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

**Competitive Sealed Proposals:** Per 13-1-120 NMSA 1978 of the NM Procurement Code, CES has determined that competitive sealed proposals are to be utilized for this solicitation. CES is soliciting qualified professional services and professional services based the following determination:

1. CES may conduct oral or written discussions or interviews with potential Offerors prior to an award.
2. CES may request clarifications to proposals.
3. CES shall award qualified professional services contracts on which price is not an evaluation factor.
4. Offeror meets or exceeds the minimum Offeror's qualifications.
5. Offeror must be a highly qualified, experienced and licensed to provide the services and deliverables being solicited. Offeror must provide the necessary documentation to demonstrate that it complies with all solicitation requirements.
6. Offeror must be able to provide a single source contact or turnkey operation.
7. Offeror must have at least three (3) years of service history in the related Category you are responding to.
8. Offeror must demonstrate its ability to control delivery, and resolution of problems with the services offered.

9. The deliverables and services offered must meet or exceed the industry standards and guidelines established for use involving public agencies.
10. Offeror must provide the necessary information and documentation to substantiate and demonstrate its ability and capacity to comply with all the terms, conditions, specifications and requests for information stated herein.
11. Offeror's Past Performance Information (PPI) must indicate an Offeror in good standing who has performed and conducted its business affairs in an acceptable manner without improprieties.

**Confidential Information:** If an Offeror believes that any part of its proposal should be withheld from public inspection, a statement advising CES of this fact will accompany the submission. The CES Executive Director will review the statement, and will determine in writing whether the information will be withheld. If the Executive Director determines that the information should be disclosed, the Offeror will be informed in writing of such determination and, should the Offeror object in writing within five (5) days after notification thereof, no disclosure will be made. The proposal may be rejected.

**Conflict of Interest:** Any contract issued related to this RFP is subject to cancellation by CES if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the CES Agencies is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or as a consultant to any other party of the contract with respect to the subject matter of the contract.

**Consultant Relationships:** The Design Professional or Service Offeror utilizing outside consultants or independent Offerors providing services under this RFP must have in place a written agreement/contract clearly and specifically identifying the services, terms, conditions, stipulations, timelines and requirements to the extent of the services to be performed by the consultant or independent Offeror as part of a project, and will be bound to the same terms, conditions, and specifications of the Design Professional's/service Offeror's contract with the CES Member or Participating Entity including, but not limited to, the project's requirements and the Design Professional's/service Offeror's obligations and responsibilities, including performance of professional and related services committed to the CES Member or Participating Entity. Each Consultant agreement shall preserve and protect the rights of the CES Member or Participating Entity under this RFP and the individual project's contract. Where appropriate, the Design Professional shall require each consultant/sub Offeror to enter into similar agreements with their consultants. The Design Professional/Service Offeror shall make available to each proposed consultant/sub Offeror, prior to execution of an agreement related to this RFP and the individual project's contract, copies of the RFP/project contract to which the consultant or independent Offeror will be bound. Nothing contained herein or elsewhere in this RFP shall create any contractual relationship with or cause of action in favor of a third party against CES and/or CES Member or Participating Entity.

**Contract:** Any agreement for the procurement of items of tangible personal property, services or construction services.

**Contract Between Owner, Buyer and Offeror:** An Agreement between the CES Member or Participating Entity (Owner), CES (Buyer) and the CES Offeror for the procurement of qualified professional services and related deliverables will be signed for each individual project's contract over Sixty Thousand Dollars (\$60,000). CES issues this Agreement to consummate the agreement of

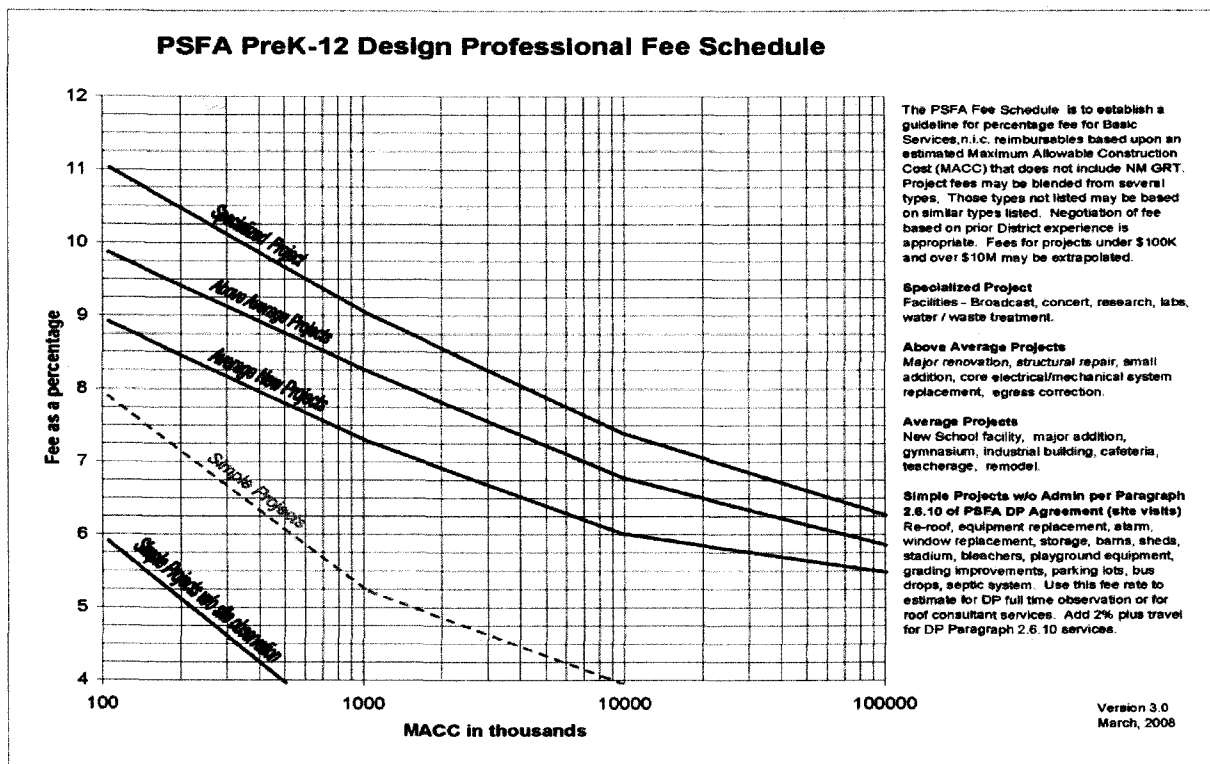
the parties in accordance with the terms and conditions specified in the RFP, and that the owner's purchase order to the buyer is in accordance with the same terms and conditions.

**Contract Changes:** CES can make changes in the general scope of this contract by giving notice to the Offeror and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this service, an equitable adjustment in the price or delivery or both will be made. No change by the Offeror will be recognized without written approval of CES. Any claim of Offeror for any adjustment must be made in writing within thirty (30) days from the date of receipt by the Offeror of notification of such change, unless CES waives this condition. Nothing in this section will excuse Offeror from proceeding with performance of the service as changed hereunder.

**Offeror:** The firm responding to the solicitation or the firm awarded a contract.

**Offeror's License:** A document issued by the State of New Mexico, to service Offerors, which authorizes Offerors to undertake and/or propose to undertake, perform, supervise, and subcontract with others to provide professional design and related services. Offerors will have all the appropriate New Mexico licenses if they intend to perform and provide the services themselves. Copies of licenses will be submitted by the Offeror with its response. The Offeror agrees to keep and ensure that any required licenses for it and any consultants for a project current and in compliance with New Mexico rules and regulations. It is the Offeror's responsibility to keep CES updated to any changes in licensure, or to provide copies of renewed licenses to keep the procurement file up to date.

**Offeror's Fee and Price Schedule for Professional Services:** Per the NM Procurement Code 13-1-124. Architect Rate Schedule, The Offeror shall utilize the State of NM architect rate schedule which shall set the highest permissible rates for each building type group, which shall be defined in the regulations for a project. The rate schedule shall be in effect upon the approval of the state board of finance and shall be in compliance with the State Rules Act and shall apply to all contracts between a CES Member (K-12) and the Offeror. The Offeror is encouraged to review and take into consideration the State guidelines layout in the New Mexico General Service rule (GSD 85-510), New Mexico Administrative Code 1-5-18 and The NMPSFA preK-12 professional Design Fee Schedule which is provided below as an indicator of the fees parameters established by the New Mexico Public School Facility Authority.



**Offeror's Hourly Rate Schedule and Reimbursable Fees to be submitted after Preliminary Award Notice and Prior to Final Award Notice:** The Offeror will furnish its proposed hourly rate schedule and Reimbursable Fees schedule that will become part of the Offeror's procurement file. The Hourly Rate Schedule must clearly state and identify any/all services and related services proposed in response to this solicitation with their associated costs, whether provided by the Offeror. The Offeror will maintain, keep current and provide copies of the approved hourly rate schedule to CES Agencies for audit purposes when preparing quotes. The Hourly Rate Schedule may be modified at contract renewal.

**Offeror's Quote/Proposal to CES Member/Participating Entity:** When preparing a quote/proposal under a CES-awarded contract, the Offeror must clearly identify and break out services, deliverables, materials and reimbursable expenses into individual line items as they appear on the Offeror's awarded price schedule or pricing methodology. Stated prices must include the CES one percent (1%) administrative fee.

**Cooperative Procurement [13-1-44 NMSA 1978]:** Procurement conducted by or on behalf of more than one state CES Member or Participating Entity or local public body, or by a state CES Member or Participating Entity or local public body with an external procurement unit.

**Cooperative Purchasing:** The purpose of this cooperative purchasing solicitation (RFP) is to pool the CES Member or Participating Entity's efforts and resources to provide the economic leveraging/benefits of volume purchasing resulting in lower product costs and a reduction in administrative costs through a collaborative effort administered by CES.

**Cost of Proposal Preparation:** CES will not reimburse the cost of developing, presenting, or providing any response to this solicitation and/or participating in an interview if conducted.

**Credit Hold:** The Offeror must agree not to place CES, its Member/Participating Entity on "credit hold" without ten (10) days advanced notice in writing, either by letter or facsimile. The Offeror must also copy CES as part of this process when it involves a direct purchase with a Member/Participating Entity. Before CES can pay an Offeror's invoice, it must collect payment from the Member/Participating Entity that received the product. CES believes it is better for the Offeror if CES places the slow-paying CES Member or Participating Entity on "credit hold". If an Offeror places CES on "credit hold," agencies that pay promptly are penalized. If, on the other hand, CES places the offending CES Member or Participating Entity on "credit hold", payment is more likely to result and only the offender is punished.

**Delivery:** Delivery is to be made within the timelines identified within the project's contract and/or purchase order, unless otherwise stipulated in writing and accepted by all parties (buyer, Offeror and CES Member or Participating Entity). The Offeror agrees to notify CES if an order cannot be processed and/or delivered within the identified timelines and/or the agreed upon adjusted timelines. The CES Member or Participating Entity placing the order will then have the option of canceling the purchase order or invoking other options enumerated within the buyer, Offeror and CES Member or Participating Entity agreement. Ownership of work performed and benefit of services happens only after acceptance of delivery by the CES Member or Participating Entity.

**Design Professional:** The legal entity qualified to do business in the State of New Mexico that employs an individual or individuals licensed to practice the discipline or disciplines for the services to be provided and performed under this solicitation.

**Design Professional Project Representative:** The individual shall be the Project Design Professional or shall be assigned by the Project Design Professional to provide on-site project administration as required for the Project. The Design Professional Project Representative shall be mutually agreed upon by Owner and Design Professional prior to the Bidding Phase of this Project and shall be authorized to make binding decisions, as if made by the Design Professional, as they relate to the carrying out of any agreement derived from and project executed under this solicitation.

**Department of Finance and Administration (DFA):** The cabinet CES Member or Participating Entity with central accounting authority and responsibility that may issue payments for work performed under this RFP involving PSCOC funding.

**Descriptive Literature:** For the purpose of this solicitation, descriptive literature is defined as documentation and other media information provided by the Offeror to communicate, illustrate, demonstrate and/or support their response regarding the services, deliverables and projects they are proposing to offer.

**Determination:** The written documentation of a decision of the CES authorized representative, and/or Procurement Officer, including finding of facts required to support a decision. A determination becomes part of the procurement file to which it pertains.

**Deviations or Exceptions to Requirements:** Deviations or exceptions stipulated in an Offeror's proposal can result in rejection of the response. CES reserves the right to determine whether the deviation or exception does or does not serve the interest of or is not advantageous or acceptable to CES or its Agencies.

**Disclosure:** Offerors submitting a proposal will disclose any and all owners, Offerors or employees who are active employees of CES or are immediate relatives of an employee of CES.

**Disclosure of Proposal Contents:** Proposal contents will be kept confidential until conclusion of successful contract negotiations. At that time, all proposals will be open to the public, except for the material which has clearly been noted and deemed as proprietary or confidential by the Offeror. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret under the Uniform Trade Secrets Act, Sections NMSA 1978 § 57-3A-7. Any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" must be readily separable from the proposal to facilitate public inspection for the non-confidential materials.

**Discussions:** Discussions occur when oral or written communications between CES and the Offeror are conducted for minor clarifications involving information essential for determining the acceptability of a proposal or that provides the Offeror an opportunity to revise or modify its proposal. CES will not help an Offeror bring its proposal up to the level of other proposals through discussions. CES will not disclose technical information pertaining to a competing proposal CES is willing to discuss with an Offeror having a proposal in the competitive range any weaknesses, excesses, or deficiencies in its proposal.

**Electronic Data:** The professional service Offeror must be willing and capable of providing to the CES Member or Participating Entity and/or governing authorities/agencies, upon request, documents (proposals, communications, test results, reports, design/as-built drawings, presentations, specifications, etc.) in the appropriate AutoCAD, Microsoft Office and other national/industry computer technology formats. As part of any project planning, the Offeror must inform, discuss and advise the CES Member or Participating Entity of its capacity in the technology area.

**Eligible Agencies:** Any CES Member or Participating Entity can use the services of Cooperative Educational Services upon request. CES reserves the right to reject any purchase authorizations it receives from a CES Member or Participating Entity without cause.

**Estimated Quantities:** CES anticipates considerable activity resulting from this solicitation. However, no commitment of any kind is made concerning quantities to be acquired. CES does not guarantee usage. Usage depends on the actual needs of the CES Agencies and on the marketing expertise of the Offeror.

**Evaluation Committee:** means a body constituted in accordance with Section 13-1-121 NMSA 1978 to perform the evaluation of Offeror's proposals. The committee's evaluation activities are facilitated and coordinated by CES and the committee consists of CES Member or Participating Entity staff/representatives. The committee reviews, evaluates and makes an award recommendation to the CES Procurement Officer, who makes a final determination.

**Exculpatory Provisions:** All parties to this contract agree to save harmless one another from simple negligence.

**Federal CES Member or Participating Entity [25 USC 3001 (4)]:** Defined as any department, CES Member or Participating Entity, or instrumentality of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory CES Member or Participating Entity established through legislative and/or administrative action.

**Federal Requirements:** Offeror agrees, when working on any federally-assisted projects with more than Two Thousand Five Hundred Dollars (\$2,500) in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act, and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the Offeror agrees to post wage rates at the work site, and comply with all reporting requirements. The Offeror will provide CES with a copy of any required report filed. In addition, to comply with the Copeland Act, the Offeror must keep records for three (3) years, and allow the federal grantor CES Member or Participating Entity access to these records upon demand. All federally-assisted contracts to Members that exceed Ten Thousand Dollars (\$10,000) may be terminated by the federal grantee for noncompliance by the Offeror. In projects that are not federally funded, Offeror must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed-on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee. On all other projects, the prices must agree with this contract (see attached supplemental federal terms and conditions).

**Force Majeure:** Except for payments of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected, and occurs without that party's fault or negligence, including, but not limited to, the following: acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; earthquakes; famine; volcanic eruptions; meteor strikes; lockouts; injunctions-interventions-acts or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure will be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure, and will be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement. Force majeure will not include late deliveries of software or materials caused by congestion at a manufacturer's plant, or elsewhere, an over-sold condition of the market, inefficiencies and poor management practices, or similar occurrences. If either party is delayed at any time by force majeure, then the delayed party will notify the other party, in writing, of such delay within 48 hours.

**General Provisions:** The terms "can", "may", "should", "preferably", or "prefers" identifies a desirable or discretionary item of the RFP. Failure to comply with such an item will not result in the rejection of the Offerors proposal.



**Gratuity:** By written notice, CES will cancel this contract if it is found that gratuities in the form of entertainment, gifts, etc., were offered or given by the Offeror or any agent or representative of the Offeror to any employee of CES with a view toward securing a contract or with respect to the performance of the contract. Paying the expenses of normal business meals, which are generally made available to all eligible Members and government employees, will not be prohibited by this paragraph. Samples of software, equipment or hardware provided to CES for demonstration, evaluation or loan purposes are not considered gratuities.

**Improper Delivery:** Unless contrary to other parts of this solicitation and/or the individual project contract, if the products or the tender of delivery fails in any respect to conform to this contract and/or individual project contract, the purchasing CES Member or Participating Entity can:

1. Reject the whole; or
2. Accept the whole; or
3. Accept any unit or units and reject the rest.

**Indemnification:** Offeror will indemnify, defend and save harmless CES, its Members or its employees from any and all claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any attorney's fees and/or litigation expenses, which might be brought or made against or incurred by CES, its Members or its employees on account of loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Offeror, its employees, agents, representatives, or sub Offerors, their employees, agents, or representatives in connection with or incident to the performance of this agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Offeror, and/or its sub Offerors or claims under similar such laws or obligations. Offeror's obligation under this section will not extend to any liability caused by the sole negligence of CES, its Members or its employees. The liability of CES, its Members or its employees will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41 -4-1 et seq. NMSA 1978, as amended.

**Inquiries:** Any question related to this RFP will be directed to CES. Submit all questions about the RFP in writing to Cooperative Educational Services, David Chavez, Executive Director. Replies will be made to all who have received this RFP as addenda and will become part of the proposal documents. CES may require any and all questions to be submitted in writing. Any inquiries related to this RFP should not have the solicitation number on the envelope, since it might then be confused with a sealed proposal response and not be opened until the due time and date. Inquiries can be faxed to 505-344-9343 or sent by e-mail to [bids@ces.org](mailto:bids@ces.org).

**Insurance:** On contract award, the Offeror will, at its own expense, purchase and maintain the appropriate insurance that will protect it from claims that may arise out of or as a result from its activities under this contract, where those activities are performed by it, by any sub Offeror, by anyone directly or indirectly employed by any of the Offerors or by anyone for whose acts Offeror may be liable during the entire performance period of this contract. The Offeror must furnish a Certificate of Insurance to the CES Procurement Office prior to official award. If policy changes occur during the life of the contract, it is the Offeror's responsibility to provide updated proof of coverage to the CES Procurement Office.

1. Professional Liability Insurance. The Design Professional shall provide and maintain Professional Liability Insurance with a One Million Dollar limit (\$1,000,000) and a maximum

deductible of \$50,000 unless otherwise specified in the individual project contract. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services and for a period thereafter of not less than three (3) years following completion and acceptance of the work. The coverage provided shall contain an endorsement providing thirty (30) days' notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer licensed to do business in the State of New Mexico and acceptable to the CES Member or Participating Entity. Provision of insurance does not limit the liability of the Design Professional potential exposure.

- a. The Design Professional will provide professional errors and omissions insurance for errors, omissions and personal injury, occupational disease, sickness or death, and property damage. Insurance will include "occurrence" claim provisions.
- b. At Design Professional's option, either insure the activities of its Consultants or require them to maintain insurance to cover all claims that may arise out of the work performed and if the CES Member or Participating Entity is damaged by the failure or neglect of the Design Professionals, Consultants and/or sub Offerors.

2. Liability Insurance

The Design Professional shall purchase from and maintain from a company or companies lawfully authorized to provide insurance in the State of New Mexico, insurance that shall protect the Design Professional and from claims set forth below, which may arise out of or result from operations under the Contract and for which the Design Professional may be legally liable, whether such operations be by the Design Professional or by anyone directly or indirectly employed, or by anyone for whose acts may be liable.

- a. Claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design Professional's employees;
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design Professional's employees;
- d. Claims for damages for personal injury;
- e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting, thereof;
- f. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- g. Claims for bodily injury or property damage arising out of completed operations; and
- h. Claims involving contractual liability insurance applicable to the Design Professional's obligations under an individual project's contract.

3. Certificates of Insurance acceptable to the CES Member or Participating Entity shall be filed with the CES Member or Participating Entity and a copy given to CES prior to commencement of the project. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire unless at least forty-five (45) days prior written notice has been given to the CES and the CES Member or Participating Entity. The Certificates of Insurance shall clearly state the coverage, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Design Professional will promptly notify and furnish to CES and the CES Member or Participating Entity copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD Form, or similar format acceptable to the CES Member or Participating Entity, and shall include the following terms, conditions and statements:

- a. The name(s) of the CES Member or Participating Entity(ies) and state CES Member or Participating Entity(ies) who are party to the project's agreement/contract, its agents, servants and employees who are recognized as additionally insured.
  - b. The insurance coverage communicated for an individual project will not be canceled or materially changed, except after **forty-five (45)** days written notice has been provided to the CES Member or Participating Entity.
  - c. The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy.
  - d. The coverage provided by this certificate is primary.
  - e. Nothing in the certificate of coverage will be construed to affect CES, CES Member or Participating Entity, agents, servants and employees' defenses, immunities or limitations of liability under the New Mexico Tort Claims Act.
4. **Minimum Required Coverage:** The CES Member or Participating Entity may request and require additional coverage and/or limits.
- a. Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged in work on projects performed and covered under this RFP. In case any class of employee engaged in work on projects under this RFP is not protected under the Worker's Compensation Statute, the Design Professional shall provide, and cause each consultant to provide, Employer's Liability Insurance in an amount not less than five hundred thousand (\$500,000). Failure to comply with these conditions will result in the contract being terminated.
  - b. Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended. Current acceptable minimum coverage is \$1,000,000 combined single limit for bodily injury and property damage, or \$750,000 bodily injury and \$250,000 property damage (each occurrence).
  - c. Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.

**Interviews:** If an interview is required by an RFP or RFB or should the evaluation committee elect to conduct interviews, CES staff will coordinate with each interviewee as to the time, date, place and the time allowed for each presentation. The Evaluation Committee Members may question each interviewee during or after its presentation. Interviews will be closed to any persons not representing the interviewee. At the conclusion of all interviews, each Evaluation Committee Member shall freshly rate each interviewee in accordance with the criteria and standards stated. CES will not be responsible or reimburse any interviewee for the cost of their presentation or travel.

**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.

**Late Offers:** Late offers will be considered non-responsive and the Proposer will be notified in writing. If the Proposer feels that its failure to meet this requirement is due to unforeseen conditions or "Acts of God", the Proposer will need to provide detailed documentation as to the reason(s) why the proposal did not arrive by the due date and time. CES will review the documentation submitted and make a written determination whether to accept or reject the proposal.

**Legal Remedies:** All claims and controversies will be subject to the State of New Mexico Procurement Code NMSA 1978, 13-1-1 to 13-1-199.

**Liability:** The Offeror will hold CES harmless from and will indemnify CES from and against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising out of, or in connection with the Offeror's conduct of the contract awarded as a result of this procurement process, to the extent the negligent act or failure to act or willful act of the Offeror, its agents, representatives or employees is deemed to be the cause of the resulting personal injury or property damage claimed. It is expressly agreed that, to the extent it is determined that the damage claimed was in part caused by the negligence of CES or other parties, the Offeror's liability pursuant to this indemnification provision will not be greater than that portion of the total liability in the same proportion as vendor's negligence bears to the entire negligence giving rise to the liability.

**Licenses and Certifications:** The Offeror will maintain in current status all federal, state, local and industry licenses, certifications and bonds required for the performance and delivery of any and all of the professional services, services and products offered in its response to this RFP. Any Offerors utilized under this RFP must hold a current New Mexico license and/or certifications, as required by New Mexico statutes and other governing authorities' rules, regulations and requirements to undertake, enter into and/or perform under this RFP and resulting contracts. It is the responsibility of the Offeror to ensure that any sub Offerors performing work on a project shall maintain the appropriate licenses. The Offeror will submit copies of its licenses with the response to the RFP (place behind Tab 5).

**Liens:** All materials and services will be free of all liens.

**Liquidated Damages:** The CES Member or Participating Entity may suffer financial loss if the contracted project is not designed, developed, conducted, performed and/or completed in accordance with the individual project's scope of work, terms, conditions, specifications, stipulations and timelines. The Offeror (and its insurance/surety) shall be liable for and shall pay to the CES Member or Participating Entity, not as a penalty, the sums that may be hereinafter agreed upon as liquidated damages per occurrence and/or calendar day of delay until the work is determined by the CES Member or Participating Entity and CES to be acceptable and complete. Liquidated damages will be determined on a project-by-project basis and be at the option of the CES Member or Participating Entity.

**Local public body (13-1-67 NMSA 1978):** Defined as a political subdivision of the State and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [13-1-28 NMSA 1978].

Political subdivisions, administrative units, councils, commissions and boards are entities/organizations that either by federal, state or local legislative or administrative action or appointment have been established or given the responsibility and authority to act, conduct and perform various activities on behalf of the federal or state CES Member or Participating Entity or local public body.

**Mandatory Requirements:** The terms "must," "shall," "will," "is required," or "are required" identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor shall result in the rejection of the Offerors proposal. Rejection of the proposal will be subject to review by the CES Evaluation committee and a final decision on rejection will be made by the CES Procurement Officer.

**Member of CES:** (See CES Member)

**Mergers, Dissolution, Successors, and Assignees:** The Offeror agrees that during the term of the contract, it will maintain its existing business structure and adhere to the terms and provisions of the contract. The parties will be bound by and inure to the benefits of the successors and the respective parties involved, the business structure will not dissolve or otherwise dispose of all or substantially all its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure can:

1. Qualify to do business in the State of New Mexico and holds the appropriate licenses, registrations, etc.;
2. Assume, is capable of, and has the capacity and qualifications and agrees in writing to perform all the existing and future obligations of the original Offeror;
3. Provide CES with all the documents required for it to review, evaluate and approve; and
4. Receive CES' written approval.

**Money:** All transactions are payable in U. S. currency only.

**Most Favored Customer:** Although CES expects Offerors/Offerors to offer their very best prices to CES Agencies, nothing in this solicitation establishes a most-favored customer relationship between CES and the Offeror. The Offeror can respond to any solicitation from any public procurement unit without regard to this contract; however, the Offeror must agree that fees and prices offered through its CES contract will be at least two percent (2%) below the lowest fee/price offered directly to a CES Member or Participating Entity for a similar volume. An Offeror's response to a non-CES solicitation issued by a CES Member or Participating Entity may reflect the Offeror's best non-CES price with a note indicating a lower CES price is available and may be mutually beneficial.

**Multiple Awards:** CES has determined that often contracts awarded to more than one supplier for comparable goods and services at various prices best meet the many needs of the Members. Hence, when in the opinion of CES an award to one supplier would be impractical or fail to meet the total requirements of comparison or evaluation, multiple awards can be made.

**Multi-Term Contract:** A contract having a term longer than one (1) year.

**Negotiations:** Where there is no competition that would result in a better contract, negotiation may be conducted until a detailed agreement is reached.

**NMCID:** New Mexico Construction Industries Division, a state CES Member or Participating Entity that is responsible for overseeing, administering, issuing and ensuring that construction projects, Offerors and owners follow and comply with New Mexico laws, rules, regulations, policies and procedures.

**NMDOL:** New Mexico Department of Labor, a state CES Member or Participating Entity responsible for the overseeing, administering, issuing, implementing and ensuring that all employers, Offerors, and sub Offerors follow and comply with New Mexico and Federal labor laws, rules, regulations, policies and procedures governing employment and the general workforce.

**NMPED:** New Mexico Public Education Department, formerly called the New Mexico State Department of Education.

**NMPSFA:** New Mexico Public School Facilities Authority is the administrative unit created by the New Mexico legislature to carry out and act on behalf of the PSCOC to administer, coordinate and provide general oversight for "state funded construction", which is defined as a building or appurtenance to a building that is built in whole or in part with state capital outlay monies. As part of their oversight function, NMPSFA will receive and review construction project documents and coordinate with other state agencies such as NMCID, Environment Department, Department of Energy, Minerals and Natural Resources, State Fire Marshal's Office, etc., to insure compliance with all applicable adequacy standards, rules, regulations, building, plumbing, electrical, fire prevention and mechanical codes adopted by the state, county, city, town or fire district in which the construction project is located.

**No Replacement of Defective Tender:** Every tender of products/services must fully comply with all provisions of this contract. If tender is made which does not fully conform, this will constitute a breach and Offeror will not have the right to substitute a conforming tender without written consent of all parties involved.

**Non-Exclusive Contract:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of local procurement units in New Mexico. CES reserves the right to obtain like goods and services from another source when necessary.

**Non-Profit, Non-Public Educational institutions and other Non-Profit Organizations (Section 501(c)(3) of the Internal Revenue Code, Federal Tax Code):** Defined as charitable, religious, educational, public service, support and scientific organizations, entities, and corporations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

**Non-Responsive Offer:** Any offer that does not conform to the mandatory or essential terms, conditions and/or specified proposal requirements for this solicitation is considered non-responsive.

**Notation:** If the original Offeror sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. CES reserves the right to accept or object to the new party, with the original Offeror being obligated if the new party fails to perform. A simple change of name agreement will not change the contractual obligations of the Offeror.

**Notice:** Notices under this contract will be in writing and will, for all purposes, be deemed to have been fully given when sent by registered or certified mail, return receipt requested, postage prepaid, properly addressed to the respective parties as specified herein or at such other address as may be specified by either party from time to time.

**Offer Acceptance Period:** To allow CES Members/Participating Entities the opportunity to evaluate the proposals offered, CES requires that an offer in response to this solicitation be valid and irrevocable for ninety (90) days after opening time and date.

**Offeror Qualifications:** The Offeror must have extensive knowledge and experience and possess the background, capacity and resources necessary to manufacture, obtain, deliver, install, configure, and/or maintain the quality and support of products and services offered and comply with the terms, conditions and requirements stated herein. CES prefers that the Offeror have at least three (3) years' experience with the products and services offered.

**Options:** Optional professional services, services and products may be added to the contract at the time they become available under the following conditions:

1. The option meets and complies with the solicitation's scope of work, specifications and requirements.
  - a. The option is priced at a discount similar to other options.
  - b. The option is an enhancement to the unit that improves performance or reliability.

**Ordering Process:** Procurement/purchasing of professional services, services and products occurs when a CES Member or Participating Entity identifies that professional services, service and/or product needed is offered by a CES contracted vendor and the identified services and products meets, exceeds and conforms to their individual project's needs, specifications and requirements. The CES Member or Participating Entity will:

1. Contact the CES awarded vendor and communicate and discuss their scope of work's specifications, needs and requirements to seek and receive a written quote from the vendor. CES vendors are under contract to equally offer and provide all entities the same opportunity, products, services and CES pricing. The CES Agencies voluntarily participate in the CES cooperative procurement program and may accept or reject any offer proposed prior to the issuance of a purchase order.
2. The CES Member or Participating Entity will notify CES of its intent to utilize one of its contracts by submitting a purchase order to CES identifying the vendor and the services and products being ordered.
3. CES verifies the item being ordered is under contract and is priced at the contract pricing. If the purchase order is for professional services and related products and services, CES issues, completes and ensures all required documents are in place and have been properly executed.
4. Vendor provides the requested services, deliverables, products and invoices. CES verifies Vendor's invoice and issues a CES invoice to the CES Member or Participating Entity. The CES Member or Participating Entity verifies the services, deliverables and/or products have been delivered, received and accepted. The CES Member or Participating Entity issues payment to CES and CES issues payment to the vendor.
5. Roles, Duties and Responsibilities of the various parties involved in a CES transaction.
  - a. Buyer (CES) is an entity created by a Revised and Amended Joint Powers Agreement as authorized by Section 11-1-1, et. seq., N.M.S.A., 1978, which consists of public educational institutions in New Mexico that have joined together for the purpose of construction, and purchasing tangible personal property and services at economical prices. As the Buyer, CES acts as a conduit for professional services, services, and deliverables and may be vested in the CES Member or Participating Entity. Buyer warrants and assures the CES Member or Participating Entity that it has complied with the Procurement Code, the Public Works

Contract Act and the Sub-Offeree Fair Practices Act in contracting for procurements from Seller. In consideration of the recitals and for other valuable consideration and support services, CES receives a one percent (1%) administrative fee which is included in the Offeror's prices. Buyer's obligation is to act as a procurement agent on behalf of the CES Agencies for the purpose of soliciting and establishing contracts that will allow CES Agencies to acquiring professional services, services, deliverables and tangible personal property provided by a Seller under contract with the Buyer.

- b. CES Member or Participating Entity is a Party to the CES JPA or has entered into a participating entity agreement, desiring to receive certain goods and services through CES' cooperative purchasing program.
- c. Seller has responded to a Request for Proposal (RFP) published by Buyer in accordance with the Procurement Code, Section 13-1-103 or 13-1-112, N.M.S.A., 1978, and a resultant contract has been issued to the Seller of professional services, services and products. The contractual relationship between the Seller and CES allows and facilitates the purchase of such items for the benefit of CES Member or Participating Entity. To consummate the transaction between the parties, it is necessary that CES issue a Purchase Order to Seller under terms and conditions specified in the RFP, and the CES Member or Participating Entity issues its Purchase Order to CES under the same terms and conditions. This procedure ensures that the funds of New Mexico taxpayers will be spent wisely and prudently.

**Overcharges by Antitrust Violations:** CES maintains that in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Offeror hereby assigns to CES any and all claims for overcharges as to the goods and services used to fulfill the contract.

**Ownership of Materials and Documents:** CES and CES Agencies shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through Offeror's work pursuant to this Contract. Offeror, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in CES, CES Agencies all Offeror's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to Offeror's work under this Contract. The Offeror shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Offeror's obligations under the individual CES Member or Participating Entity's project contract without the prior written consent of the CES Member or Participating Entity. However, the Offeror may retain file copies which cannot be used without prior written consent of CES Member or Participating Entity. The CES Member or Participating Entity agrees that the Offeror shall not be liable for damages, loss, or injury resulting from the future use of the provided documents for other than the project specified, when the Offeror is not the firm of record.

**Parol Evidence:** This contract represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

**Participating Entities:** Is defined as non-public educational agencies and/or organizations classified as follows that may participate in and purchase tangible personal property, professional, non-professional and construction services through their cooperative purchasing agreement with CES.



1. Federal CES Member or Participating Entity [25 USC 3001 (4)] is defined as any department, CES Member or Participating Entity, or instrument of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory CES Member or Participating Entity established through legislative and/or administrative action.
2. State CES Member or Participating Entity [13-1-90 NMSA 1978] is defined as any department, commission, council, board, committee, institution, legislative body, CES Member or Participating Entity, government corporation, educational institution or office of the executive, legislative or judicial branch of the government of this state. "State CES Member or Participating Entity" includes the purchasing division of the General Services Department (GSD) and the state purchasing agent, but does not include local public bodies.
3. Local Public Body [13-1-67 NMSA 1978] is defined as a political subdivision of the State and the agencies, instruments and institutions thereof, including: two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [13-1-28 NMSA 1978].
4. Non-Profit, Non-Public Educational Institutions and other Non-Profit Organizations (Section 501(c)(3) of the Internal Revenue Code, Federal Tax Code) is defined as charitable, religious, educational, public service, support and scientific organizations, entities, corporations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

**Past Performance Information (PPI):** PPI is relevant information regarding an Offeror's actions under previously awarded contracts to educational institutions, local, state or federal agencies. It includes the Offeror's record of conforming to specifications and to standards of products/services; workmanship; the Offeror's record of containing and forecasting costs on any previously performed cost reimbursable contract schedules, including the administrative aspects of performance; the Offeror's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Offeror's business-like concern for the interests of the customer.

**Payment by CES:** CES will make every effort to collect payment from Members/Participating Entities for the purchase of goods and services within thirty (30) days after the receipt of goods or services and a correct invoice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. *Any offer that requires payment in less than forty-five (45) days shall not be considered.* CES must first receive payment from the Member/Participating Entity to process payment to the Offeror. Any Offeror whose business would be in jeopardy due to slow payments is encouraged not to respond. It has been CES' experience that public agencies always pay, but many are slow in processing payments.

**Payments by CES Member or Participating Entity:** For the purchase of goods and services received and accepted, payment will be made within forty-five (45) days after the receipt of a correct invoice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. If a dispute arises or an CES Member or Participating Entity's account becomes delinquent, the Offeror is encouraged to contact and request assistance from CES. *Any offer that requires payment in less than forty-five (45) days shall not be considered.*

**Payment Discounts:** Any payment discount offered must be made directly to CES and not to the Member receiving the materials or services. Quick-payment discounts of ten (10) days are normally

impossible; 20, 30 and 45 days are more reasonable. Payment discounts of forty-five (45) calendar days or more will be deducted from the proposal price to determine low price.

**Penalties:** Any business or person that willfully violates the Procurement Code is guilty of:

1. A misdemeanor if the transaction involves fifty thousand dollars (\$50,000) or less; or
2. A fourth degree felony if the transaction involves more than fifty thousand dollars (\$50,000).

**Peripheral Items:** Offeror can include various peripheral services, deliverables and related items that function with the primary offering.

**Price Adjustment:** Price increases (change in fee and price schedules and discount rate) shall be considered at the time of a contract extension, and shall be a factor in renewal. Unforeseen conditions and/or circumstances that may occur that could impact an Offeror's fee and price schedule may be submitted to CES for its consideration and approval. CES reserves the right to approve or disapprove such requests. The price adjustments shall apply to all CES Agencies equally.

**Pricing:** For contract negotiation, the Offeror will describe discounts and special pricing offered. Offeror must agree that prices offered through this contract will include the CES one percent (1%) administration fee and, while this contract is in effect, prices offered will be at least two percent (2%) below the lowest price offered by the Offeror to other public agencies for a similar volume. Should a lesser cost be provided to any other CES Member or Participating Entity, the preceding and existing work through this contract will be reduced in price to meet that rate.

CES Agencies pay an administration fee equal to one percent (1%) of the purchase price of goods and services purchased from CES contracts. Offerors will include the administration fee in all prices in the Discount, Fee and Price Schedules. CES will deduct the one percent (1%) administration fee prior to issuing its' purchase order to the vendor.

**Price Reduction and Adjustment:** A price reduction can be offered at any time and will become effective upon notice. Special, time-limited reductions are permissible under the following conditions:

1. The price reduction is available to all CES Agencies equally.
2. The price reduction is for a specific period, no less than thirty (30) days.
3. The original price is not exceeded after the time limit.
4. CES is to be notified and have the new prices on record prior to any offer of the new prices to a CES Member.

**Pricing-Alternative Method of Costing:** This method covers any product and service not covered by an established and approved fee and price schedule; is unique, special and/or out of the ordinary and customary products and services offered; and is necessary or required to perform, complete and meet the requirements of an individual project or sole source. The alternative cost is calculated as follows:

1. The Offeror must prepare, issue and receive three written quotes from available suppliers and select the supplier that offers the products and services that meets the stipulated requirements and specifications and the most cost-effective solution. All quotes must be made available upon request.
2. The Offeror must indicate the percent of overhead and/or markup as part of their response to be added to these costs to obtain the normal and customary retail price.

3. The Offeror must indicate the percent-off-discount offered to CES and its Members/Participating Entities on the normal and customary retail price.
4. The CES price is calculated by taking the product and services cost to the Offeror plus the indicated percent of profit/overhead to equal the normal and customary retail price. The Offeror will then subtract the approved CES discount to obtain the CES price. Example: item cost \$1,000; percent of profit/overhead of 20% equals retail price of \$1,200; less the CES discount of 10% or \$100 equals the CES price of \$1,100.

**Prime Offeror:** Any firm, business and/or individual(s) who submits a response to this RFP and is awarded a contract. The Offeror will be considered a prime Offeror to CES and CES will not enter into any agreements with a sub Offeror. Any Offeror paid directly by CES is a prime Offeror. Prime Offerors using sub Offerors must be responsible for any sub Offerors required to perform and/or provide products and services offered herein.

**Professional Services:** Services relating to architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office (13-1-76 NMSA., 1978).

**Progress Payments:** Under this solicitation, CES and CES Agencies may allow progress payments to be made on goods and/or services received and accepted under the following conditions:

1. The CES Member or Participating Entity and the Offeror agree to the terms of the progress payments prior to issuing a purchase order to the Offeror.
2. The purchase order and/or the cost proposal in which the purchase order is based clearly identify and describe the terms of acceptance, amount(s) to be paid and the date(s) payment(s) are to be made.
3. The CES Member or Participating Entity has satisfactory method/criteria of verifying progress (milestones) stated and agreed to in the written cost proposal and/or purchase order.
4. Payments will be made only after actual goods and/or services are verified, received and accepted.
5. Payments will be made in full compliance with the CES Member or Participating Entity's local administrative procedures, board policies and any/all other applicable state rules, regulations and statutes.

**Progress Payments to Offerors Processed by CES:** All progress payments involving CES purchase orders must be invoiced through CES. It is the responsibility of the CES Member or Participating Entity to review, verify and approve any estimates of work completed and/or goods received. The Offeror must obtain from the CES Member or Participating Entity a written document/statement identifying work completed and/or the goods received and approved and certifying the payment is due. If the estimate of work and/or goods received are not approved and certified, CES Member or Participating Entity can withhold an amount from the progress payment that reasonably represents the deficiency identified in the Offeror's payment request. In such cases, the Offeror agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond forty-five (45) days from the due date, the Offeror agrees not to charge CES interest on the late payment. Any late charges will be the total responsibility of the CES Member or Participating Entity. The Offeror can

extend any due date to avoid the requirement to pay interest. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

**Project:** Defined as the documents, activities and events as enumerated within the scope of work of each agreement executed under this solicitation. Due to the nature of this solicitation, a project may include, but is not limited to: facility master planning, programming, design development, construction documents, bidding and negotiating, contract development, construction administration, post-construction consulting, etc. Each individual project/contract performed under this RFP is a stand-alone procurement transaction which is governed by the terms, conditions, specifications and stipulations of this RFP, the Offeror's response to this RFP and the resulting award. An individual project may require performance in whole or in part any of the areas listed herein.

**Project Design Professional:** An individual architect, engineer, landscape architect or surveyor registered in the State of New Mexico who shall sign and affix a New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports required for the Project. The Project Design Professional shall be mutually agreed upon by CES Member or Participating Entity and Design Professional prior to the execution of any agreement covered by this solicitation.

**Project Director:** The Offeror will assign a project director to coordinate operational activities with the Executive Director, Procurement Officer and Director of Finance of CES and will make monthly reports to the CES Administrative Team.

**Protests:** Protests will be filed and resolved in accordance with the State of New Mexico Procurement Code §13-1-172 NMSA 1978 and applicable CES board policies. Venue for any and all legal actions regarding or arising out of the transactions covered herein shall be solely in the District Court in and for the County of Bernalillo, State of New Mexico. The laws of the State of New Mexico will govern any resulting transactions.

A protest period of fifteen (15) days shall begin on the day following the contract award notice and end at 5:00 p.m. Local Time at the end of the fifteenth (15) day. A protest must be written and include:

1. The company name, contact name, address and telephone number of the protester;
2. The original signature of the protester or its representative;
3. Identification of the Request for Proposal (RFP) or Request for Bid (RFB) by solicitation number;
4. A detailed statement of the legal and factual grounds of protest, including copies of any relevant and supporting documents and exhibits; and
5. The form of relief requested.

Protests shall be filed with David Chavez, the Executive Director of CES, at 4216 Balloon Park Road, Albuquerque, NM 87109. *Any protest received after the deadline will not be accepted.*

**Provisions Required by Law:** Each provision of law and any clause required by law to be in the contract will be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party, the contract will forthwith be physically amended to make such insertion or correction.

**PSCOC:** Public School Capital Outlay Council created by the New Mexico Legislature to govern and establish policies, regulations, standards, and procedures and oversee the application, review, evaluation and distribution processes relating to capital outlay funds appropriated and authorized by the New Mexico Legislature.

**Public Record:** All Proposals submitted to this invitation will become the property of CES and will become a matter of public record available for review after the final award has been made, and under the supervision of the Executive Director of CES or designee from 9:00 a.m. to 4:00 p.m., Monday through Friday, at 4216 Balloon Park Road NE, Albuquerque, New Mexico. Any request for public records relating to the procurement prior to award of a contract will be denied pursuant to NMAC 1.4.1.40 Disclosure, which states: The contents of any proposal shall not be disclosed to be available to competing Offerors during the negotiation process and prior to award. Award in this context means the final required signature on the contract(s) resulting from the procurement.'

**Public School Facilities Authority:** (See NMPSFA)

**Qualifications:** Includes all skills, knowledge, capacities, capabilities, experience, financial stability, available human and physical resources, historical background, past and present performance, proper license to perform and do business in New Mexico, that proposed products/services meet or exceed specifications specified herein and proposed pricing complies with state and local requirements. The evaluation of a respondent's qualifications will be done in accordance with the criteria set forth herein, and the most recent edition of any relevant regulation, standard, document or code that will be in effect. Where conflict among the requirements or with these specifications exists, the most stringent requirement will be used.

**Qualifications-Based Selection (QBS):** A procurement method that results in the selection of the best qualified professional most suitable to the needs of the Contracting CES Member or Participating Entity.

**Quality:** Unless otherwise modified elsewhere in this solicitation, Offeror warrants that for a period of one (1) year after acceptance of the services, deliverables and outcomes stipulated in the project's contract by a CES Member or Participating Entity, they shall be:

1. Of a quality to pass without objection in the industry and professional standards normally associated with them;
2. Fit for the intended purpose(s) for which they are used;
3. Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
4. Adequately offered, presented, delivered, accomplished and complete as the contract may require; and
5. Conform to the written promises or affirmations of fact made by Offeror.

**Reimbursable Expenses:** Expenses in addition to the basic services compensation that include actual expenditures made by the Design Professional or its employees in the interest of the Project pursuant to the individual project's agreement and as otherwise authorized in writing by the CES Member or Participating Entity. Reimbursable expenses may include, but are not limited to: mileage, travel expenses, per diem, travel time, communications and distribution costs, blue print and drawing duplication, document duplicating, printing and copying expenses, advertising expense, testing, analysis and laboratory services.

**Request for Proposal (RFP):** All documents, including those attached or incorporated by reference, which are used for soliciting a proposal.

**Responsible Offeror:** 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 acceptable delivery of the services or items of tangible personal property and/or services described in the RFP.

**Responsive Proposal:** An offer which conforms in all material respects to the requirements set forth in the REQUEST FOR PROPOSAL. Material respects of a request for a proposal include, but are not limited to, Offeror's qualifications, price, quality, quantity or delivery requirements.

**Right to Assurance:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

**Safety Measures:** Offerors must take all necessary precautions for the safety of employees on the worksite, and will erect and properly maintain at all times, as required by job conditions and progress of the work, all necessary safeguards for the protection of the workers and public. Offeror will communicate and post danger-warning signs for any hazardous conditions/exposures that may be created by their operation and/or performance of the work. Proper precautions will be taken pursuant to federal, state and local laws, regulations and industry standards and practices to protect workers, the public and existing structures from injury or damage.

**Samples/Exhibits of Work/Projects:** May be provided as part of the Offeror's response and provided as part of the interview process or as part of a selection process conducted by a CES Member or Participating Entity prior to entering into an individual project contract. Upon request of CES or a CES Member or Participating Entity, the Offeror will provide adequate samples and detailed specifications relating to any of the services offered. Samples must be submitted within ten (10) days of request from CES or CES Member or Participating Entity. Samples will be provided at no cost and removed by Offeror at Offeror's expense. Samples received may be held for comparison with others. CES and CES Agencies will not be held responsible for samples/exhibits damaged during the examination. Samples not removed within thirty (30) days after notice to Offeror will be considered abandoned and the CES Member or Participating Entity for disposal.

**Selection Committee:** Means a body constituted in accordance with Section 13-1-121 NMSA 1978 to perform the evaluation of Offeror proposals. (See Evaluation Committee)

**Severability:** The provisions of this contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract, which may remain in effect without the invalid provision or application.

**Shortlist:** The Evaluation Committee will review each Offeror's proposal. Points will be allocated, by each Member, as outlined herein. Each Committee Member's point totals will be translated into a numeric ranking of all proposals. The Committee will select those respondents based on these rankings and conduct oral interviews. The Committee will determine number of Offerors on the

shortlist. This decision will be based on the number, quality, type and uniqueness of proposals received.

**Site:** The physical location on which the Project is built, including **all** land acquired for the Project or associated with the Project, including surface drainage, wells, transmission lines, easements, rights-of-way, roadways and existing facilities that may be directly or indirectly affected by the Project or that might affect the Project.

**Site Examination:** Offeror shall familiarize itself with the site, to anticipate site conditions, location, environment and/or any unseen problems that may exist that might impact the project's design work. Failure to have visited the site before submitting a project proposal shall in no way relieve the Offeror from furnishing any materials or performing any work required to complete the project in accordance with the proposal documents, without additional cost to the CES Member or Participating Entity.

**Smoking:** All Offerors and sub Offerors must adhere to local smoking policies when inside a building working on this contract. Smoking will only be allowed in posted areas or on premises where permitted.

**Specifications:** All Scope of Work specifications in this RFP are designed to enable an Offeror to satisfy a requirement for a deliverables, process or service. A specification may be expressed as a standard, a part of a standard, or independent of a standard. No specifications are intended to unnecessarily limit competition by eliminating items capable of satisfactorily meeting the actual needs of the procurement. Any Offeror believing a specification is unnecessarily restrictive, and submits a proposal, must indicate such in its initial response. The apparent omission of a specification and/or any supplemental specifications within the detail of a specification or description of this solicitation concerning any service shall be regarded as meaning that only the best commercial practices are to prevail and that only materials and services of the highest quality and correct type, size, practice and design are to be used.

**State CES Member or Participating Entity (13-1-90 NMSA 1978):** Defined as any department, commission, council, board, committee, institution, legislative body, CES Member or Participating Entity, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this State. "State CES Member or Participating Entity" includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies.

**Suspension or Debarment Status: Disclosure Regarding Suspension, Debarment Status and Responsibility**

1. Any prospective Offeror and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state CES Member or Participating Entity or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Offeror, or any principal of the Offeror's company:
  - a. Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state CES Member or Participating Entity or local public body;
  - b. Has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:

1. The commission of fraud or a criminal offense relating to obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
  2. Violation of Federal or state antitrust statutes related to the submission of offers; or
  3. The commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
- c. Is presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
- d. Has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
1. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  2. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  3. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state CES Member or Participating Entity or local public body.
2. Principal, for this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
  3. The Offeror shall provide immediate written notice to NMSD or other party to this Agreement if, at any time during the term of this Agreement, the Offeror learns that the Offeror's disclosure was at any time erroneous or became erroneous because of changed circumstances.
  4. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Offeror's responsibility and ability to perform under this Agreement. Failure of the Offeror to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.
  5. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, the disclosure required by this document. The knowledge and information of an Offeror is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
  6. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Offeror is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Offeror must provide immediate written notice to the CES CPO. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, CES may terminate the involved contract for cause. Still further CES may suspend or debar the Offeror from eligibility for future solicitations until the matter is resolved to the satisfaction of CES.



**Taxes:** Prices offered will not include applicable state and local taxes. All applicable taxes must be listed as a separate item on all invoices, and will be paid by the educational CES Member or Participating Entity issuing the purchase order to CES. No gross receipts tax may be collected on delivery charges to the CES Member or Participating Entity's location.

**Taxes - Indian Reservation or Tribal Tax:** If goods or services are subject to Indian reservation or tribal tax, Offeror shall include such taxes as a separate item on the original invoice to CES.

**Technical Irregularities:** Are matters of form rather than substance evident from the proposal documents or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, CES and its Members/Participating Entities reserve the right to waive such irregularities or allow an Offeror to correct them if either is in the best interest of CES and its Members/Participating Entities. Examples may include, but are not limited to, the failure of an Offeror to:

1. Submit both a printed and electronic copy of proposals required by the RFP;
2. Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
3. Acknowledge receipt of an amendment to the RFP, but only if: a) it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or b) the amendment involved had no effect on price, quality or quantity.

**Term of Contract and Extension:**

1. Contract period: it is CES' intent to award a multi-term contract for the specified professional and consulting services and deliverables. The initial contract term shall be for one (1) calendar year from the date of contract award. By mutual written agreement between CES and Offeror, the contract may be extended for up to three (3) consecutive 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension exists unless and until Offeror is so notified by CES.
2. Month-to-month extensions: CES reserves the right to issue month-to-month extensions to accommodate the purchasing cycle for reissuing a solicitation if it is determined to be in the best interest of CES Agencies.
3. Extension and renewal of contract: Conditions for extension of the contract shall include, but are not limited to: contract usage, satisfactory performance of services during the preceding contract term, ability to continue to provide satisfactory services, continued adherence to the contract requirements, and continued competitive prices for the services performed and deliverables provided under the contract. CES may require an update of statements of qualifications annually.

**Termination for Non-Appropriation:** Any CES Member or Participating Entity's individual project covered by this RFP and executed through the CES cooperative procurement process may be terminated if insufficient appropriations and/or authorizations do not exist due to changes in state or federal law, or because of court order, or because of insufficient appropriations made available to CES Member or Participating Entity's governing board and/or the New Mexico State Legislature. Such termination will be affected by sending fifteen (15) days written notice to the Offeror. The CES Member or Participating Entity decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Offeror and shall be final.

**Termination of Contract by CES:** CES can cancel any contract secured by solicitation without any further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of CES is or becomes at any time while the contract or any extensions of the contract are in effect an employee of or a consultant to any other party to this contract with respect to the subject matter of the contract. Such cancellation will be effective when written notice from CES is received by the parties to this contract, unless the notice specifies a later time. (See also Cancellation)

**Termination of RFP:** The RFP in no manner obligates CES to the eventual purchase of any product or service described or which may be proposed until confirmed by a written Acceptance of Offer and Contract Award. Progress towards this end is solely at the discretion of CES, and may be terminated without penalty or obligation at any time prior to the signing of a contract. CES reserves the right to cancel this RFP at any time for any reason and to reject any or all proposals.

**The terms "must," "shall," "will," "is required," or "are required":** Identify *a necessary* item or factor. Failure to comply *with such* an item or factor *may result in* the rejection of the Offerors proposal.

**The terms "can," "may," "should," "preferably," or "prefers":** Identifies a desirable or discretionary item or factor. Failure to comply with such an item or factor *may result in* the rejection of the Offerors proposal. *Rejection of the proposal will be subject to review by the CES procurement officer and Executive Director.*

**Three-Party Agreement between A/E, Buyer, Owner:** Is a written agreement entered into by the party's A/E projects with a total project cost (A/E fees) of Fifty Thousand Dollars (\$50,000) or more, summarizing the project's scope of work, terms, conditions, specifications and contract documents of a specific project offered to an awarded CES Offeror.

**Title and Risk of Loss:** The title and risk of loss of services, deliverables and/or materials will not pass to the procurement unit purchasing the items until it receives and accepts the services, deliverables and/or the materials at the point of delivery, unless otherwise provided within this document or individual project contract.

**Token Proposals:** If any Offeror submits a perfunctory offer with no serious intent of being accepted, CES reserves the right to remove the Offeror from its potential vendor's list. If an Offeror wishes to remain on the vendor's list, either a no response or a request to remain on the list is all that is needed.

**Warranty/Quality Guarantee:** The Offeror warrants that all professional and consulting services, services, supplies, materials and deliverables delivered under this solicitation conforms to the specifications and quality stipulated within this solicitation and/or the specifications of services and deliverables as defined in the individual CES Member or Participating Entity's project performed under this solicitation. The Offeror must agree to assist the CES Member or Participating Entity in reaching a solution regarding a dispute with any Offeror and ensure that any service and/or deliverable supplied to CES or CES Member or Participating Entity will conform to all requirements of the contract and all representations of Offeror and will be fit for all purposes and uses required and defined in each individual project contract document. Unless modified elsewhere in this

solicitation, Offeror warrants that for one (1) year after acceptance of the individual project, the work performed, and/or deliverables provided to the CES Member or Participating Entity will be:

1. Of a quality to pass without objection in the industry or trade normally associated with them.
2. Fit for the intended purpose(s) for which they are being purchased and/or being used.
3. Of even kind, quantity and quality within each unit and among all units, in the variations permitted by the contract.
4. Conform to the written promises or affirmations of fact made by Offeror.
5. CES reserves the right to cancel the contract if Offeror fails to meet this obligation and/or charges the CES Member or Participating Entity for any service and/or deliverable covered by warranty.

**Weighted Evaluation:** CES reserves the right to use a point system to evaluate responses. The scoring system will be based on the point system defined in each Category.

**Withdrawal of Offer:** An Offeror can withdraw its bid, provided such written notice is received at the CES office prior to the specified due date and time.

**Year-End Procurement:** For purchase orders (PO) issued to an Offeror, goods must be delivered and services must be completed five (5) days prior to the end of the Member's fiscal year (June 30<sup>th</sup>). CES must receive all invoices dated for the prior fiscal year by the 10<sup>th</sup> of July. The Member can cancel purchase orders not completed by June 25<sup>th</sup>. The Member can issue revised purchase orders dated after July 1<sup>st</sup> for any goods not delivered or services not completed by June 25<sup>th</sup>.

**SECTION V. Acceptance of Supplemental Terms and Conditions**

## Acceptance of Supplemental Terms and Conditions to Comply with Federal Requirements for Federal Funded Project

Rather than duplicate each general term and condition and indicate acceptance, Offeror may sign the statement below. No exceptions to the Federal Terms and Conditions are allowable. Please check the statement below that applies to your response below, sign and date the appropriate pages, scan and upload this document in your Technical Response.

\_\_\_\_\_ *I accept the Supplemental Terms and Conditions to Comply with Federal Requirements for federally funded or partially funded federal projects.*

\_\_\_\_\_ *I do not wish to provide professional services for any federal or partially funded federal projects.*

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature (should match cover signature)

**SECTION V. Cooperative Educational Services Supplemental Terms and Conditions**

**To Comply With  
Federal Government Terms, Conditions, and Contract Clauses**

1. **FALSE CLAIMS ACT:** Offeror agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, sub Offeror or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.
2. **SUBRECEIPIENT REQUIREMENTS:** Offeror agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.
3. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS, 31 U.S.C. 3801 et seq. , 49 CFR Part 31, 18 U.S.C. 1001 & 49 U.S.C. 5307**
  - (1). Program Fraud and False or Fraudulent Statements or Related Acts.
  - (2). The Offeror acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Offeror certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the federal assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Offeror further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Offeror to the extent the Federal Government deems appropriate.
  - (3). The Offeror also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on the Offeror, to the extent the Federal Government deems appropriate.
  - (4). The Offeror agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subOfferor who will be subject to the provisions.
4. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**No Obligation by the Federal Government.**

  - (1). The Purchaser and Offeror acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Offeror, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
  - (2). The Offeror agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance funds. It is further agreed that the clause shall not be modified, except to identify the sub Offeror who will be subject to its provisions.

**5. LOBBYING, 31 U.S.C. 1352**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - 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 CES Member or Participating Entity, 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**6. CIVIL RIGHTS REQUIREMENTS, 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**The following requirements apply to the underlying contract:**

- 1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Offeror agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Offeror agrees to comply with applicable Federal implementing regulations and other implementing requirements by federal agencies may issue.
- 2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Offeror agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Offeror agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Offeror agrees to comply with any implementing requirements a federal CES Member or Participating Entity may issue.
  - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, the Offeror agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Offeror agrees to comply with any implementing requirements federal CES Member or Participating Entity may issue.
  - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Offeror agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Offeror agrees to

comply with any implementing requirements federal CES Member or Participating Entity may issue.

- 3) The Offeror also agrees to include these requirements in each subcontract financed in whole or in part with Federal funds, modified only if necessary to identify the affected parties.

**7. DEBARMENT, SUSPENSION, INELIGIBILITY OR VOLUNTARY EXCLUSION CERTIFICATION**

This clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or CES Member or Participating Entity with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- 1) The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- 2) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- 3) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or CES Member or Participating Entity with which this transaction originated.
- 4) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 5) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 6) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
- 7) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or CES Member or Participating Entity with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 8) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier



Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or CES Member or Participating Entity.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h). Applies to "contracts in an amount that is greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

- 1) Overtime requirements - No Offeror or subOfferor 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.
- 2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Offeror and any subOfferor responsible therefore shall be liable for the unpaid wages. In addition, such Offeror and subOfferor shall be liable to the United States 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 (1) of this section, in the sum of \$10 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 (1) of this section.
- 3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) 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 Offeror or subOfferor under any such contract or any other Federal contract with the same prime Offeror, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Offeror, such sums as may be determined to be necessary to satisfy any liabilities of such Offeror or subOfferor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 4) Subcontracts - The Offeror or subOfferor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subOfferors to include these clauses in any lower tier subcontracts. The prime Offeror shall be responsible for compliance by any subOfferor or lower tier subOfferor with the clauses set forth in paragraphs (1) through (4) of this section.

**9. PRIVACY ACT, 5 U.S.C. 552**

The following requirements apply to the Offeror and its employees that administer any system of records on behalf of the Federal Government under any contract:

- 1) The Offeror agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Offeror agrees to obtain the express consent of the Federal Government before the Offeror or its employees operate a system of records on behalf of the Federal Government. The Offeror understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- 2) The Offeror also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance funds.

**10. ENERGY CONSERVATION REQUIREMENTS, 42 U.S.C. 6321 et seq. and 49 CFR Part 18**

The Offeror agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**11. CLEAN WATER REQUIREMENTS, 33 U.S.C. 1251**

- 1) The Offeror 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. The Offeror agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to the appropriate EPA Regional Office.
- 2) The Offeror also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance funds.

**12. CLEAN AIR, 42 U.S.C. 7401 et seq., 40 CFR 15.61 & 49 CFR Part 18**

- 1) The Offeror 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. . The Offeror agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to appropriate federal CES Member or Participating Entity and the appropriate EPA Regional Office.
- 2) The Offeror also agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

**13. RECYCLED PRODUCTS, 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873**

**Recovered Materials** - The Offeror agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**14. SEISMIC SAFETY REQUIREMENTS, 42 U.S.C. 7701**

The Offeror agrees to ensure that any new building or addition to an existing building leased or purchased with federal funds will be designed and constructed in accordance with the with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic

safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings and will certify to compliance to the extent required by the regulation. The Offeror also agrees to ensure that all work performed under this contract including work performed by a subOfferor is in compliance with the standards required by NEHRP and the certification of compliance issued on the project.

**15. BUY AMERICA REQUIREMENTS - 49 U.S.C. 5323(j) & 49 C.F.R. Part 661**

**Buy America** - The Offeror agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted by or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or Offeror must submit to the recipient the appropriate Buy American certification (below) with all bids or offers on federally funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy American certification must be rejected as nonresponsive. This requirement does not apply to lower tier subOfferors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or Offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**16. FLY AMERICA REQUIREMENTS 49 U.S.C. § 40118 and 41 CFR Part 301-10**

**Fly America Requirements**

The Offeror agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Offerors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Offeror shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Offeror agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**17. CARGO PREFERENCE REQUIREMENTS - 46 U.S.C. 1241 and 46 CFR Part 381**

Cargo Preference - Use of United States-Flag Vessels - The Offeror agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed

separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Offeror in the case of a subOfferor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**18. TERMINATION - 49 U.S.C. Part 18**

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Offeror when it is in the Government's best interest. The Offeror shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Offeror shall promptly submit its termination claim to (Recipient) to be paid the Offeror. If the Offeror has any property in its possession belonging to the (Recipient), the Offeror will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Offeror does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Offeror fails to perform in the manner called for in the contract, or if the Offeror fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Offeror setting forth the manner in which the Offeror is in default. The Offeror will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Offeror had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Offeror, the (Recipient), after setting up a new delivery of performance schedule, may allow the Offeror to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Offeror [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Offeror fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Offeror of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Offeror. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Offeror and its sureties for said breach or default.

d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Offeror of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. **Termination for Default (Supplies and Service)** If the Offeror fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Offeror fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Offeror a Notice of Termination specifying the nature of the default. The Offeror will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Offeror was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

f. **Termination for Default (Transportation Services)** If the Offeror fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Offeror fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Offeror a Notice of Termination specifying the nature of default. The Offeror will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Offeror has possession of Recipient goods, the Offeror shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Offeror and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Offeror was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

g. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Offeror. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Offeror. If the termination is for default, the notice shall state the manner in which the Offeror has failed to perform the requirements of the contract. The Offeror shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Offeror by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the Offeror in proportion to the value, if any, of work performed up to the time of termination. The Offeror shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Offeror.

If the termination is for the convenience of the (Recipient), the Offeror shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Offeror has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Offeror, the (Recipient), after setting up a new work schedule, may allow the Offeror to continue work, or treat the termination as a termination for convenience.

#### **19. BREACHES AND DISPUTE RESOLUTION - 49 CFR Part 18**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of **Cooperative Educational Services** Executive Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Offeror mails or otherwise furnishes a written appeal to the Executive Director of Cooperative Educational Services. In connection with any such appeal, the Offeror shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Offeror and the Offeror shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by **Cooperative Educational Services**, Offeror shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the **Cooperative Educational Services** and the Offeror arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the **Cooperative Educational Services, its Members and Participating Entities** is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the **Cooperative Educational Services, its Members and Participating Entities** or Offeror shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

#### **20. FEDERAL CHANGES**

**Federal Changes** - Offeror shall at all times comply with all applicable Federal CES Member or Participating Entity regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between CES Member, Federal CES Member or Participating Entity and CES, as they may be amended or promulgated from time to time during the term of this contract. Offeror's failure to so comply shall constitute a material breach of this contract.

#### **21. PATENT AND RIGHTS IN DATA - 37 CFR Part 401 & 49 CFR Parts 18 and 19**

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Offeror may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Offeror authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Offeror using Federal assistance in whole or in part provided by FTA.

(c) When Federal CES Member or Participating Entity awards Federal assistance for experimental, developmental, or research work, it is Federal CES Member or Participating Entity's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless Federal CES Member or Participating Entity determines otherwise, the Purchaser and the Offeror performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit Federal CES Member or Participating Entity to make available to the public, either Federal CES Member or Participating Entity's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed



for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Offeror's use whose costs are financed in whole or in part with Federal assistance provided by Federal CES Member or Participating Entity for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Offeror agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Offeror of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Offeror shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Offeror and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Offeror identifies that data in writing at the time of delivery of the contract work.

(g) Unless Federal CES Member or Participating Entity determines otherwise, the Offeror agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Federal CES Member or Participating Entity.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Offeror's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Offeror agree to take the necessary actions to provide, through Federal CES Member or Participating Entity, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Offeror also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Offeror agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until Federal CES Member or Participating Entity is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Offeror's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Offeror agree to take the necessary actions to provide, through Federal CES Member or Participating Entity, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Offeror also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **22. ACCESS TO RECORDS AND REPORTS, 49 U.S.C. 5325, 18 CFR 18.36 (i) & 49 CFR 633.17**

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government, the Offeror agrees to provide the Purchaser, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Offeror which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Offeror also agrees, pursuant to 49 C.F.R. 633.17 to provide the granting CES Member or Participating Entity or its authorized representatives including any PMO Offeror access to Offeror'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.

2. Where the Purchaser is a State, the Offeror agrees to provide the Purchaser, the granting CES Member or Participating Entity or its authorized representatives, the Comptroller General of the United States or any of their authorized representatives including any PMO Offeror, access to the Offeror'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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Offeror agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Offeror which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1)) through other than competitive bidding, the Offeror shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Offeror agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Offeror 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 Offeror 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).

7. FTA does not require the inclusion of these requirements in subcontracts.

#### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I State Grantees</b>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Offeror	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<b>II Non State Grantees</b>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Offeror	Yes	Yes	Yes	Yes
b. Contracts above	Yes <sup>3</sup>		Yes	Yes	Yes	Yes

\$100,000/Capital Projects						
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Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

**PLEASE NOTE THAT COMPLIANCE WITH FEDERAL REQUIREMENTS WILL BE STRICTLY ENFORCED BY THE STATE AND FEDERAL GOVERNMENT. THEREFORE, ALL OFFERORS AND SUBOFFERORS SHOULD BECOME FAMILIAR WITH THE SPECIFIC TERMS AND REPORTING REQUIREMENTS OF FEDERAL GOVERNMENT AS MAY BE APPLICABLE TO FUNDS RELATED TO THIS CONTRACT.**

Offeror: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



ITEM # 18-0191

## COOPERATIVE EDUCATIONAL SERVICES

*Public Educational Institutions in New Mexico United by a Joint Powers Agreement to Establish an Educational Cooperative*

### PARTICIPATING ENTITY COOPERATIVE PURCHASING AGREEMENT FOR STATE AGENCIES AND/OR LOCAL PUBLIC BODIES

#### **RECITALS:**

Cooperative Educational Services (CES) is the administering agency of the *Restated and Amended Joint Powers Agreement to Establish an Educational Cooperative (JPA)*. The parties to the JPA are public educational institutions in New Mexico, and the JPA is approved by the New Mexico Department of Finance and Administration (DFA). Board Policy is established by the Board of Directors whose members are party to the Joint Powers Agreement.

The JPA provides for cooperative procurement in accordance with the New Mexico Procurement Code. It also allows local public bodies and state agencies to take advantage of cooperative procurement through the JPA. While membership in the JPA is limited to public educational institutions, the Board Policy provides for non-member *Participating Entities* to use CES' programs.

The entity identified below now makes application to be a *Participating Entity (PE)* to the JPA in accordance with the terms and conditions of the CES Board Policy. Approval by the CES President finalizes this Cooperative Purchasing Agreement.

#### **IN CONSIDERATION OF THE RECITALS AND FOR OTHER VALUABLE CONSIDERATION, IT IS AGREED AS FOLLOWS:**

**I. Purpose** The purpose of the Agreement is to establish a method by which participating entities may join together in cooperative multi-jurisdictional contracting and to ensure the commitment of each participating entity. Further, this Agreement shall provide an understanding of the contracting process, and the organization and operation of this purchasing cooperative.

**II. Authorization** The Agreement is entered into by the participating state agencies and/or local public bodies pursuant to their respective rules and regulations. Each state agency or local public body is authorized by the New Mexico Procurement Code (§13-1-135 NMSA 1978) to enter into cooperative purchasing agreements. Transactions made under this Cooperative Purchasing Agreement are subject to the New Mexico Procurement Code and CES Board Policy.

**III. Method** Cooperative contracting may occur when two or more members/entities agree to standardize construction, a product or service and combine their requirements in a single solicitation. Any PE with a desire to develop or use a cooperative contract will notify CES. All PE's will have an equal opportunity to use the awarded contracts. Participation in each cooperative contract is voluntary. Participation shall be promulgated by participation in the Cooperative Purchasing Program (CPP) or a signed purchase order to CES, identifying the awarded contract. CES will verify contract conditions and issue a purchase order to the vendor who fulfills the order directly to Participating Entity. Vendor then invoices CES, who invoices PE. Payment is made within 25 days of invoice by the PE to CES, who pays the vendor. CES enables certain vendors to provide online procurement where PE places an order online and then pays the vendor directly. PE understands that there may be instances where the vendor does not have the capacity to fulfill a PE's request for goods or services. PE also understands and agrees that CES only procures goods and services and facilitates transactions and is not a guarantor of or otherwise responsible for a vendor's performance. PE may take part in cooperative contracts by collaborating in the development of contract documents, solicitation of bids and proposals, bid evaluation and analysis, and contract award. Any claim by a vendor against CES resulting from the cooperative contracting process must be dealt with according to the Procurement Code and CES Board Policy, and will not be negotiated, arbitrated or settled by any of the PEs. Commodities, services or items for cooperative solicitation will be selected by CES. At a minimum, the items and services must be such that: 1. when contracted in volume, a reduced cost will occur; 2. they be in constant need by members; 3. they have a supplier base to provide adequate competition; and 4. cooperative contracting has been determined practicable, acceptable and economically feasible by CES.

#### IV. Administrative Fee

There is no application fee for the entity; there is no annual membership fee for the entity; there is a 1% administrative fee imbedded in the vendors' contract price.

#### V. Termination

This Cooperative Purchasing Agreement may be terminated at will by either party with 30 days written notice.

#### VI. Release and Indemnification

PE understands and agrees that CES is not responsible for any actions of CES contractors. PE releases CES from any and all claims, demands, suits, proceedings, loss, costs and damages of every kind and description, including any attorney's fees and/or litigation expenses incurred by PE, its successors and assigns, including, but not limited to, any loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake, or negligence of, any CES contractor, its employees, agents, representatives, or subcontractors, its employees, agents, or representatives, in connection with or incident to the performance of this agreement ("Claims"), ~~and PE shall indemnify and hold CES harmless, as permissible by law, from all costs, expenses, damages and attorney's fees in the event such Claims are brought against CES.~~ PE's release and obligations under this section will not extend to any liability to the extent caused by the negligence of CES, its agents, employees and Members.



#### VII. Provisions Required by Law

Each and every provision of laws and any clause required by law to be in the Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement will be physically amended to make such correction or insertion.

### ENTITY APPLICATION

This application is made as stated below:

City of Santa Fe

(Insert name of Entity applying to be a Participating Entity)

This application is made by the following individual with the approval of the entity's administration and governing authority.

see attached  
(Print name of person making this application)

\_\_\_\_\_  
(Print title of person making application)

\_\_\_\_\_  
(Signature of person making this application)

\_\_\_\_\_  
(Date application is made)

### CES APPROVAL

This application is approved by the President of CES on behalf of the parties to the JPA.

see attached  
(Signature of CES President)

\_\_\_\_\_  
(Date application is approved)

PE # \_\_\_\_\_

#### IV. Administrative Fee

There is no application fee for the entity; there is no annual membership fee for the entity; there is a 1% administrative fee imbedded in the vendors' contract price.

#### V. Termination

This Cooperative Purchasing Agreement may be terminated at will by either party with 30 days written notice.

#### VI. Release and Indemnification

PE understands and agrees that CES is not responsible for any actions of CES contractors. PE releases CES from any and all claims, demands, suits, proceedings, loss, costs and damages of every kind and description, including any attorney's fees and/or litigation expenses incurred by PE, its successors and assigns, including, but not limited to, any loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake, or negligence of, any CES contractor, its employees, agents, representatives, or subcontractors, its employees, agents, or representatives, in connection with or incident to the performance of this agreement ("Claims"), and PE shall indemnify and hold CES harmless, as permissible by law, from all costs, expenses, damages and attorney's fees in the event such Claims are brought against CES. PE's release and obligations under this section will not extend to any liability to the extent caused by the negligence of CES, its agents, employees and Members.



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See attached  
(Print name of person making this application)

\_\_\_\_\_  
(Print title of person making application)

\_\_\_\_\_  
(Signature of person making this application)

\_\_\_\_\_  
(Date application is made)

### CES APPROVAL

This application is approved by the President of CES on behalf of the parties to the JPA.

Rick M. Carpenter  
(Signature of CES President)

5-15-18  
(Date application is approved)

PE # \_\_\_\_\_

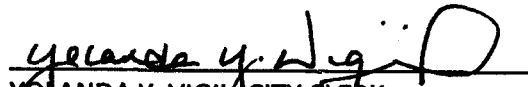
CITY OF SANTA FE:




JAVIER M. GONZALES, MAYOR

DATE: 3/7/18

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
cc mtg. 2/20/18

APPROVED AS TO FORM:

  
KELLEY A. BRENNAN, CITY ATTORNEY 2/14

APPROVED:

  
ADAM K. JOHNSON, FINANCE DIRECTOR 3.12.18

Business Unit/Line Item:

\_\_\_\_\_



## PARTICIPATING ENTITY INFORMATION SHEET

INSTITUTION NAME: CITY OF SANTA FE

### ENTITY CONTACT:

Name: ALAN M. Webber  
(Please Print)

Job Title: Mayor

Mailing Address: 200 Lincoln Ave, PO Box 909

City/State/Zip: Santa Fe, NM 87504-0909

Telephone: 505-955-6590 Fax: \_\_\_\_\_

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City/State/Zip: Santa Fe, NM 87504

### PURCHASING CONTACT:

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### ACCOUNTS PAYABLE CONTACT:

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**ENTITY MANAGER:**

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Name: Chris Sanchez  
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**HUMAN RESOURCES CONTACT:**

Name: Gary Bartlett  
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**CLERK CONTACT:**

Name: Yolanda Vigil  
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Job Title: City Clerk  
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Email Address: yvigil@ci.santa-fe.nm.us

**INFORMATION TECHNOLOGY CONTACT:**

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**TRANSPORTATION CONTACT:**

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(Please Print)  
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Email Address: kwilson@ci.santa-fe.nm.us

**FINANCE CONTACT:**

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(Please Print)  
Job Title: Interim Finance Director  
Telephone: 505-955-6172 Fax: \_\_\_\_\_  
Email Address: kddayoung@ci.santa-fe.nm.us

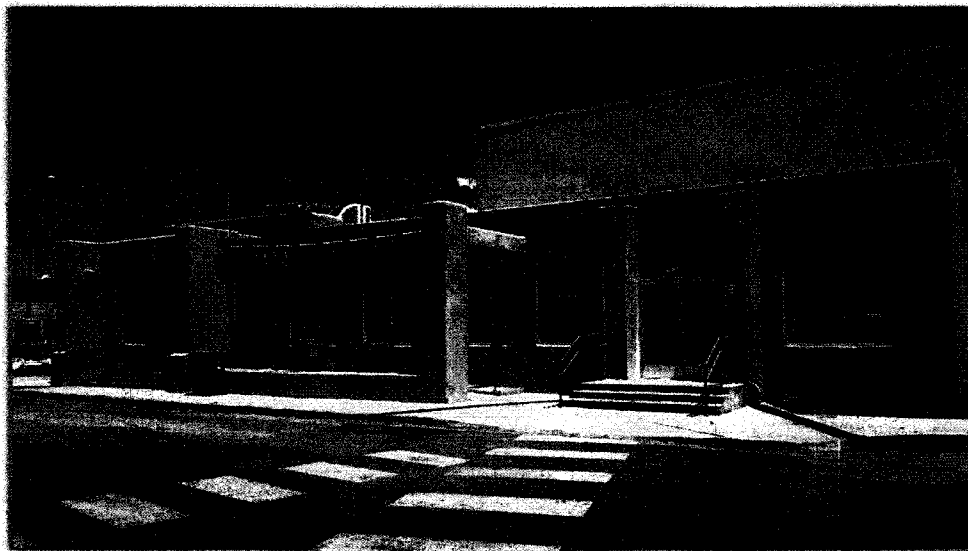
**PUBLIC WORKS CONTACT:**

Name: John Romero  
(Please Print)  
Job Title: Interim Public Works Director  
Telephone: 505-955-6438 Fax: \_\_\_\_\_  
Email Address: jromero1@ci.santa-fe.nm.us

# Salvador Perez Natatorium Structural and Building Envelope Rehabilitation Phase 1 Analysis and Recommendations

City of Santa Fe, New Mexico

September 2018



WHPacific

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## Salvador Perez Pool Building Evaluation

### Purpose

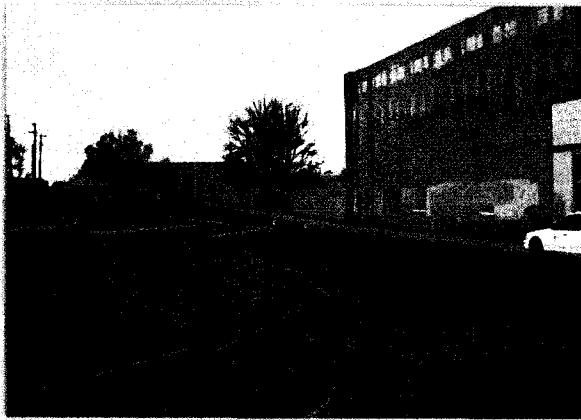
The purpose of this task order is to assess the condition of the natatorium at Salvador Perez Pool for the City of Santa Fe. WHPacific is to assess the degree of corrosion of the structural steel roof framing and steel columns in the natatorium, determine if the wood roof deck has deteriorated, assess cracking in a masonry wall at the north side of the pool and spalling of the brick veneer at the east and west ends of the south wall of the pool. WHPacific is also charged with assessing the performance of the roof and building envelope. Based on our assessment, we will determine if repairs or reinforcement of the structure is required.

### Building Description

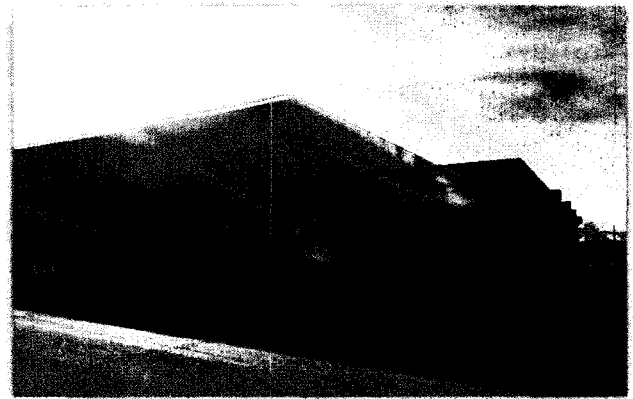
The original structure was reportedly constructed in the 1954. There are no record drawings of the original construction. There are record drawings of certain renovations and modifications that have been made. Based on as-built drawings from 1984, the building is approximately 105' long by 84' wide. The roof is approximately 30' above the finish floor around the pool. The roof consists of wood deck supported on steel bar joists spaced at 4' on center. The joists are supported by 8' deep steel trusses spaced at approximately 15' on center that span approximately 84' in a north-south direction above the pool. Joists in the end bays are also supported by East and West CMU walls. Based on this information and our investigation, a draft roof framing plan of the natatorium is included in Appendix A of this report.

Drawings from 1984 indicate that the steel framing in the natatorium was repainted. In addition to mechanical modifications, large windows and diagonal bracing were removed from three bays of the north wall of the natatorium and replaced with CMU block. A 10 foot high portion of windows in the South wall was removed and replaced with fiberglass panels. Drawings from 1996 indicate a one-story addition was constructed along the north side of the natatorium which added restrooms, a classroom and a weight room. The radiant heating system in the natatorium was also removed as part of that project. Drawings from 1996, indicate the concrete slab around the pool was removed and replaced with a new gutter system at the perimeter of the pool. Drawings from 1998 indicate a new duct system was installed at the perimeter of the natatorium under the steel trusses. Drawings from 2000 indicate locker rooms were modified, a new portal ramp and roof added at the west entrance of the facility, and skylights added in the roof of the natatorium. Drawings from 2010 indicate a new roof top heating and cooling mechanical units were added above the women's locker room west of the natatorium and rooms north of the natatorium. Record drawings were not provided for renovation of the south wall of the natatorium which appears to have been a relatively recent modification.

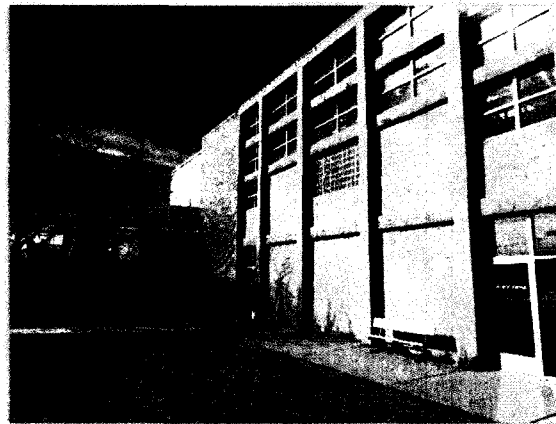
Photo No. 1 on Page 2 depicts the east wall of the natatorium as of April, 2011 prior to installation of the existing EIFS system. The upper portion of wall shows CMU infill in previous window or possibly louver openings. Photo No. 2 shows the existing condition of the east wall as of February 2018 from a slightly different angle. Photo No. 3 depicts the south wall of the natatorium as of February 2018.



*Photo 1- East Wall as of April 2011 Prior to Renovation.*



*Photo 2- East Elevation after Renovation taken Feb. 2018*



*Photo 3- South Wall of Natatorium taken Feb. 2018*

## Scope of the Assessment

The assessment of the natatorium included review of available record drawings and photos provided by the City of Santa Fe. It was not known if the original or subsequent paint on the steel structure contained lead; therefore, prior to conducting our investigation, the paint on the steel structure was sampled and tested for lead by our sub consultant, CERL. The paint was found to not meet the definition of lead based paint but did possess very minor amounts of lead which dictated certain safety precautions be taken in our building investigation.

WHPacific conducted a building investigation on August 14, 2018. A "Genie" Model AWP-30SDC push around type man-lift with a maximum reach of 29 feet was used to access the underside of the roof as well as the steel joists and trusses. Access was limited due to the perimeter duct system and bleachers; therefore, the evaluation was made based on what could be readily accessible around the perimeter of the pool. Photo No. 4 depicts use of the lift along the south wall of the building. Based on visual observation, the joists in the east the bay of the roof appeared to have the most corrosion. Our investigation concentrated on that area. None of the structure above the pool was accessible. The City of Santa Fe provided ladders for access to the exterior of the roof of the natatorium. The following summarized our findings for the various components of the roof.



*Photo 4- Lift for Access to Roof near South Wall.*

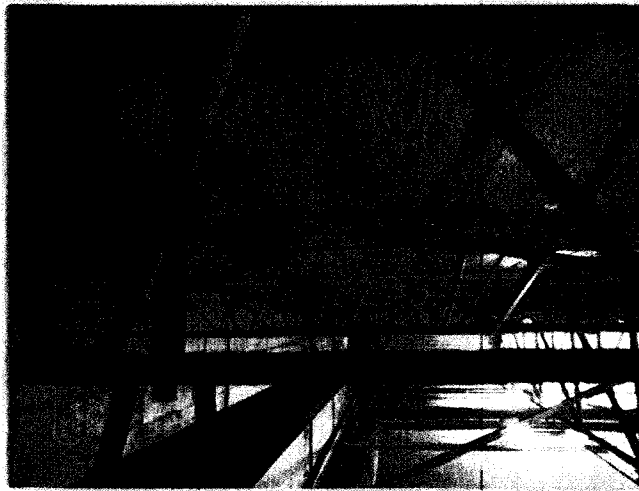
#### Roof Deck

To assess if the deck was rotting or deteriorating a steel awl was used to penetrate the wood deck from its underside. This was done in four locations including the north east corner of the building where peeled paint was most prominent. We estimated the penetration of the awl to be less than one-eighth inch. This was consistent at each location. No rotting or other deterioration was found on the underside of the deck. Photo No. 5 depicts the typical condition of the wood deck. In some areas the paint had peeled off. The wood deck does not appear to have any section loss.

#### Steel (Bar) Joists

Since there are no record drawings of the roof framing, no member sizes were available to use as a basis for evaluating how much section loss may have occurred due to corrosion. We made a comparative analysis of members having corrosion to those that had little or no corrosion. The roof framing plan in Appendix A was used to record which members were evaluated. We assessed the degree of corrosion of the bar joists numbered 3 and 8 in the east bay of the roof. We removed rust by scraping to sound metal and measuring the diameter of the web and bottom bars with a 6 inch digital fractional caliper by Husky having an accuracy of plus or minus .001 inch and then compared that with other bars having little or no corrosion. We also scraped corrosion off the double angle top chord of the bar joists and compared its thickness to sections that were not corroded.





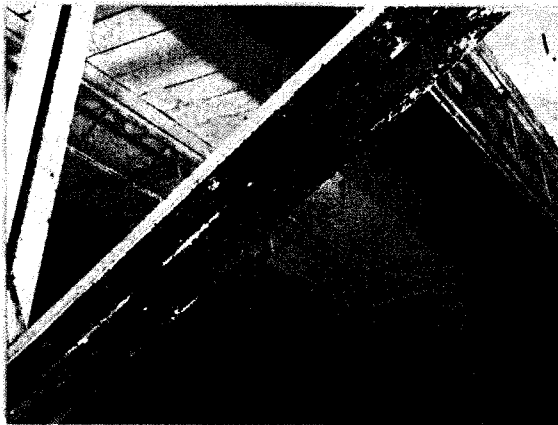
*Photo 5 – Underside of Wood Roof Deck and Corrosion on Bar Joist*

For the diagonal web members of these joists, we measured a minimum diameter of .45" after scraping off corrosion compared with .465" to .47" diameter for bars not corroded. For round bars, the cross-sectional area is proportional to the diameter squared. On this basis, we determined the net section of diagonal corroded bars to have an area that was 92% to 94% of the non-corroded bar. Deducting 2 mils for paint, the net area of the corroded bar would be 93% to 95% that of the non-corroded diagonal bars.

We measured the diameter of bottom chord bars of the joists and found the net thickness of corroded bars to be 96% to 99% of non-corroded bar. We also measured the thickness of the double angle top chord. The net section after removal of corrosion was measured to be .16" and the non-corroded section was .17". The net thickness of the corroded top chord angle is 94% of the thickness of non-corroded portions of the angle. Corrosion is less severe in the remainder of the roof bar joists. The section loss to date in the bar joists does not appear to be significant. Some minor deflection was observed in one of the joists but we did not detect any distress in the bar joists.

#### Roof Trusses

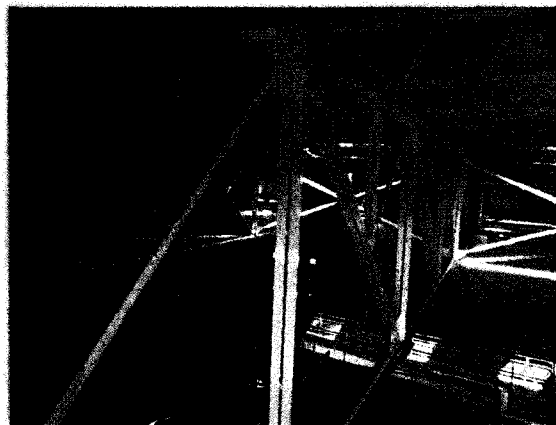
We assessed corrosion of the roof trusses that span over the pool. The double angle diagonal member of the truss on Line F is corroded on its bottom surface but with minor corrosion of its vertical legs. The bottom chord of that truss also is corroded and we did notice slight cavitation or pitting however no significant loss of section was found when corrosion was scraped to bare metal. (See Photos 6 and 7 on following page). The other trusses spanning the pool are generally in better condition with minor corrosion as depicted in Photo 8 on the following page.



*Photo 6- Corrosion on bottom of diagonal truss member*



*Photo 7- Corrosion on Bottom Chord of Truss*



*Photo 8 - Trusses on Lines A thru C with minor corrosion.*

The truss on Line 21 (See Roof Framing Plan) at the south wall was also investigated. Photo No. 9 depicts this truss. This truss spans approximately 46 feet and supports trusses on Lines C through F. The bottom chord of this truss consists of 3" x 4" double angles with short legs back to back. Some localized corrosion and debris was found on the horizontal leg of the angles (See Photo No. 10). The corrosion was found to be surficial with little measurable change in the thickness of the angle. The top chord of this truss also consists of 3" x 5" double angles with the short legs back to back. There is debris and rusting on the top surface and lesser corrosion on the vertical leg. A small speck of light was visible in Photo No. 11 indicating the edge of deck is not sealed completely and possibly allows wind driven rain to enter. Corrosion in the top chord does not appear to be significantly different than that on the bottom of truss.



Photo 9- Truss on Line 21 Parallel to South Wall.

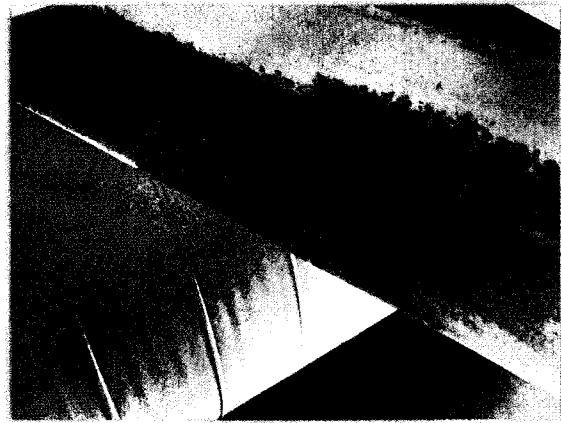


Photo 10- Minor Corrosion on Bottom Chord of Truss.

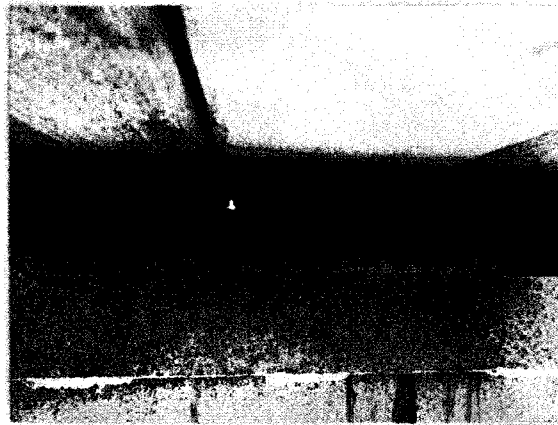


Photo 11- Corrosion on Top Chord of Truss - Speck of light visible.

#### **Bearings of Truss at South Side of the Building**

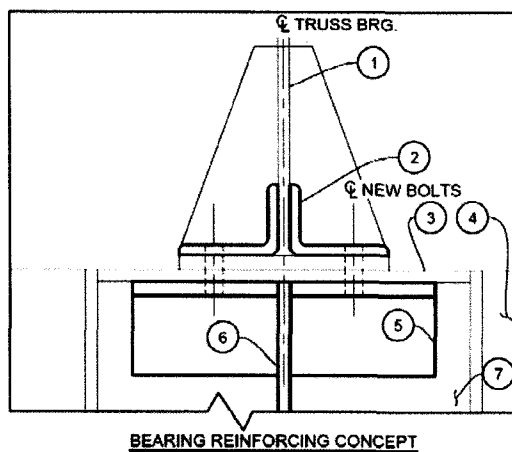
The truss on Line 21 bears on short steel wide flange beams spanning between two columns at each end of the truss. The bearing consists of a steel plate, reinforced with stiffeners that are welded to a bearing plate. The bearing plate is bolted to the supporting steel wide flange beam. The bearing at the west end of the truss, near Grid C has little corrosion and is in good condition. We were unable to closely access east bearing near line F due to piping, duct and the adjacent brick wall duct obstructing access with the man lift. The west side of this bearing appears to be in satisfactory condition.

From a close up photograph provided by the City of Santa Fe of the east side of the bearing, a crack appears to extend through the bearing plate at one of the bolt holes and extend through the top flange of the supporting wide flange beam (See Photo No. 12). There appears to be significant corrosion and some loss of section at the northeast corner of the bearing plate. Some debris likely has fallen onto this bearing as was noticed on the top flange of the truss. The crack in the plate and degree of corrosion results in a loss of section in the bearing plate. It is recommended to reinforce this bearing. It appears possible to reinforce the bearing in place by welding an angle(s) to the underside of the column cap plate, adding vertical stiffeners to the beam in line with the existing web plate of the truss and

welding angles to the web plate with new holes for longer bolts. A concept of a possible reinforcement is shown on the sketch below.



Photo 12- Crack and Corrosion in Bearing Plate at East End of Truss on Grid 21.



#### KEYED NOTES

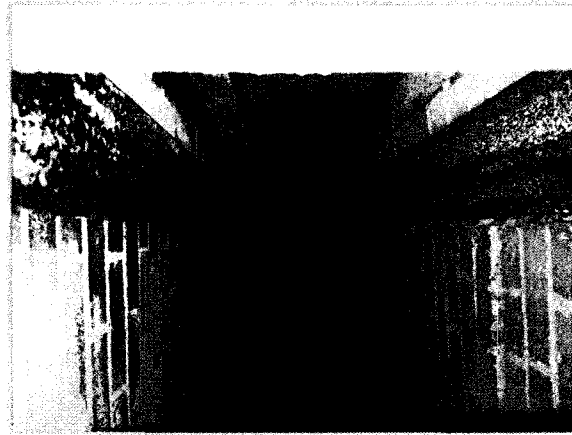
1. EXISTING WEB PLATE
2. WELD ANGLE TO WEB PLATE (EAST SIDE)
3. TOP OF EXISTING BEAM
4. EXISTING COLUMN
5. WELD ANGLE TO WEB OF BEAM
6. STIFFEN EACH SIDE OF BEAM WEB
7. EXISTING BEAM BETWEEN COLUMNS

### Steel Columns

Steel columns support trusses at the north and south sides of the building. The lower portion of columns are concealed by masonry or brick walls. The upper 8 feet of the steel columns is visible. The cavity between the brick walls at the south side of the building creates a confined space. We were unable to access this space, however, the City provided a photograph looking down which indicate corrosion along the entire exposed face of column flanges (See Photo No. 13).

Approximately 6' of architectural end panels were removed at the bottom of walls in our investigation however masonry concealed the steel columns. In Photo No. 13, it appears that panels at the top of the wall could be removed to expose a portion of the columns. The brick walls are non-load bearing except for their own weight. These walls may provide lateral support to the steel columns, however, it appears feasible to cut a door opening through the inner brick wall which would provide access to this space.

Further investigation could be done to assess the degree of corrosion of the columns after a means of access is provided.



*Photo 13- Corrosion on Flanges of Steel Columns embedded in Brick Walls.*

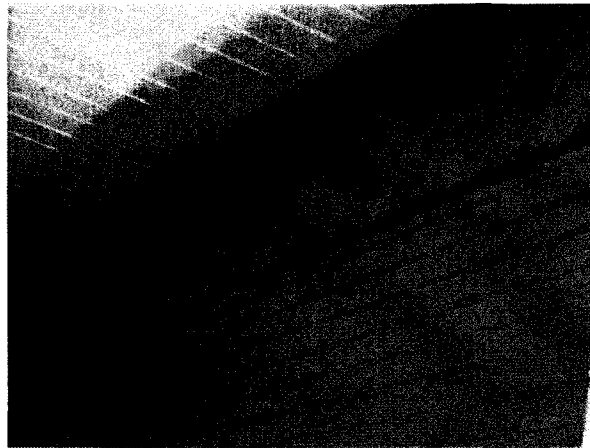
The condition of brick and CMU walls of the natatorium, was also assessed in our investigation. The following summarizes conditions found.

#### *Brick Walls*

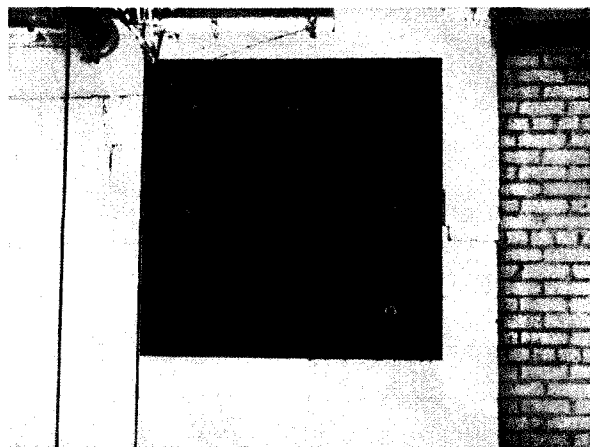
There are gaps and voids in the mortar in both the interior and exterior brick walls. The brick in the parapets at the top of walls is only partially covered with flashing/coping. The brick and cement mortar bed on the top of the wall has spalled and crumbled most likely due to moisture intrusion and freeze thaw action (See Photo No. 14). Steel plates were added in a recent building modification at the east side of the south wall and in one location on the south side of the east wall. The interior plates at the south wall are bent with the top flange supporting the roof deck (See Photo No. 15). Those plates are connected to plates on the outside of the wall with through bolts. The anchor rods and interior steel bent plates have rusted on the inside of the building. Large interior and exterior plates were added near the top to the East Wall. (See Photo No. 16). We contacted Jim Hands and Associates who the City of Santa Fe believed had participated in the design of the renovation. The representative of the firm could not recall why the plates were added. The plates may have been added for reinforcement as there appears to be crack in the wall at this area.



*Photo 14- Brick and Mortar Deterioration at Top of South Wall.*



*Photo 15- Steel Bent Plate at Top of Wall - East End of South Wall*



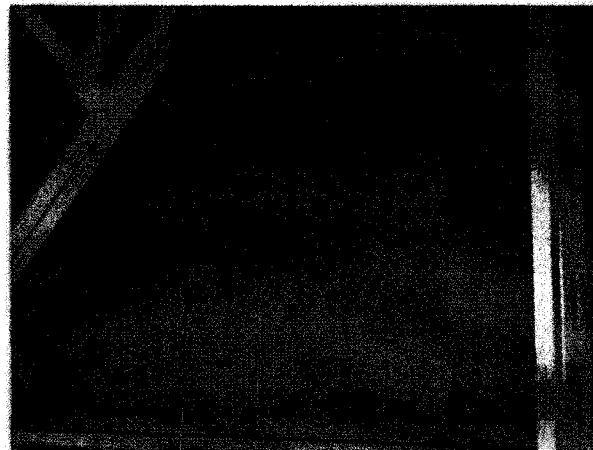
*Photo 16- Large Steel Plate at Top of East Wall.*

### Masonry (CMU) Walls

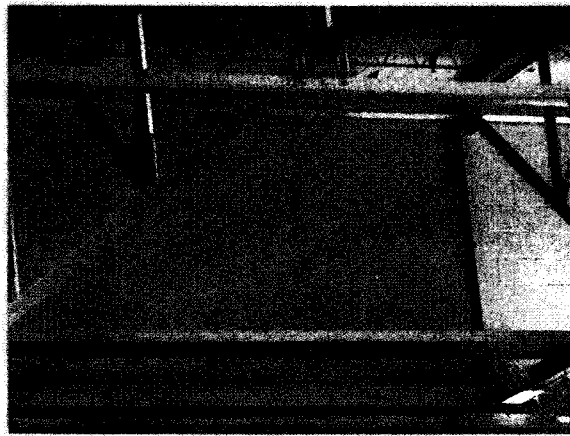
A line of rust was observed in east and west CMU walls of the natatorium (See Photo No. 17) apparently coinciding with the top of previous window or louver openings that were removed and filled with CMU blocks. We believe steel lintel angles were used to span these openings and were not removed. They appear to have corroded thus staining the walls. Roofing material has sagged down along the west wall and to a lesser extent along the east wall.

A diagonal crack exists in the upper 8 feet of the north wall of the natatorium (See Photo No. 18). Record drawings from 1984 indicate that window frames and glass block were removed below this area and replaced with infill CMU. Some slight deflection may have occurred and caused this cracking during that renovation. The crack does not appear to be propagating further. CMU block in an adjoining bay appears to have been infilled as it is cut short and there is a varying width gap between the CMU and the web of the steel columns (See Photo No. 20).

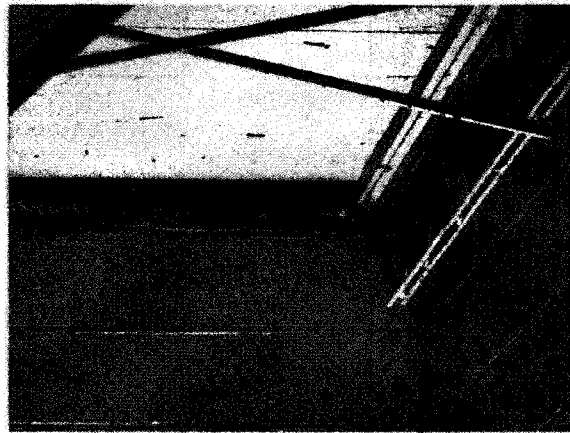
At the top of the west CMU at the north corner of the building, there is a gap between the top of wall and the wood roof deck (See Photo No. 19). The roofing material appears to be unsupported beyond the roof deck.



*Photo 17- Rust Stain on West Wall of Natatorium and Roofing Material at face of wall.*



*Photo 18- Diagonal crack in mortar joints of North Wall.*



*Photo 19- Gap at top of CMU Wall - NW corner of Natatorium*





*Photo 20- Gap between CMU and Steel Column at North Wall of Natatorium.*

## Structural Evaluation and Recommendations

### Roof Structure

The condition of the steel roof framing is judged to be satisfactory with minor section loss due to corrosion. The truss bearing plate at the east end of the south truss is cracked and appears to have section loss due to corrosion. It is recommended that the truss bearing plate on Line 21 at Line F, be reinforced. We recommend that the entire steel roof framing and exposed steel columns be sandblasted and re-painted. A NACE level 3 inspector is recommended to ensure a quality installation. To accomplish this work, we anticipate that the pool will need to be drained and a work platform constructed to create a level surface from which to support scaffolding and or lifts. It may be necessary to remove doors to improve access to the natatorium.

### Roof Deck

The roof deck appears to sound and with no significant loss in section. The paint is peeling away from the deck in localized areas. In conjunction with painting the steel structure, we recommend that the existing paint be removed and the bottom of the deck repainted. We recommend assessing the top of the wood deck if roofing repairs are necessary to ensure that the top of the wood deck is in good condition.

### Brick Walls

The brick parapets at the top of the south wall are in poor condition and it is recommended that the top course be replaced with new brick. A new coping covering the top of walls in their entirety is recommended. There are gaps in the mortar and mortar at the top of the wall has spalled. It is

recommended that loose mortar be removed and repointed. Cleaning and painting steel plates and anchor rods at the top of the brick walls in the southeast corner of the building is recommended. Sealing the brick walls is recommended.

We recommend cutting openings in the interior brick walls and installing access doors walls at the south side of the natatorium between grids Band C and east of Grid F. This will allow visual inspection of the spaces between the interior and exterior brick walls and assessment of corrosion of the steel columns and subsequent removal of corrosion and painting of the steel columns.

#### Masonry Walls

We recommend removal and repointing cracked mortar at the top of the north wall of the natatorium. Gaps exist between the CMU walls and steel columns in the north wall. We recommend cutting and infilling with new CMU to seal and create a finished appearance. We noted some minor spalling in one of the CMU pilasters. We recommend repair mortar be used to repair the masonry pilaster. We recommend installing CMU at the north end of the west wall of the natatorium. This will likely require peeling the roofing back to uncover this area. We recommend removing mortar near the top of the west and east walls of the natatorium where steel lintels apparently were installed and cleaning and painting the edge of lintels with rust preventive paint and repointing the mortar joints. This work likely could be done in conjunction with repainting of the roof structure.

## Architectural Building Envelope Assessment and Recommendations

### Facility Assessment

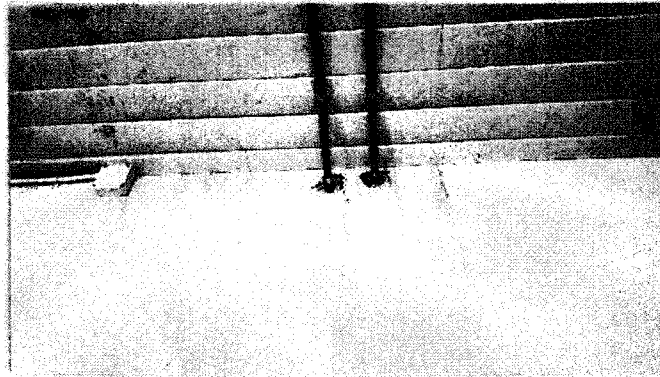
#### Exterior Wall System

The Salvador Perez Natatorium has several different systems of construction that create the exterior building envelope for this facility. Without record drawings, it is assumed that the majority, if not all, of the existing exterior building envelope system uses a load bearing masonry wall structure. Based on WHPacific's site visit, these existing load bearing walls remain either unfinished on the exterior face, or the walls are clad in a stucco or exterior insulation and finish system (EIFS). At the main entry, the low bay structure facing west is assumed to be a two or three coat stucco system over masonry while the remainder of the low bay structure has an exposed concrete masonry unit (CMU) exterior finish. Similarly, the high bay structure is predominantly unclad having an exposed CMU exterior finish. The natatorium's high bay wall that faces east, however, remains an exception as it was clad in 2015 with a three-inch layer of EIFS. The EIFS exterior finish is providing improved thermal performance of the exterior wall system, and it is reducing the formation of condensation on the building's interior wall surface.

#### Roof System

The natatorium's roof system was replaced in 2008 and is assumed to be a 60 mil Thermoplastic Polyolefin (TPO) membrane roof with at least 4"-6" of rigid insulation within its substrate's construction. In the evening prior to WHPacific's site visit, a three-inch rainfall was reported in parts of the City of Santa Fe and several roof leaks were apparent during the morning of the facility's envelope assessment. The low bay TPO roof system appeared especially vulnerable to water penetration as several trash cans were being used to catch water from roof leaks. Evidence of past water damage was also noted as walls and ceiling tile are streaked with water stains. Water penetration was evident in the northwest corner of

the building near the reception desk, along the west elevation near the entrance adjacent to the training equipment, and immediately east of the main entry where water was dripping from the ceiling's exposed ductwork. Additionally, water could be heard dripping onto, or into, ductwork just outside the northeast offices along the corridor that runs east from the main entry.



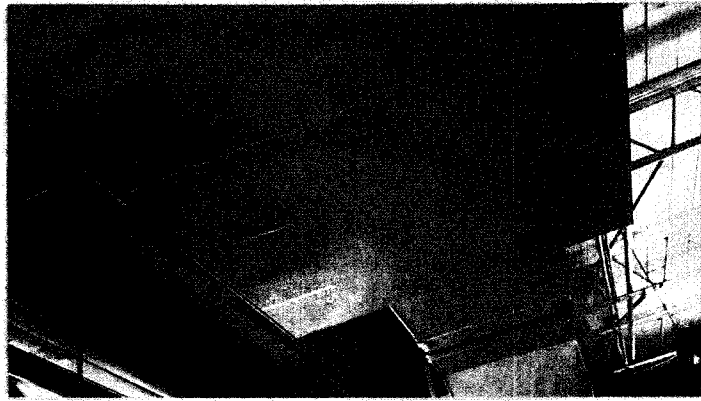
*Photo 21-Water stains*



*Photo 22-Water stains*



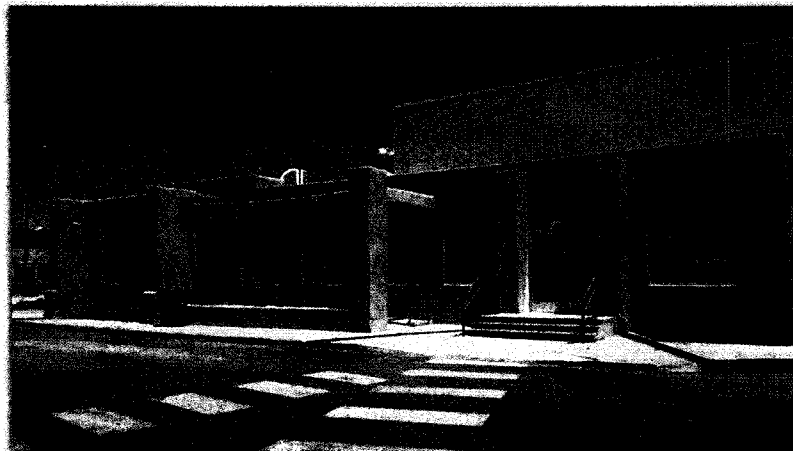
*Photo 23  
Roof Leaks*



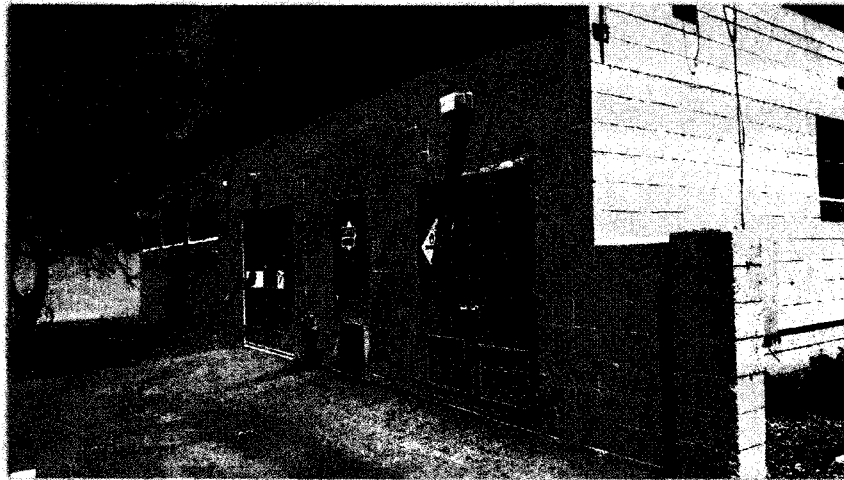
*Photo 24  
Water dripping from duct*

### *Doors and Windows*

Wind driven rain is penetrating the building along the west elevation especially where there is no canopy over the pair of aluminum doors to the south of the main entry near the locker rooms (See Photo No. 25). A little further south at the mechanical room and adjacent storage rooms (acid and oxidizer rooms), louvers in these doors are covered on the interior side of the door with sheet metal. It is assumed that these louver coverings are protecting the building's interior from wind-driven, penetrating rain. Consequently, the mechanical equipment may not be obtaining sufficient outside air to perform at optimal capacity. These doors and all other doors within the facility are proposed to be replaced under the recommendations provided by this assessment report; however, additional input will be needed from the mechanical renovation design currently in progress under a separate contract. If an alternate source of outside air is achievable and the facility can be protected from wind-driven rain through the installation of flush doors at this location, an optimal solution for this deficiency can then be implemented during the building's eventual renovation. It would also be prudent to check existing piping, especially gas piping, in this area for signs of extensive corrosion that may lead to failure.



*Photo 25-West entry with no canopy near training equipment*



*Photo 26-Mechanical room and storage room doors*



*Photo 27-Louvers covered with sheet metal*

Further deterioration of the existing doors and windows is evident from the significant amount of corrosion that is visible on the facility's hollow metal door and window frames. The corrosion is likely the result of condensation from high humidity levels within the natatorium as well as moisture that has penetrated the building through its exterior wall system. Naturally, corrosion is not a concern for the aluminum door and window frames.



*Photo 28-Corrosion at hollow metal windows*

In general, the doors and windows are not providing a reliable weather barrier for the building envelope; and even where moisture is not a concern, the thermal performance of the existing windows does not meet today's industry standard for thermal resistance. In many locations, the existing window seals have failed and moisture is evident between the two layers of  $\frac{1}{4}$ " glass.



*Photo 29-Window seal failure*

## Recommendations

### Exterior Wall System

To improve the thermal performance of the exterior wall system and lower demand on the building's HVAC system for heating and cooling, it is recommended that all exposed CMU exterior walls be clad with a new three-inch layer of EIFS. Knowing that each inch of rigid insulation will improve the thermal resistance of the exterior wall system by a minimum R-Value of 5.0 (see table below), this additional three-inch layer of EIFS will provide an added R-Value of 15 to the existing wall system's thermal performance. By comparison, an eight inch uninsulated concrete masonry unit alone has only an R-Value of 2.5. The new EIFS exterior will match the existing stucco and provide a high performing thermal envelope for the building. The new EIFS finish should be applied to the high bay and low bay areas having an exposed CMU finish. All existing exterior stucco walls should simply receive a new stucco finish coat, or "fog" coat, to match the color of the new EIFS.

### Typical Physical Properties<sup>1</sup>

FOAMULAR® 150 Extruded Polystyrene Insulation

Property	Test Method <sup>2</sup>	Value
<b>Thermal Resistance<sup>3</sup>, R-Value (180 day) minimum,</b> hr•ft <sup>2</sup> •°F/Btu (RSI, °C•m <sup>2</sup> /W) @ 75°F (24°C) mean temperature		
	ASTM C518	
1" Thickness		5.0 (0.88)
1½" Thickness		7.5 (1.32)
2" Thickness		10 (1.76)
2½" Thickness		12.5 (2.20)
3" Thickness		15 (2.64)
@ 40°F (4.4°C) mean temperature		
1" Thickness		5.4 (0.95)
1½" Thickness		8.1 (1.43)
2" Thickness		10.8 (1.90)
2½" Thickness		13.5 (2.38)
3" Thickness		16.2 (2.85)
<b>Long Term Thermal Resistance, LTTR-Value<sup>3</sup> minimum</b> hr•ft <sup>2</sup> •°F/Btu (RSI, °C•m <sup>2</sup> /W) @ 75°F (24°C) mean temperature		
	CAN/ULC S770-03	
1" Thickness		5.0 (0.88)
1½" Thickness		7.8 (1.37)
2" Thickness		10.6 (1.87)
2½" Thickness		13.4 (2.36)
3" Thickness		16.2 (2.85)

Source: Owens Corning Foamular 150 Product Literature

### Roof System

The natatorium's roof system was replaced in 2008 yet some repairs are recommended for the high bay roof. First, ponding at the southeast corner of the high bay can be remedied through additional sloping of the roof with the installation of rigid insulation to create steeper crickets that promote complete drainage of ponding water in this area. Second, the high bay roof requires a new parapet cap to maintain a weathertight envelope. Currently, sealant and caulk provide the last line of defense for water determined to make its way into the building. Inevitably sealant and caulk will fail. The recommendation is for a new parapet cap that encapsulates the entire top of wall and provides a mechanical seal that is flashed and counter-flashed to maintain a weathertight roof system as it transitions to the vertical

exterior wall system. Additional recommendations for the masonry top of wall condition are provided in the structural assessment for the natatorium. These recommendations will need to be completed prior to the new parapet cap installation.

At the low roof, the recommendation is to replace this section of the roof in its entirety while also providing a new parapet cap that encapsulates the entire top of wall and provides a mechanical seal that is flashed and counter-flashed. Alternatively, the low roof could be patched and a new parapet cap installed; however, it may be difficult to identify the locations where the TPO membrane is failing or has been punctured.

For safety purposes, further recommendations for the roof include removal of the internal roof ladder that provides access to the high bay over the natatorium and capping this roof penetration at the roof level. This access ladder for the roof is in the pool area, and a new ladder on the building's exterior is recommended for its replacement. The new ladder could be located on the east or south side of the structure. In addition, it is recommended that the low bay roof hatch be replaced and fall protection also be installed at this location. The low bay roof hatch at the mechanical room will require existing ductwork to be relocated for it to be fully functional. The ductwork reconfiguration should be feasible under the mechanical project currently under design for the facility by others.

#### Doors and Windows

WHPacific recommends that all the existing doors and windows be replaced with new aluminum doors and windows. This will provide the natatorium with high performing thermally-broken insulating window and door systems that utilize current state of the art manufacturing and construction assemblies. The window and doors should be flashed properly for weathertight installation and specified to provide as a high thermal resistance factor as is feasible.

Based on the structural recommendation noted earlier, two additional pairs of doors are recommended to be added at the confined space identified in the pool area. Future observation of the column base plates may be required for remediation purposes sometime in the future.

#### Interior finishes: ceilings and walls

WHPacific recommends replacement of the stained ceiling tile throughout the facility's interior and a fresh coat of paint throughout. Once the building envelope is renovated, an upgrade to these finishes would give the natatorium a newly renovated appearance and eliminate the old worn appearance that the natatorium's water stained ceilings and walls currently offers to its patrons. Additionally, WHPacific recommends removing, or upgrading, the existing catwalk in the pool area because it does not meet code requirements for life safety.









## Budgetary Cost

SALVADOR PEREZ NATATORIUM BUDGETARY CONSTRUCTION COST ESTIMATE BREAKDOWN			
LINE NO	ITEM DESCRIPTION	TOTAL MATERIAL AND LABOR COST (DOLLARS)	LINE TOTAL (DOLLARS)
	<b>BASE BID</b>		
1	DEMOLITION	\$6,434.00	\$6,434.00
2	CLEAN AND PAINT STEEL ROOF STRUCTURE	\$175,000.00	\$175,000.00
3	CLEAN AND PAINT UNDERSIDE OF ROOF DECK	\$21,000.00	\$21,000.00
4	CLEAN AND PAINT INTERIOR CMU WALLS	\$43,000.00	\$43,000.00
5	REPAIR TRUSS BEARING	\$5,000.00	\$5,000.00
6	REPOINT BRICK WALLS	\$30,000.00	\$30,000.00
7	REPLACE BRICK AT TOP OF SOUTH WALLS	\$5,000.00	\$5,000.00
8	SEAL BRICK WALLS	\$3,000.00	\$3,000.00
9	CMU WALL REPAIRS	\$12,000.00	\$12,000.00
10	STRUCTURAL CONTINGENCY (30%)	\$87,150.00	\$87,150.00
11	REPLACE LOW ROOF AND COPING	\$52,500.00	\$52,500.00
12	FIX HIGH ROOF COPING & PONDING	\$12,600.00	\$12,600.00
13	SEAL ROOF PENETRATIONS	\$5,000.00	\$5,000.00
14	REPLACE TWO ROOF HATCHES AND PROVIDE NEW LADDER	\$20,000.00	\$20,000.00
15	FALL PROTECTION AT ROOF HATCH	\$5,000.00	\$5,000.00
16	REPLACE WINDOWS	\$33,750.00	\$33,750.00
17	REPLACE DOORS	\$56,000.00	\$56,000.00
18	COMBUSTION AIR OPENING AT MECH. RM	\$7,500.00	\$7,500.00
19	REPAIR CEILINGS	\$31,500.00	\$31,500.00
20	ARCHITECTURAL CONTINGENCY (10%)	\$23,028.40	\$23,028.40
21	SUBTOTAL		\$634,462.40
22	OVERHEAD 15%		\$95,169.36
23	PROFIT 10%		\$63,446.24
24	BOND 5%		\$31,723.12
25	<b>SUBTOTAL BASE BID</b>		<b>\$824,801.12</b>
	<b>ALTERNATE NO.1</b>		
26	EIFS EXTERIOR CMU WALLS	\$230,490.00	\$230,490.00
27	COLOR COAT EXISTING STUCCO	\$12,420.00	\$12,420.00
28	TRELLIS REPAIR	\$7,500.00	\$7,500.00
29	ARCHITECTURAL CONTINGENCY (10%)	\$25,041.00	\$25,041.00
30	SUBTOTAL		\$275,451.00
31	OVERHEAD 15%		\$41,317.65
32	PROFIT 10%		\$27,545.10
33	BOND 5%		\$13,772.55
34	<b>SUBTOTAL ALTERNATE NO.1</b>		<b>\$358,086.30</b>
35	<b>PROJECT TOTAL</b>	<b>\$909,913.40</b>	<b>\$1,182,887.42</b>

## Appendix A - Roof Framing Plan

# LEGEND

-  MAN LIFT LOCATION (CHRONOLOGICAL)
-  WOOD CEILING (DECK) INVESTIGATION LOCATION
-  JOIST LINE (1-20)
-  TRUSS LINE (A-F)
-  JOIST ROW (T-Z)
-  JOIST OR TRUSS INVESTIGATION LOCATION

