



**Mid-Region Council of Governments**

# REQUEST FOR PROPOSALS

For

# Economic Recovery and Resiliency Plan

Issued: August 20, 2021

MRCOG Procurement No.: RFP 2022-01

Proposal Due Date/Time: September 21, 2021, 2:00 PM (MST)

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## 1.0 INTRODUCTION

### 1.1 Purpose of this Request for Proposals

The Mid-Region Council of Governments (MRCOG) invites qualified firms (Offerors) to submit proposals for professional services for the work indicated in the title page in accordance with the specifications contained in this Request for Proposal (RFP). This RFP contains specific requests for information.

The purpose of this procurement is to select individual(s)/firm(s) that will assist MRCOG in developing an Economic Development Resiliency and Recovery Plan that will serve as an addendum to the Mid-Region of New Mexico Comprehensive Economic Development Strategy (CEDS). Our region includes Sandoval, Bernalillo, Valencia, Tarrant, and southern Santa Fe counties, and this plan will encompass all of the communities within the region. This plan will include categorizing communities into clusters by geographic area and industry types to develop goals, strategies, and a general list of potential project priorities that will help create a more resilient economy.

This project may be funded in part through federal funds. As such, applicable federal laws, regulations and guidelines shall be adhered to by the Contractor as part of the contract.

### 1.2 Scope of Work

#### 1.2.1 Project Objective

The Mid-Region Economic Recovery and Resiliency Plan will explore events and disasters that cause disruption in the economy in the Mid-Region. It will address how events, including the Covid-19 pandemic, expose and exacerbate social and economic weaknesses. The plan will specifically relate to some of the weaknesses that are called out in the Mid-Region of New Mexico Comprehensive Economic Development Strategy (CEDS). Some examples of hazards or disasters in the Mid-Region of New Mexico include natural disasters (floods, fires, drought, severe winter storm), recessions, pandemics, and power outages.

This plan will develop goals, strategies, policies, programs, potential project priorities, and other actions to reduce disasters' economic impacts to the greatest extent possible and will be applicable to many sectors to improve the community's or cluster of communities' economic resilience to hazards or changing conditions. This plan can include goals to update land use codes, zoning, development standards, incentive programs, and other plans or policies to better prepare for events and disasters. The strategies developed will reduce future disaster related response and recovery costs and improve recovery time in community clusters following natural or human-caused hazard events. This plan will help communities to develop long-lasting, sustainable, and strong economies that will continue to be successful through various disasters.

#### 1.2.2 Key Deliverables

The key deliverable for this project will be the Mid-Region Economic Development Resiliency and Recovery Plan.

The development of this plan will first include:

- i. A review of existing relevant plans including:

The MRCOG CEDS - The 2020 Mid-Region of New Mexico Comprehensive Economic Development Strategy (CEDS) will need to be reviewed to ensure consistent goals for the region. The resiliency plan will conduct further evaluation of weakness described, and it will also build off goals and strategies outlined in the CEDS.

The NM Statewide Comprehensive Economic Development Plan, Albuquerque Economic Development's 2021 and Beyond, City of Albuquerque Economic Development's THRIVE 2021 Plan, and the Southern Tarrant County Economic Development Plan - These plans will need to be reviewed to align goals and strategies and identify areas for collaboration. The review of these plans will also ensure efforts are not duplicated.

- ii. Public Engagement Process - Input will need to be gathered from local businesses and community members from the entire region to determine challenges that occur during events or disasters that disrupt business operations, especially in rural communities. This information gathering process will also be used to develop community clusters based on similar economic conditions and industries.

The components of the plan document will include:

- i. Economic Conditions Analysis- Economic data will need to be gathered and analyzed for pre-pandemic, during the pandemic, and post pandemic broken up by community clusters and industries.
- ii. Evaluation of Potential Hazards, Disasters, and Risks to the Mid-Region- An evaluation of events that the Mid-Region is susceptible to will need to be conducted. This evaluation will be used to develop the necessary strategies to build resilience in the face of these events. Examples of hazard or disaster events in the Mid-Region of New Mexico include natural disasters (floods, fires, drought, severe winter storm), recessions, pandemics, and power outages.
- iii. Evaluation of Social and Economic Weaknesses- Existing weaknesses in each community cluster will need to be evaluated including weaknesses described in the CEDS that are intensified during the identified potential disaster events.
- iv. Goals and Implementation Strategies – Goals and implementation strategies to achieve these goals will need to be developed for each community cluster to address the weaknesses in their economies and to be more prepared for disaster events moving forward. These strategies will address what businesses, organizations, and the communities can do to ensure continued successful operation during times of disaster. These strategies will also outline key project focus areas so that communities can work together regionally on projects that will have the greatest impact for building resiliency.

### 1.2.3 Key Milestones

This plan will need to be developed and completed over an eight-month period. The plan must be completed by June 30th, 2022.

#### 1.2.4 Key Project Stakeholders

The Mid-Region Council of Governments Economic Development and Regional Planning Programs will be the main points of contact during this process. The key stakeholders of this plan are the communities throughout the Mid-Region, businesses, non-profits, and other organizations who have experienced economic hardship due to the COVID-19 pandemic.

#### 1.3 Scope of Procurement

The scope of the procurement shall encompass the defined scope of work and any extensions or renewals thereof, as part of a multi-year Contract.

#### 1.4 Procurement Manager

The MRCOG has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

Kim Monjaras  
Procurement Officer  
809 Copper N.W.  
Albuquerque, NM 87102  
Phone: 505-247-1750, Fax: 505-247-1753  
[E-mail: kmonjaras@mrcog-nm.gov](mailto:kmonjaras@mrcog-nm.gov)

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

#### 1.5 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of Business" means 5:00 PM local time.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the MRCOG Executive Director to

evaluate Offeror's proposals.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's proposal.

"MRCOG" means the Mid-Region Council of Governments of New Mexico.

"RMRTD" means the Rio Metro Regional Transit District of New Mexico.

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Manager" means the person or designee authorized by the Executive Director of MRCOG to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the MRCOG to oversee all MRCOG procurement.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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

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

## 1.6 Background Information

The MRCOG is an association of local governments in central New Mexico. Members include county, municipal and special purpose units of government in Bernalillo, Sandoval, Tarrant, Valencia and southern Santa Fe Counties.

MRCOG received funding from the Economic Development Administration (EDA) as part of the CARES Act to provide planning and technical assistance in response to the COVID-19 Pandemic. The Mid-Region, along with the State of New Mexico, have experienced economic hardship due to the pandemic. It is important that the region has a plan that will help in the recovery from the pandemic and additionally help central New Mexico be prepared for future disasters in order to maintain a strong and growing economy.

## 2.0 PROCUREMENT CONDITIONS

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

### 2.1 Sequence of Events

The Procurement Manager will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown however may be subject to change at the discretion of the MRCOG.

Issue RFP – August 20, 2021  
Proposals Due – September 16, 2021  
Evaluation Committee – September 21, 2021  
Orals (if Necessary) September 22-24, 2021  
Selection of Finalist(s) – September 28, 2021

### 2.2 Explanation of Events

#### 2.2.1 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to the Procurement Manager. All written questions must be emailed to the Procurement Manager at the address specified in this solicitation. The Procurement Manager will provide a written response only to written requests that are received at least ten (10) working days prior to the submittal due date.

#### 2.2.2 Notification of Written Responses and Amendments

In order to receive notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 1 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt may be hand-delivered, electronically mailed, returned by facsimile, registered or certified mail to the Procurement Manager. Offerors must include an email address on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least five (5) working days prior to the proposal submittal due date in order for a potential Offeror to be placed on the procurement distribution list.

#### 2.2.3 Procurement Distribution List for Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 1 will be included on the procurement distribution list. Written responses to written questions and any solicitation amendments will be emailed to all potential Offerors whose organization appears on the procurement distribution list.

#### 2.2.4 Submission of Proposal

All proposals must be received by the Procurement Manager or designee no later than by the time on the date shown on the cover page of this Request for Proposals.

Proposals received after this deadline will not be accepted.

The date and time will be recorded on each proposal as it is received. Proposals must be addressed and delivered to the Procurement Manager at the address listed herein. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by facsimile or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

#### 2.2.5 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions. Potentially responsive proposals are proposals that are reasonably susceptible of being made responsive.

#### 2.2.6 Selection of Finalists

The Procurement Manager will provide the list of finalists to the Executive Director. The Procurement Manager will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

#### 2.2.7 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the MRCOG address noted herein. Each presentation will be limited to thirty minutes with an additional fifteen minutes for questions and answers.

#### 2.2.8 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

#### 2.2.9 Contract Negotiations

The contract will be negotiated with the most advantageous Offeror(s). In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the MRCOG reserves the right to negotiate a contract with another Finalist Offeror without undertaking a new procurement process.

#### 2.2.10 Contract Award

The contract shall be awarded to the Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms with the MRCOG within a reasonable time as defined in this solicitation. Contracts are not valid until signed by the Executive Director of the MRCOG.

#### 2.2.11 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer.

Kim Monjaras  
Procurement Officer  
809 Copper N.W.  
Albuquerque, NM 87102  
Phone : 505-247-1750, Fax : 505-247-1753  
[E-mail: kmonjaras@mrcog-nm.gov](mailto:kmonjaras@mrcog-nm.gov)

Protests received after the deadline will not be accepted.

### 2.3 General Requirements

This procurement will be conducted in accordance with the MRCOG procurement policy, the New Mexico Procurement Code and applicable Federal regulations.

The MRCOG requires that all Offerors agree to be bound by the "General Requirements" contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

#### 2.3.1 Acceptance of Conditions Governing the Procurement

Offerors should indicate their acceptance of the "Conditions Governing the Procurement" section in the letter of transmittal.

Submission of a proposal constitutes acceptance of this solicitation's governing conditions and the evaluation factors contained herein.

#### 2.3.2 Incurring Cost

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

Offeror.

### 2.3.3 Prime Contractor Responsibility

Any Offeror awarded a contract as a result of this RFP will be solely responsible for fulfillment of the contract with MRCOG. The MRCOG will make contract payments to only the prime contractor.

### 2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the proposal or used in the performance of the contract.

### 2.3.5 Amended Proposals

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

### 2.3.6 Offerors' Rights to Withdraw Proposal

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

### 2.3.7 Proposal Offer Firm

Responses to this RFP will be considered firm in that revisions, alteration or changes will not be considered, other than Best and Final Offers solicited by the Evaluation Committee, for a period of ninety (90) calendar days after the due date for receipt of proposals.

### 2.3.8 Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Officer shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential or proprietary data.

#### 2.3.9 No Obligation

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

#### 2.3.10 Termination of RFP

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

#### 2.3.11 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will affect such termination. The contractor will accept the MRCOG's decision as to whether sufficient appropriations and authorizations are available as final.

#### 2.3.12 Governing Law

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

#### 2.3.13 Basis for Proposal

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

#### 2.3.14 Contract Terms and Conditions

The contract between the MRCOG and a contractor will follow the format specified by the MRCOG. An Offeror may review the form of contract at the office of the Procurement Manager. However, the MRCOG reserves the right to negotiate with a successful Offeror provision in addition to those contained in this RFP.

Should an Offeror object to any of the MRCOG's terms and conditions, as contained in this Section, that Offeror must propose specific alter- native language. The MRCOG may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at substantive or complete substitutions are not acceptable to the MRCOG and will result in disqualification of the Offerors proposal. Offerors must provide a brief discussion of the purpose and impact, if any, of each

proposed change followed by the specific proposed alternate wording.

#### 2.3.15 Approval of Contractor Personnel

Personnel proposed in the Contractor's written proposal to the procuring agency are considered material to any work performed under this RFP and subsequent contract.

During the course of this procurement and after the contract has been signed, no changes of personnel will be made by the Contractor without prior written consent of the Procurement Manager. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments.

Approval of the replacement personnel shall not be unreasonably withheld.

The MRCOG shall retain the right to request the removal of any of the Contractor's personnel at any time.

#### 2.3.16 Contract Deviations

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

#### 2.3.17 Offeror Qualifications

The Procurement Manager may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Manager will reject the proposal of any 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.

#### 2.3.18 Right to Waive Technical Irregularities

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

#### 2.3.19 Project Team Prohibited Activities

MRCOG employees or MRCOG committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

### 2.3.20 Notice - Civil and Criminal Penalties

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

### 2.3.21 MRCOG Rights

The MRCOG reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

### 2.3.22 Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, and contractors must secure from the MRCOG written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the contract.

### 2.3.23 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the MRCOG. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned upon written request after the expiration of the protest period: Offerors not selected for award of a contract that request return of materials within the time frame specified above may pick up the documentation at the MRCOG office within a fifteen-day period following the protest period.

### 2.3.24 Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

### 2.3.25 Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the MRCOG, the version maintained by the MRCOG shall govern.

## 2.4 Special Provisions

This procurement may be supported in part or in whole from time to time with federal, state and local public funds. Therefore, the following certifications are required for this solicitation:

### 2.4.1 Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. An

executed Certification of Restrictions on Lobbying is required as provided in Appendix 3 of this solicitation.

#### 2.4.2 Debarment and Suspension

The Contractor shall provide certification required by Department of Transportation regulations, Government-wide Debarment and Suspension, 49 C.F.R. Part 29 and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

#### 2.4.3 Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 5 of this solicitation.

#### 2.4.4 Affirmative Action/Civil Rights Compliance

All proposals must include a certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation.

### 3.0 RESPONSE FORMAT AND ORGANIZATION

#### 3.1 Number of Responses

Offerors shall submit only one proposal for each Contract listed in this RFP.

#### 3.2 Number of Copies

Offerors shall deliver: **one (1) original, five (5) identical copies and one (1) digital copy**: one complete copy and one electronic copy without "Proprietary" information in PDF format to the location specified herein on or before the closing date and time for receipt of proposals.

#### 3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Proposals shall be no longer than 25 pages (single sided) excluding tabs and front and back covers.

Pages shall be single spaced with a font of no less than number 10.

##### 3.3.1 Proposal Organization

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

- Tab 1. Proposal Form: Appendix 2
- Tab 2. Project Understanding
- Tab 3. Qualifications and Resources
- Tab 4. Methodology
- Tab 5. Experience Providing Equivalent Products/Services
- Tab 6. Schedule
- Tab 7. Project Cost (Price sheet – sealed separately)
- Tab 8. Forms and Certifications
  - Appendix 3: Certification Restriction on Lobbying
  - Appendix 4: Certification Debarment Suspension
  - Appendix 5: Campaign Contribution Disclosure Form
  - Appendix 6: Certification Affirmative Action/Equal Employment Opportunity

Within each section of the proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Forms and certifications included in Tab 8 are required to ensure that an Offeror has completed a responsive proposal. The completed certifications will not count toward the page limits for this solicitation.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

### 3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence – the fully executed Proposal Form as contained in Appendix 2. Failure to provide the form with all the information indicated to be inserted will result in rejection of the proposal as non-responsive.

## 4.0 SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

### 4.1 Project Understanding

Offerors shall provide a narrative on their understanding of the proposed work.

### 4.2 Qualifications and Resources

Offerors shall provide a description of their qualifications and resources available for the completion of the Mid-Region Economic Recovery and Resiliency Plan.

### 4.3 Methodology

Offerors shall provide a description of their proposed methodology for completing the plan.

This methodology explanation should include quality control/quality assurance measures, standards, and processes that will ensure high-quality project deliverables that meet or exceed the specifications outlined in this RFP.

#### 4.4 Experience Providing Equivalent Products/Services

Offerors shall provide a description of relevant previous experience. Relevant experience should include examples and descriptions of the following:

1. Experience successfully working with and engaging rural communities in a planning process
2. The ability to engage the public and implement public input during the planning process
3. Experience gathering and analyzing key economic data
4. Ability and experience developing long range economic development plans
5. Background creating strategies to build resilience in communities
6. Experience identifying key projects and implementation strategies to meet goals outlined in a plan

#### 4.5 Schedule

The Offeror is advised that it is intended to complete the work within a maximum of 245 calendar days (8 months) after the finalist has been selected, or by June 15, 2022, whichever occurs first. Offerors shall provide a description of the ability to complete the scope of work in the required time frame.

#### 4.6 Project Cost

Offerors shall provide project cost in Appendix 7 of this RFP. These costs shall not include applicable gross receipts taxes. Cost shall be under separate cover, not included in technical portion of proposal.

Cost points shall be calculated based on the sum from the calculation using the following formula:

$$\frac{\text{Lowest Responsive Offeror's Price}}{\text{Compared Offeror's Price}} \times 10 = \text{Cost evaluation points}$$

### 5.0 EVALUATION

#### 5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each. These factors, along with the general requirements and special provisions, will be used in the evaluation of Offeror proposals.

<u>Evaluation Factor</u>	<u>Points</u>
1. Project Understanding	10
2. Qualifications and Resources	15
3. Methodology	30
4. Experience Providing Equivalent Products/Services	30

5. Schedule	10
6. Project Cost (Price sheet – sealed separately)	5
<b>SUBTOTAL</b>	<b>100</b>
5. Oral Interview (If Necessary)	30
6. Best & Final Offers (If Necessary)	20
<b>TOTAL AVAILABLE</b>	<b>150</b>

## 5.2 Evaluation Process

The evaluation process will follow the steps listed below:

### 5.2.1 Proposal Compliance

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

### 5.2.2 Contacting Offerors

The Procurement Manager may contact the Offeror for clarification of the response as specified herein.

### 5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors detailed in this solicitation that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. The Evaluation Committee may then make a recommendation to MRCOG Executive Director for award or solicit Oral Interviews from the finalists. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with the evaluation process specified herein. The Evaluation Committee may then make a recommendation to MRCOG Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points as specified herein and then make a final recommendation for award to the MRCOG Executive Director. A serious deficiency in the response to any one factor, however, may be grounds for rejection regardless of overall score.

APPENDIX 1  
ACKNOWLEDGEMENT OF RFP FORM

**RFP#: 2022-01**

In acknowledging the receipt of this Request for Bid, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Appendix 6.

The acknowledgement of receipt should be signed and returned to the Procurement Officer. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a bid for the procurement checked below at least five (5) working days prior to the bid due date, will receive copies of all potential Offeror written questions and the MRCOG's written responses to those questions as well as solicitation amendments, if any, that are issued.

Organization / Individual	_____	
Represented by	_____	Title _____
Phone No.	_____	Fax No. _____
E-mail Address	_____	
Address	_____	
City/State/Zip Code	_____	
Signature*	_____	Date _____

\* Formal signature required - e-mail transmittal with scanned signature is acceptable.

This name and address will be used for all correspondence related to the Request for Proposals/Bids.

Firm  does  does not (**check one**) intend to respond to this Request for Proposals/Bids.

Return to: Kim Monjaras  
Procurement Officer  
809 Copper Ave. N.W., Albuquerque, NM 87102  
Phone: 505-247-1750; Fax: 505-247-1753  
E-mail: [kmonjaras@mrcog-nm.gov](mailto:kmonjaras@mrcog-nm.gov)

APPENDIX 2  
PROPOSAL FORM

**RFP#: 2022-01**

Proposing Organization \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/State/Zip Code \_\_\_\_\_

Head of Organization \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Proposal Contact Person \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Contract Signatory Authority \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Tax/Legal Status [ ] Corporation [ ] For Profit [ ] Not-for-Profit [ ] Government [ ] Individual

Federal ID Number \_\_\_\_\_ State ID Number \_\_\_\_\_

1. I (We) am submitting on the procurement titled: \_\_\_\_\_
2. I (We) accept the Conditions Governing the Procurement stated within this solicitation.
3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. \_\_\_\_\_ to \_\_\_\_\_.

Signature of Officer \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX 3**  
**CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING**  
**RFP#: 2022-01**

I, \_\_\_\_\_, hereby certify on  
(name and title of official)

behalf of \_\_\_\_\_ that;  
(name of Contractor)

(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 and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee or 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

For purposes of this Certification, this Agreement shall be considered a federal contract. This certification is a material representation of fact upon which reliance is 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 section 1352, title 31, U.S. Code. 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

APPENDIX 4  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED  
TRANSACTIONS

**RFP#: 2022-01**

To be submitted with each bid or offer exceeding \$25,000.

The Contractor, certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

THE CONTRACTOR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub- section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

APPENDIX 5  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM  
RFP#: 2022-01

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS/BIDS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

**"Contract"** means any Agreement for the procurement of items of tangible personal property, services, professional services or construction.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or

son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

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

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution made by: \_\_\_\_\_ Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_ Date contribution(s) Made: \_\_\_\_\_

Amount(s) of Contributions: \_\_\_\_\_

Nature of Contributions(s): \_\_\_\_\_ Purpose of Contributions(s): \_\_\_\_\_

\_\_\_\_\_  
**Signature, Title, Date**

-OR-

NO CONTRIBUTION(S) IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
**Signature, Title, Date**

APPENDIX 6  
CERTIFICATION REGARDING  
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY  
AND NONDISCRIMINATION  
AHRO Form CC 2

**RFP#: 2022-01**

The Offeror hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Offeror has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.

Yes  No

Compliance reports were required to be filed in connection with such contract or subcontract.

Yes  No

The Offeror has filed all compliance reports due under applicable instruction. If this does not apply, leave blank.

Yes  No

\_\_\_\_\_  
Company Name of Offeror

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
FAX Number

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

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX 7 COST SHEET

<b>Project Budget</b>	
<b>Research and Data Gathering</b>	
Review of Existing Plans	
Public Engagement Expenses (marketing, survey costs, etc.)	
<b>Plan Development</b>	
Economic Conditions Analysis	
Evaluation of Hazards and Disasters	
Evaluation of Social and Economic Weaknesses	
Development of Goals and Strategies	
<b>Travel</b>	
<b>Equipment and Supplies</b>	
<b>Other (please specify)</b>	
<b>Total Project Cost</b>	<b>\$0.00</b>

EXHIBIT A  
DRAFT CONTRACT

RFP#: 2022-01

This Agreement ("Agreement") is made and entered into on the date last entered below, by and between \_\_\_\_\_ ("Contractor"), and the Mid Region Council of Governments ("MRCOG"), an association composed of and representing local governments within New Mexico State Planning and Development District Three, herein referred to as "Parties."

**RECITALS**

**WHEREAS**, the MRCOG issued a Request for Proposals RFP \_\_\_\_\_ - \_\_\_, titled \_\_\_\_\_, dated \_\_\_\_\_, which is attached hereto as Appendix A, and by this reference made a part of this reference made a part of this agreement; and

**WHEREAS**, the Contractor submitted its proposal, dated \_\_\_\_\_ in response to RFP \_\_\_\_\_ - \_\_\_, which proposal is attached hereto as Appendix B, and by this reference made a part of this agreement; and

**WHEREAS**, MRCOG desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

**Section 1. Miscellaneous Representations**

A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement.

B. MRCOG has the right and power to enter into this Agreement.

**Section 2. Scope of Services**

A. The Contractor shall be available to assist the MRCOG in the services specified in Exhibit A (hereinafter referred to as "Services") related to the \_\_\_\_\_ Project in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by MRCOG.

B. Staffing. MRCOG designates \_\_\_\_\_ as MRCOG Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the

MRCOG Director shall serve as Project Manager.

C. Contractor designates \_\_\_\_\_ as Contractor's Project Manager. Contractor's Project Manager shall transmit all work product and invoices to the MRCOG Project Manager. The Contractor Project Manager shall direct the technical aspects of the Services; however, the Contractor may provide additional qualified personnel to meet its obligations under this Agreement. Contractor shall provide to MRCOG a statement of qualifications for each individual performing work under this Agreement when requested to do so by MRCOG. Any change in Contractor's appointment of its Project Manager shall not be allowed until approved in writing by MRCOG.

### **Section 3. Compensation and Method of Payment**

A. For performing the Services specified in Exhibit A hereof, MRCOG agrees to pay the Contractor up to the amount of \_\_\_\_\_ Dollars \$\_\_\_\_\_, which amount shall include any gross receipts tax and which shall constitute full and complete compensation for the Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such services in accordance with Exhibit B Schedule of Fees included in this Agreement.

B. This Contract is for on call services related to the tasks specified in Exhibit A attached hereto. Written work authorizations shall be issued that describe the task(s) specified in in Exhibit A in detail and the related level of compensation. No compensation shall be provided by the MRCOG for work not specifically authorized in this manner, or for work beyond the amount stated in the work authorization.

### **Section 4. Method of Payment.**

A. Payment to Contractor. Amounts due to Contractor shall be paid to the Contractor upon receipt by MRCOG of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of MRCOG and upon receipt of payment by MRCOG from the funding agency. Payments to the Contractor shall be paid within the time periods prescribed by statute.

B. Reports Required. Contractor will attach to the invoice a detailed work effort and progress report in a format mutually agreed upon by the MRCOG Project Manager and the Contractor. Payments shall be made only after verification and acceptance of the progress reports by the MRCOG Project Manager.

C. Verification of Invoices. MRCOG shall be entitled to verify the personnel time and other costs charged to MRCOG pursuant to the provisions of this Agreement.

### **Section 5. Time of Performance**

The Services described herein shall commence on the date this Agreement is executed and shall be completed within \_\_\_\_\_ (\_\_) years, unless the time for completion is

extended pursuant to Option to Extend Term contract clause contained herein.

## **Section 6. Option to Extend Term**

A. MRCOG may extend the term of this Agreement for up to \_\_\_\_\_ (\_\_) years in one (1) year increments by written notice to the Contractor. If feasible, MRCOG shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Agreement expires. The preliminary notice does not commit MRCOG to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Agreement.

B. If MRCOG exercises this option to extend the term of the Agreement, the extended Agreement shall be considered to include this option provision.

C. The total duration of this Agreement, including the exercise of any options under this clause, shall not exceed \_\_\_\_\_ (\_\_) years.

## **Section 7. Independent Contractor**

Neither Contractor nor its employees are considered to be employees of MRCOG for any purpose whatsoever. Contractor is considered an independent contractor at all times in the performance of the Services described herein. Contractor further agrees that neither it nor its employees are entitled to any benefits from MRCOG under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of MRCOG.

## **Section 8. Personnel**

A. Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with MRCOG.

B. All the Services required hereunder will be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

D. None of the work or the Services covered by this Agreement shall be subcontracted without the prior approval of MRCOG. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

## **Section 9. Insurance**

A. General Requirements. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New

Mexico. When requested by the MRCOG, Contractor shall provide to the MRCOG copies of any or all policies of insurance for the insurance coverage required in this Section. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If the Contractor subcontracts, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance if required by law to cover all hazards associated with Services provided hereunder that are not covered by the Contractor's insurance policies.

The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the MRCOG of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

The Contractor shall furnish the MRCOG with certificates of insurance, substantially the same as Exhibit D, and shall deliver said certificates to the Project Manager, MRCOG, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give MRCOG notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to MRCOG. Documents establishing the continuation or replacement of insurance shall be received by the MRCOG no less than 30 days prior to the expiration of the insurance coverage.

B. Approval of Insurance. Even though a "Notice to Proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the MRCOG shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.

C. Commercial General Liability Including Automobile. The Contractor shall procure and maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation, as further described below. All such policies of insurance shall have liability limits in amounts of One Million Dollars (\$1,000,000) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, the Contractor's contractual liability to the MRCOG hereunder, and claims arising out of or from the Contractor's performance of this

Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to MRCOG premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. MRCOG reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

D. Increased Limits. If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the MRCOG may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

E. Additional Insured. The MRCOG shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

F. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Worker's Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the MRCOG, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not MRCOG employees for any purpose.

G. Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section 7 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible) for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the MRCOG and held by a bank authorized to do business in New Mexico which is acceptable to MRCOG.

H. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. MRCOG shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

I. Professional Liability Insurance. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, Professional Liability (errors and omissions) insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit of liability per occurrence with a general aggregate of (\$1,000,000).

## **Section 10. Reports, Information and Ownership of Documents**

A. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to MRCOG such statements, records, reports, data and information as requested by MRCOG pertaining to matters covered by this Agreement.

B. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to MRCOG unless specifically authorized to do so in writing in advance by MRCOG.

C. Ownership and Use of Documents. Contractor's work product produced pursuant to this Agreement shall become the sole property of the MRCOG. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents.

D. Computer Program Licensing Agreements. MRCOG shall have the option to require (at MRCOG's cost) that the Contractor provide any and all computer licensing agreements necessary to permit MRCOG to use computer programs and data related to the services performed by Contractor under this Agreement.

E. Future Use. MRCOG's use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of Contractor as specified in this Agreement shall be at MRCOG's risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.

F. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The MRCOG shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Agreement. Contractor may use Materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted MRCOG, provided that such Materials shall not include the MRCOG's confidential or proprietary information, to

the extent the MRCOG provides Contractor with notice that such materials are considered confidential or proprietary by the MRCOG. The MRCOG shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so, requested in writing by Contractor.

#### **Section 11. Establishment and Maintenance of Records**

Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by MRCOG with respect to all matters covered by this Agreement. Except as otherwise authorized by MRCOG, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

#### **Section 12. Audits and Inspections**

At any time during normal business hours and as often as MRCOG may deem necessary, there shall be made available to MRCOG or the funding agency and the State Auditor for examination all of Contractor's records with respect to all matters covered by this Agreement. Contractor shall permit MRCOG, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the MRCOG at the MRCOG offices in Albuquerque, New Mexico, within fifteen (15) days after receiving a written request for such records by the MRCOG. In the event Contractor does not wish to make its books and records available at the MRCOG offices, then Contractor shall pay reasonable travel and accommodation expenses for the MRCOG staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit.

#### **Section 13. Changes**

MRCOG may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between MRCOG and Contractor shall be incorporated in written amendments to this Agreement.

#### **Section 14. Suspension**

A. Suspension of Work. MRCOG shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Agreement. Such order shall be in writing and identified as a "Suspension of Work Order". Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to Section 4 of this Agreement.

B. Resumption of Work. In the event MRCOG cancels a Suspension of Work Order,

Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if MRCOG determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

## **Section 15. Termination**

A. Termination by MRCOG for Cause, ten (10) day notice. If through any cause Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, MRCOG shall thereupon have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.

Notwithstanding the above, Contractor shall not be relieved of liability to MRCOG for damages sustained by MRCOG by virtue of any breach of this Agreement by Contractor, and MRCOG may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due MRCOG from Contractor is determined.

B. Termination by MRCOG: twenty (20) day notice. MRCOG may terminate this Agreement at any time by giving at least twenty (20) day notice in writing to Contractor. Said twenty (20) days shall run from the day on which Contractor received said notice of termination. In the event this Agreement is terminated by MRCOG as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Contractor, Paragraph A of this section hereof, relative to termination, shall apply.

C. Work Product. In the event of termination under the provisions of this section, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Agreement shall, at the option of the MRCOG, become the property of the MRCOG and Contractor shall deliver such work product to MRCOG within thirty (30) days of receipt of the request of the MRCOG.

D. Termination by Contractor: thirty (30) Day notice. The Contractor shall be entitled to terminate this Agreement in the event of a default by the MRCOG in the performance of any covenant or agreement herein required to be performed by the MRCOG and the failure of the MRCOG to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the MRCOG shall have remedied the default prior to receipt of the Contractor's notice of termination.

E. Non-Funding. The performance of this Agreement is contingent upon the necessary appropriations and authorizations forthcoming for the performance of this

Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by MRCOG by giving notice to Contractor. Such event shall not constitute an event default by MRCOG. All payment obligations of the MRCOG shall cease upon the date of termination. The MRCOG's decision as to whether sufficient appropriations are available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

## **Section 16. Breaches and Dispute Resolutions**

A. Disputes. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MRCOG, herein defined as the MRCOG Procurement Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MRCOG Procurement Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the MRCOG Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Performance During Dispute. Unless otherwise directed by MRCOG, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

C. Remedies. If any controversy or claim arising out of this Agreement cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MRCOG is located.

D. Right and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder 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 MRCOG or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **Section 17. Special Federal Provisions**

This procurement may be supported in part or in whole from time to time with federal funds. Hence, Federal-Aid requirements and the following contractual clauses and certifications are applicable to this solicitation.

A. Fly America. The Contractor shall 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 Contractors are required to use US 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 traveled by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier is 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 Contractor agrees to include the requirements in this section in all subcontracts that may involve international air transportation.

B. Buy America. The contractor 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 FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)l and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit the appropriate Buy America certification with all bids or offers on FTA-funded contracts exceeding \$100,000, except those subject to a general waiver. Certification is not required for this procurement due to lack of applicability per the scope of work detailed herein.

C. Seismic Safety. The Engineer agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Engineer agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

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

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

F. Prohibition Against Use of Federal Funds for Lobbying. Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required. Certification is required as provided in the solicitation.

G. Access to Records and Reports. The Contractor shall comply with all requirements of 49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17. The Contractor agrees to provide the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

I. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the MRCOG and understands and agrees that the MRCOG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

J. Recycled Products. The Contractor 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.

K. No Government Obligations to Third Parties. The MRCOG and Contractor 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 MRCOG, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

L. Program Fraud and False or Fraudulent Statements and Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor 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 Contractor 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 Contractor to the extent the Federal Government deems appropriate. The Contractor 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 originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor 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 subcontractor who will be subject to the provisions.

M. Debarment and Suspension. The Contractor shall provide certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations. Certification is required as provided in the solicitation.

N. Civil Rights Compliance. 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, and Federal transit law at 49 U.S.C. § 5332, the Contractor 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 Contractor agrees to comply with applicable Federal implementing regulations.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor 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 undertaken in the course of the Project.

Affirmative Action - The Contractor 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 Contractor agrees to comply with any Federal implementing requirements.

Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any further Federal implementing requirements.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor 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. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only, if necessary, to identify the affected parties. Acceptance of offer is contingent upon the bidder's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders and New Mexico statutes relating to the enforcement of civil rights.

O. Disadvantaged Business Enterprise. The contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Mid Region Council of Governments (MRCOG) adheres to the annual DBE goal established by the State. The overall goal for DBE participation utilizing race-neutral measures is 3.94%. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico Department of Transportation, Office of Equal Employment Opportunity Programs (OEOP), P.O. Box 1148, Santa Fe, New Mexico 87504-1148 or from the following state website: <https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot&XID=177>. A separate contract goal has not been established for this procurement.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as deemed appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. If applicable, the prime contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within 30 days from the receipt of each payment the prime contract

receives from MRCOG. Any delay or postponement of payment beyond the above referenced time frame may occur only for good cause following written approval from the MRCOG.

The contractor must promptly notify MRCOG whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent.

Q. Incorporation of Federal Transit Administration (FTA) Terms. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause the agency to be in violation of the FTA terms and conditions.

R. Text Messaging While Driving. In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Contractor is encouraged to comply with the terms of the following Special Provision.

Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

Safety. The Contractor is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving Contractor owned or rented vehicles or Government-owned, leased or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as: Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subcontracts with its subcontractors and third-party contracts and also encourage its subcontractors, lessees, and third-party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subcontract, lease, and third-party contract at each tier financed with Federal assistance provided by the Federal Government.

## **Section 18. General Conditions**

### **A. Contract Interpretation.**

1) Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the MRCOG or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

2) Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

3) Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

4) Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

5) Entire Agreement. This Agreement represents the entire contract

between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

6) Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) Exhibits Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

8) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of MRCOG.

9) Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by MRCOG, or waiving or limiting the MRCOG's control over the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the MRCOG.

#### B. Discrimination Prohibited.

1) General. In the use and occupation of the MRCOG premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) Civil/Human Rights Laws. In the operation and use of the MRCOG premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Part 21, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national

origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the MRCOG facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor's violation of this section shall be deemed a material breach of this Agreement.

5) Contractor shall include the provisions of this section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

#### C. Indemnification Agreement.

1) General Indemnification. The Contractor agrees to indemnify and hold harmless the MRCOG, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

2) Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.

3) Survives the Term. This indemnification agreement shall survive the term of this Agreement.

4) Scope of Indemnification. With respect to any liability, claims,

damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs , (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the MRCOG and on behalf of the MRCOG, ( c) and satisfy judgments finally establishing the liability of the MRCOG in all actions for which the Contractor is obligated to indemnify the MRCOG, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against MRCOG in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by MRCOG for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

5) Miscellaneous. MRCOG shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify MRCOG. In the event MRCOG fails to give Contractor notice of any such demand, notice, summons, or other process received by MRCOG, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify the MRCOG, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the MRCOG. This section shall not be construed as a waiver of the MRCOG's immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the MRCOG.

D. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the MRCOG. The MRCOG shall not be required to approve any assignment or other transfer of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

E. Ethics.

1) Conflict of Interest. As a condition of this Contract, the Contractor shall furnish the MRCOG with a Campaign Contribution Disclosure form, substantially the same as Exhibit D, and shall deliver said disclosure to the Project Manager, Mid-Region Council of Governments, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. The Contractor shall disclose whether any member of the MRCOG Board of Directors, officer or employee of the MRCOG, has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the MRCOG and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the MRCOG to the Contractor in this



G. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of MRCOG or Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of their execution or attempted execution of this Agreement.

H. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of MRCOG for any purpose whatsoever.

I. Force Majeure. Except as expressly provided in this Agreement, neither MRCOG nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

J. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.

K. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to MRCOG rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

L. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the MRCOG, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for MRCOG the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.

M. Savings. MRCOG and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. MRCOG and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

**IN WITNESS WHEREOF**, the Parties referenced herein have executed this Agreement on the dates specified below.

**MID REGION COUNCIL OF GOVERNMENTS**

By: \_\_\_\_\_  
Executive Director

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

**CONTRACTOR**

By: \_\_\_\_\_

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

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

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
MRCOG Legal Counsel

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

**APPENDIX A**

**REQUEST FOR PROPOSAL**

**MRCOG Procurement No. \_\_\_\_\_ - \_\_\_\_\_**

**APPENDIX B**

**PROPOSAL FROM:** \_\_\_\_\_

**MRCOG Procurement No.** \_\_\_\_\_ - \_\_\_\_\_

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**SCHEDULE OF FEES**

**EXHIBIT C**

**CERTIFICATE OF INSURANCE FORM**

# CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER	THIS CERTIFICATE DOES NOT AMEND< EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES
	COMPANIES AFFORDING COVERAGE
	COMPANY
	LETTER A
	COMPANY LETTER B
	COMPANY
INSURED	COMPANY LETTER D
	COMPANY LETTER E

**COVERAGES:** THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED FOR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
	<b>GENERAL LIABILITY*</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT. <input type="checkbox"/> SELF INSURANCE RETENTION				GENERAL AGGREGATE	\$
					PRODUCTS-COMP./OP.AGG.	\$
					PERSONAL & ADV. INJURY	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED. EXPENSE (Any one person)	\$
					SELF INSURANCE AMOUNT	\$
	<b>AUTOMOBILE LIABILITY *</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> SELF INSURANCE RETENTION				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per Person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
					SELF INSURANCE AMOUNT	\$
	<b>EXCESS LIABILITY *</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	<b>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</b>				STATUTORY LIMITS	\$
					EACH ACCIDENT	\$
					DISEASE - POLICY LIMIT	\$
					DISEASE - EACH EMPLOYEE	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

**Mid Region Council of Governments is added as an additional insured.**

CERTIFICATE HOLDER <b>Mid Region Council of Governments</b> 809 Copper Ave., N.W. Albuquerque, NM 87102	Director
MODIFICATION/CANCELLATION: THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE SHALL NOT BE MATERIALLY CHANGED OR ALTERED, OR CANCELED WITHOUT FIRST GIVING THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE MID REGION COUNCIL OF GOVERNEMENTS.	