



RIO METRO
REGIONAL TRANSIT DISTRICT

Rio Metro Regional Transit District REQUEST FOR PROPOSALS

On-Call General Construction Services

Issued: July 24, 2022
Procurement No. 2023-02

Proposal Due Time/Date: August 24, 2022, 5:00 p.m. (MST)

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1.0 INTRODUCTION

1.1 Purpose of this Request for Proposals

The Rio Metro Regional Transit District (RMRTD) invites individuals and firms (Offerors) to submit Proposals for a Contract for the work indicated in the title page of this RFP in accordance with the specifications contained in this Request for Proposals (RFP). This RFP contains specific requests for information.

The purpose of this procurement is to select multiple individual(s)/firm(s) that will assist the RMRTD, for On-Call General Construction Services. These services will be for Transit Facility Improvements that may be located at RMRTD-owned or maintained facilities.

Contingent upon RMRTD's satisfaction with the performance of selected Contractor(s) and acceptance of project deliverables under a Contract negotiated for services described in this RFP, RMRTD may consider extending or renewing the Contract. The Contract, including any extensions or renewals, may not exceed four (4) years in total.

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. Federal certifications are required for proposals to be deemed responsive. Davis-Bacon Act will be required for all wages (state wage rates may also apply). If project requires bonds, vendor will be required to provide an adequate bond.

1.2 Scope of Work

To establish an on-call contract with a general contractor to perform various construction related tasks along the New Mexico Rail Runner Express corridor and at other Rio Metro transit facilities. Contractor will supply adequate and competent labor, supervision, tools and equipment, installed and consumable materials, services, testing devices, required permitting and each and every item of expense necessary. Projects may cover from general maintenance to heavy construction.

1.3 Procurement Manager

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

Stephanie Aragon, Procurement Officer
809 Copper N.W.
Albuquerque, NM 87102
Phone : 505-247-1750, Fax : 505-247-1753
E-mail : saragon@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 RMRTD employees do not have the authority to respond on behalf of the RMRTD.

1.4 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 RMRTD Executive Director to evaluate Offerors Proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Executive Director for contract award. It contains all written determinations resulting from the procurement.

"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 Offerors Proposals.

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

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

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

"Procurement Officer" means the person or designee designated by the RMRTD to oversee all RMRTD 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 Proposals 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 Proposals.

"Responsive Offer" or "Responsive Proposals" means an offer or Proposals 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.

1.5 Background Information

The Rio Metro Regional Transit District (RMRTD) is an association of local governments in central New Mexico. Members include county, municipal, pueblo and special purpose units of governments in the Counties of Bernalillo, Sandoval, and Valencia. RMRTD also maintains transit facilities in Santa Fe County. Work performed under this contract may occur in any of these counties.

2.0 Conditions Governing the Procurement

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 RMRTD.

Issue RFP – July 24, 2022

Written Questions due – August 12, 2022, 5:00 PM

Proposals Due – August 24, 2022

Proposal Review – Week of August 24, 2022

Selection of Qualified Vendors – Week of August 29, 2022

2.2 Explanation of Events

2.2.1 Pre-Proposal Conference

There will be no pre-proposal conference associated with this RFP.

2.2.2 Deadline to Submit Additional Questions

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

2.2.3 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 Officer. 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.

2.2.4 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.

2.2.5 Submission of Proposal

All proposals must be received by the Procurement Officer or designee **no later than August 24, 2022, 5:00 p.m. (MDT) on**. 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 Officer 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.

Offers will be considered to be responsive if they conform to all material respects to the requirements set forth herein. All offers must include certifications that are made a part of this solicitation.

2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Officer 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 could reasonably be anticipated as capable of being made responsive.

2.2.7 Selection of Finalists

The Purchasing Officer will provide the list of finalists to the Executive Director. The Purchasing Officer 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.

2.2.8 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 one hour with an additional fifteen minutes for questions and answers.

2.2.9 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.

2.2.10 Contract Negotiations

A draft Contract is made a part of this solicitation as evidenced in Exhibit C. The Contract is subject to change and shall be negotiated with the Finalist Offerors selected for award by the Executive Director. 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 RMRTD reserves the right to negotiate a Contract with another Finalist Offeror without undertaking a new procurement process. RMRTD also reserves the right to make multiple Contract awards.

2.2.11 Contract Award

The Contract shall be awarded to the Finalist 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 RMRTD within a reasonable time as defined in this solicitation. Contract award may be to multiple Offerors.

Contracts are not valid until signed by all parties to the Contract issued in response to this RFP.

2.2.12 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.

Stephanie Aragon
Mid-Region Council of Governments
809 Copper Ave., N.W.
Albuquerque, NM 87102
Phone : 505-247-1750, Fax : 505-247-1753
E-mail : saragon@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 RMRTD procurement policy the New Mexico State Procurement Code and all applicable federal procurement laws and regulations. For more information on federal laws and regulations, applicants are encouraged to review Federal Transit Administration Circular 4220.1F.

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

2.3.1 Acceptance of Conditions Governing the Procurement

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

2.3.2 Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, presentation of any Proposals 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 RMRTD. The RMRTD will make contract payments to only the prime contractor.

2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the Proposals, 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. Because Offerors at this time may not be able to reasonably anticipate all potential construction trades that may be required for projects resulting from this RFP, Contractors may propose additional subcontractors when submitting for specific projects. However, such subcontractors shall be subject to Rio Metro's review and approval.

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 Proposals and must be clearly identified as such in the transmittal letter. The RMRTD personnel will not merge, collate, or assemble Proposals materials.

2.3.6 Offerors' Rights to Withdraw Proposals

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 Proposals Offer Firm

Responses to this RFP will be considered firm for ninety calendar days after the due date for receipt of Proposals.

2.3.8 Disclosure of Proposals 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 Proposals 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 Proposals in order to facilitate eventual public inspection of the non-confidential portion of the Proposals.

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 Proposals should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the Proposals will be so disclosed. The Proposals 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 RMRTD 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 RMRTD determines such action to be in the best interest of the RMRTD.

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 RMRTD'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 Proposals

Only information supplied by the RMRTD 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 RMRTD and a contractor will follow the format specified by the RMRTD. An Offeror may review the form of contract at the office of the Procurement Manager. However, the RMRTD reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

Should an Offeror object to any of the RMRTD's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The RMRTD 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 RMRTD and will result in disqualification of the Offerors Proposals.

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 RMRTD 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 RMRTD and the selected Offerors and shall not be deemed an opportunity to amend the Offerors' Proposals.

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 Proposals 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 RMRTD.

2.3.19 Project Team Prohibited Activities

RMRTD employees or RMRTD 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 RMRTD Rights

The RMRTD 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 RMRTD 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 Proposals 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 RMRTD. However, any technical or user documentation submitted with the Proposals of non-selected Offerors shall be returned after the expiration of the protest period. Offerors not selected for award of a contract may pick up the documentation at the RMRTD 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 available by electronic means at the following website:

<http://www.riometro.org>

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 Offerors possession and the version maintained by the RMRTD, the version maintained by the RMRTD shall govern.

2.4 Special Provisions

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. Certification of Restrictions on Lobbying is required for this solicitation as provided in Appendix 4 of this solicitation.

2.4.2 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 3 of this solicitation.

2.4.3 Affirmative Action/Civil Rights Compliance

All proposals must include a certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 5 of this solicitation.

2.4.4 Debarment and Suspension

The Contractor agrees to comply and assures the compliance of each third-party contractor and subrecipient at any tier with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and "Governmentwide Debarment and Suspension Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to and assures that its third-party contractors and subrecipients will review the Excluded Parties Listing System (EPLS) at <https://www.sam.gov/> before entering into any subcontracts funded hereunder. RMRTD will verify and take measures to obtain the compliance of their project participants, such as third party contractors and subrecipients, with the fundamental requirements of those certifications and assurances that they are not suspended or debarred based on a review of SAM.gov.

2.4.5 No Government Obligations to Third Parties

The Contractor acknowledges and agrees 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 Owner, 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 from the U.S. Department of Transportation (USDOT). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2.4.6 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 USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. 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 USDOT 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 USDOT 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 provided by USDOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.4.7 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 RMRTD, the USDOT, 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.

2.4.8 Federal Changes

The Contractor shall at all times comply with all applicable USDOT regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) with the Federal Transit Administration (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 the Contract.

2.4.9 Incorporation of Federal Transit Administration (FTA) Terms

All contractual provisions required by the USDOT, as set forth in FTA Circular 4220.1F and subsequent amendments, 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 solicitation. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause a violation of the FTA terms and conditions.

2.4.10 Energy Conservation Requirement

The Contractor 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.

2.4.11 Breaches and Dispute Resolutions

A. Disputes. Disputes arising in the performance of the resulting Contract which are not resolved by agreement of the parties shall be decided in writing by an authorized representative designated by the RMRTD. 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 RMRTD authorized representative. 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 RMRTD authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

C. Remedies. If any controversy or claim arising out of this Contract 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 mediators 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 RMRTD is located.

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

2.4.12 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 Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to USDOT 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 provided by USDOT.

2.4.13 Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to USDOT 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 provided by USDOT.

2.4.14 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.

2.4.15 Disadvantaged Business Enterprise

A. This 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*. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico Department of Transportation (NMDOT), Office of Equal Employment Opportunity Programs' website: <https://nmdot.dbesystem.com>. A separate contract goal has not been established for this procurement.

B. The 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as deemed appropriate. Each subcontract that the Contractor signs with must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The Contractor agrees to pay each subcontractor under the Contract for satisfactory performance no later than thirty (30) days from the receipt of each payment the Contractor receives from the RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

D. If applicable, the Contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within thirty (30) days from the receipt of each payment the contractor receives from the RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

E. Upon written request from RMRTD, the Contractor will provide a report of DBE participation obtained through race-neutral means throughout the period of the Contract.

2.4.16 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 and other implementing requirements FTA may issue.

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 that may in the future affect construction activities undertaken in the course of the Project. 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 implementing requirements FTA may issue.

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 implementing requirements FTA may issue.

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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

2.4.17 Contract Work Hours and Safety Standards Act

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work greater than \$100,000 which may require or involve the employment of laborers or mechanics who are not exempt by the Fair Labor Standards Act (FLSA) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

B. Violation, liability for unpaid wages, liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph one of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of

the standard workweek of forty hours without payment of the overtime wages.

C. Withholding for unpaid wages and liquidated damages - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided.

D. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

2.4.18 Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

2.4.19 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.

2.4.20 Privacy Act

The Contractor agrees to comply with all applicable terms of the Privacy Act of 1974; will notify the government when the Contractor anticipates operating a system of records on behalf of the government if such a system contains information about individuals retrievable by the individual's name or other identifier; and will include in all subcontracts this Privacy Act notification.

2.4.21 Buy America Requirements

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 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

2.4.22 Cargo

Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.4.23 Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its

subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs

reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any

apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the RMRTD may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the RMRTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the

Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither the Contractor nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

2.4.24 Bonding

1. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

2.4.25 Seismic Safety - The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

The contractor 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 contractor also 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.

2.5 Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows if the project is \$150,000 or above:

1. Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

2. Payment bonds

1. The penal amount of the payment bonds shall equal:
 1. Fifty percent of the contract price if the contract price is not more than \$1 million.
 2. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 3. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

3.0 RESPONSE FORMAT AND ORGANIZATION

3.1 Number of Responses

Offerors shall submit only **one** (1) proposal for contracts associated with this RFP.

3.2 Number of Copies

Offerors shall deliver **one (1) original, five (5) identical copies and one (1) digital copy**. Digital copies shall include one complete copy and one 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. 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.

Proposer may submit a proposal for any or all categories. For each category submit tabs 2,3 & 4.

Tab 1. Appendix 2: Proposal Form

Tab 2. Project Understanding

Tab 3. Qualifications & Resources

Tab 4. Previous Experience/References

Tab 5: Certifications

Appendix 3: Campaign Contribution Disclosure

Appendix 4: Certification Restrictions on Lobbying

Appendix 5: Certification Affirmative Action

Appendix 6 Certification Debarment, Suspension

Appendix 7: Certification of Buy America

Appendix 8: Subcontractor List

Note that Appendix 1: Acknowledge of RFP Receipt is an optional form, submitted by Offerors who wish to receive written responses to written questions and solicitation amendments as specified in this solicitation. Certifications to be included in Tab 5 are required to ensure that an Offeror has completed a responsive proposal. The completed certifications will not count toward the page limits of the proposal.

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.

Any proposal that does not adhere to these requirements may be deemed nonresponsive 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 presented in Appendix 2 of this solicitation. Failure to provide the form with all the information indicated 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 and their ability to complete the types of projects described in Exhibit B

4.2 Qualifications & Resources

Offerors shall provide a description of their qualifications and resources available. This description should include the following:

Provide information proving you have sufficient staff/resources to do these types of jobs, including resumes/work experience of project leads or foreman that the contractor is likely to assign to RMRTD construction projects

4.3 Previous Experience/References

Offerors shall provide a description of relevant previous experience, including three (3) letters of recommendation.

Provide list of public transportation-related construction projects, completed in the last 3 years, including project name, project type, original project cost, additional cost from change orders, project duration, additional time from change orders, supervisor/foreman assigned to project, and client contact information. From that list, provide a more detail description of 3 completed projects most applicable to this RFP.

5. 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, will be used in the evaluation of Offeror proposals.

<u>Evaluation Factor</u>	<u>Points</u>
1. Project Understanding	25
2. Qualifications & Resources	30
3. Previous Experience/References	45
SUBTOTAL	100
5. Oral Interview (If Necessary)	30
6. Best & Final Offers (If Necessary)	20
TOTAL AVAILABLE	150

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 in Section 2.2.6.

5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors in Section 5 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 Section 5. 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 in accordance with Section 5 and then make a final recommendation for award to the MRCOG Executive Director. The Offeror providing the most advantageous proposal to the RMRTD, taking into consideration the evaluation factors in Section 5, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

6.0 Proposal Requirements

6.1 Qualifications

- 1) General Contractor's current license and other licenses held by the contractor
- 2) Insurance Certificate
- 3) Agree to Federal requirements to include Davis Bacon Wage Rates
- 4) If project meets bonding requirements vendor will be responsible for obtaining said bonds. (The Contractor shall be required to obtain performance and payment bonds as follows if the project is \$100,000 or above – proposer is required to submit a statement from their surety company as to their ability for bonding requirements.)

**APPENDIX 1
ACKNOWLEDGEMENT OF RFP FORM
RFP #2023-02**

In acknowledging the receipt of this Request for Proposal, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Appendix 8.

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 RMRTD's written responses to those questions as well as solicitation amendments, if any, that are issued.

Firm / 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.

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

Return to: Stephanie Aragon
Procurement Officer
809 Copper Ave. N.W., Albuquerque, NM 87102
Phone : 505-247-1750 ; Fax : 505-247-1753
Email : saragon@mrcog-nm.gov

**APPENDIX 2
PROPOSALS FORM
RFP #2023-02**

To: Rio Metro Regional Transit District
809 Copper N.W.
Albuquerque, NM 87102
Attn: Stephanie Aragon

Proposing Organization	
Mailing Address	
City/State/Zip Code	
Head of Organization	
Title	
Telephone Number	Fax Number
Proposals Contact Person	
Title	
Telephone Number	E-Mail Address
Contract Signatory Authority	
Title	
Telephone Number	
Tax/Legal Status	<input type="checkbox"/> Corporation <input type="checkbox"/> For Profit <input type="checkbox"/> Not-for-Profit <input type="checkbox"/> Government
	<input type="checkbox"/> 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 in Section 2.3.1.
3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. _____ to _____.

Signature of Officer _____ Date _____

APPENDIX 3

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP #2023-02

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 Proposals 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 of 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 PROPOSALSS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATAIVE 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 Proposals or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive Proposals.

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

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

Name(s) of Applicable Official(s) if any: _____
 (Completed by State Agency or Local Public Body)

Isaac	Benton	Pat	Davis	Tammy	Fiebelkorn	Renee	Grout
Tim	Keller	Klarissa	Peña	Steven	Tomita	Jack S.	Torres
Adriann	Baroba	Walt	Benson	Steven Michael	Quezada	Russell	Walkup
Mel	Knight	Charles	Griego	Donald	Lopez	Martin	Moore
Jim	Owen	Robert	Tyler	Michael	Meek		
Joseph	Bizzell	Anthony J.	Mortillaro				

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____
 Relation to Prospective Contractor: _____
 Date Contribution(s) Made: _____
 Amount(s) of Contribution(s) _____
 Nature of Contribution(s) _____
 Purpose of Contribution(s) _____

 Signature Title (Position) Date

-OR-

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE TO AN APPLICABLE PUBLIC OFFICIAL BY ME, A FAMILY MEMBER OR REPRESENTATIVE:

 Signature Title (Position) Date

APPENDIX 4
CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING
RFP#: 2023-02

(To be submitted with each proposal or offer exceeding \$100,000)

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 5
CERTIFICATION REGARDING
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
AND NONDISCRIMINATION
AHRO Form CC 2**

RFP#: 2023-02

The Proposaller hereby acknowledges and agrees to aproposale 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.

<p>The Proposaller has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>Compliance reports were required to be filed in connection with such contract or subcontract.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>The Proposaller has filed all compliance reports due under applicable instructions. If answer to this statement is "No", explain in detail on reverse side of this certification.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Company Name of Proposer

Telephone Number

Signature

FAX Number

Printed Name

E-Mail Address

Title

Date

Address: _____

APPENDIX 6
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

RFP#: 2023-02

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 7
CERTIFICATION OF BUY AMERICA
RFP#2023-02**

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

The Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Executed this day of __, 20__.

By _____
(signature of authorized official)

(title of authorized official)

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

The Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Executed this ____ day of _____, 20____.

By _____
(signature of authorized official)

(title of authorized official)

Exhibit A

Other Special Provisions

- The Selected Respondent shall be responsible for complying with all Federal, State, County, and City laws, codes, and ordinances applicable to the performance of any work resulting from this RFP. Selected Respondents are also required to adhere to all applicable local environmental ordinances. Ignorance on the part of the Selected Respondent will in no way relieve the Selected Respondent from responsibility.
- The Selected Respondent shall be responsible for complying with Chapter 62, Article 14 NMSA 1978 and is accountable for compliance of the regulation set forth.
- The Selected Respondent shall be responsible for obtaining all required permits and certifications applicable to performance under any single order placed against this RFP.
- The Selected Respondent must be knowledgeable in awarded trade discipline and have knowledge of general construction. The selected Respondents are to give “priority” to all RMRTD trade service requests. Response times for trade work will be answered within same day of receiving the call. Except for calls for an “emergency” service, which are discussed below. Selected Respondents will be required to complete non-emergency work during hours that train operation will allow.
- Selected Respondents shall be required to respond by phone within one (1) hour of receiving an emergency call and respond on site within two (2) hours. RMRTD reserves the right to determine when a call is considered an “emergency”.
- The selected Respondents must successfully acquire the RMRTD Contractor Safety Training and maintain a staff of qualified personnel available to provide reliable immediate service.
- Because any work under this contract is on-call, exact project specifications are not available. General specifications are included in this solicitation and form the basis for any work to be performed. The specifications are intended to indicate the requirements of RMRTD which include generally accepted practice in the construction industry. The selected Respondents are to provide a “GENERAL WARRANTY”. Respondent shall warrant that work performed conforms to RMRTD requirements and is free of any defect in equipment, material, or workmanship performed by Respondent or any of its subcontractors or suppliers at any tier. All work provided by Respondent shall be warranted for a minimum period of 1 year from the date of final acceptance of the work.

Exhibit B
EXAMPLE OF REQUESTED
CONSTRUCTION SERVICES AND PRODUCTS

Offerors should note which of the three following categories they would like to be considered for in their proposals. It is the RMRTD's intent to award multiple awards for each category. Each Offeror may respond to a single or multiple categories. Each project will require quotes from each awarded vendor when the project is estimated over \$20,000.

Category 1

General right-of-way/station construction services

To establish an on-call contract with a general contractor to perform various construction related tasks along the NMRX corridor and at other Rio Metro transit facilities. These projects tend to be smaller in nature and of a shorter duration than projects in Category 2. Contractor will supply adequate and competent labor, supervision, tools and, equipment, installed and consumable materials, services, testing devices, required permitting and each and every item of expense necessary for, but not limited to:

- Fencing
- Row clean-up
- Station upgrades/repair
- Parking lot upgrades/repair/stripping
- Culvert/bridge cleanout
- Tree removal
- General excavation
- Installation of concrete landing pads for bus stops. Installation of asphalt paths or concrete sidewalks that connect bus stops to nearby pedestrian facilities.
- Installation, removal, or relocation of shelters, benches, garbage cans, and other bus stop-related amenities.
- Installation of bus stop and other signs, including posts, anchors and all hardware.
- Any striping ancillary to bus stops.

Category 2

General construction services

To establish an on-call contract with a general contractor to perform capital improvement and infrastructure construction related projects for the RMRTD. Contractor will supply adequate and competent labor, supervision, tools and, equipment, installed and consumable materials, services, testing devices, required permitting and each and every item of expense necessary for, but not limited to:

- Design-build roadway, railroad crossing, flood control and facility construction projects
- Designed-build roadway, railroad crossing, flood control and facility construction projects per provided specifications

Category 3

Traffic Control:

Contractor shall furnish, install, monitor and manage traffic control devices (barricades, lighted barricades and traffic controls) in accordance with the NM Department of Transportation and the manual of uniform traffic control devices standards for roadway and railroad related projects. The contractor may also be required to furnish traffic control plans in compliance with the foregoing.

Exhibit C
DRAFT
RIO METRO REGIONAL TRANSIT DISTRICT
PROFESSIONAL SERVICES AGREEMENT
BETWEEN

THIS AGREEMENT is made by and between the **RIO METRO REGIONAL TRANSIT DISTRICT** ("RMRTD"), an association composed of and representing local governments within New Mexico State Planning and Development District Three and ("Contractor").

WITNESSETH:

WHEREAS, the RMRTD desires to engage the contractor for On-Call Services for the Rio Metro Transit District; and

WHEREAS, the Contractor is qualified and experienced in providing such services and is willing to provide such services.

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

1. Scope of Work. The Contractor shall personally perform services as described in the Scope of Work below in a satisfactory and proper manner, and perform all matters necessary or incidental to the described services as determined by RMRTD:

The RMRTD desires to access "on call services" that cover a range of areas that relate to the (RMRTD) Transit Facility Improvements documented in the Rio Metro Regional Transit District's Americans with Disability Act (ADA) Mitigation Plan, and shall include other general construction services. These improvements will further enhance the accessibility of the Rio Metro Regional Transit District's to include any RMRTD property.

Projects may cover from general maintenance to heavy construction. Contractor may be responsible for all parts & labor.

2. Compensation.

- A. For and in consideration of all services performed under the terms of this Agreement, the total amount payable by the RMRTD to the Contractor shall be an amount **not to exceed** (\$_____).
- B. Each project estimated over \$25,000, RMRTD, will request quotes from each On-Call General Construction awarded contractor, and project will be awarded to lowest quote that meets all specifications.
- C. The RMRTD shall reimburse the Contractor within 30 days after receiving a written request for payment containing a summary report and invoice for work completed, unless causes beyond the reasonable control and without the fault or negligence of the RMRTD prevent timely payment.

3. Term. This Agreement is effective on the date signed by the RMRTD Executive Director and shall continue in effect until _____, unless it is terminated earlier pursuant to Section 5 of this agreement.

4. Option to Extend Term

A. The RMRTD may extend the term of this Contract by three (3) years by giving written notice to the Contractor. If feasible, RMRTD shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires. The preliminary notice does not commit RMRTD 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 Contract.

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

5. Termination. This Agreement may be terminated without cause by either of the parties upon ten days written notice to the other party. A termination pursuant to this provision does not nullify a party's obligations for performance or liabilities for failure to perform already incurred prior to the date of termination.

6. Status of Contractor. The Contractor is an independent contractor and is not an employee of the RMRTD.

6. Assignment. The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the RMRTD. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of this Agreement.

7. Subcontracting. The Contractor shall not subcontract any portion of the services performed under this Agreement without prior approval of the RMRTD.

8. Records and Audit. The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be provided by the Contractor for inspection by the RMRTD, or the entity's designee upon written request of the RMRTD. The RMRTD has the right to audit both before and after payment. Payment under this Agreement is not a waiver of the right of the RMRTD to recover excessive or illegal payments.

9. Release. Upon receipt of final payment of the amount due under this Agreement, the Contractor shall release the RMRTD, its employees and the RMRTD from all liabilities, claims and obligations arising from or under this Agreement.

10. Authority. The Contractor agrees not to purport to bind the RMRTD to any obligation not assumed in this Agreement by the RMRTD, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

11. Compliance with Laws. In performing services pursuant to this Agreement, the Contractor shall comply with the laws of the State of New Mexico and the policies of the RMRTD.

12. Product of Services; Copyright. All materials developed or acquired by the Contractor under this Agreement are the property of the RMRTD and shall be delivered to the RMRTD not later than the termination date of the Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

13. Conflict of Interest. The Contractor warrants that the Contractor currently has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under this Agreement.

14. Amendment. This Agreement shall not be changed or supplemented except by a written instrument executed by the parties.

15. Scope of Agreement. This Agreement incorporates all the agreements and understandings between the parties concerning its subject matter, and all agreements and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents concerning the subject matter of this Agreement is valid or enforceable unless included in this Agreement.

16. Notice. This Agreement is subject to the applicable provisions of the Procurement Code. That act imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

17. Equal Opportunity Compliance. The Contractor agrees to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, be excluded from employment or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

Special Federal Provisions. detailed in attached RFP

IN WITNESS WHEREOF, the RMRTD and the Contractor have executed this Agreement as of the date of signature by the RMRTD Executive Director written below.

By: _____
Dewey V. Cave,
RMRTD Executive Director

Contractor

Date: _____

Date: _____

SS# _____

APPROVED AS TO FORM:

Larry Horan,
RMRTD General Counsel

Date: _____