



New Mexico Institute for Mining and Technology

**REQUEST FOR QUALIFICATION (RFQ)
RFQ #2204029C**

Step 1 of 3 step process

**NMIMT
Kelly Hall Construction**

RFQ DUE TIME AND DATE: April 27, 2022 @ 2:00 PM (Local time)

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STEP 1, I: BUYER AND OTHER INFORMATION

RFP DUE TIME AND DATE: April 27, 2022 @ 2:00 PM (Local time)

MANDATORY PRE- RFQ: April 6, 2022 @ 10:00 AM (Local time)
AND SITE VISIT Kelly Hall parking lot
801 Leroy Place
Socorro, NM 87801

PURCHASING CONTACT: Kimela Miller
575-835-5881

E-MAIL: purchasing@nmt.edu

RFP OFFER DELIVERY LOCATION: NMIMT
West Hall, Rm 104
801 Leroy Place
Socorro, NM 87801

DELIVER: 1 Original
4 Sets (copies)

STEP 1, II: INTRODUCTION

New Mexico Institute of Mining and Technology (NMIMT) invites you to submit a proposal for the work specified in this CMAR Request for Qualifications (RFQ). Please read carefully all instructions, specifications and terms and conditions. Failure to comply with the instructions, specifications and terms and conditions of this RFQ may result in your proposal being declared non-responsive. The purchase of Materials and / or Services awarded under the resulting RFP are subject to NMIMT's Purchase Order Terms and Conditions as well as all statements contained in this RFQ. All terms and conditions of the RFQ and RFP shall remain unchanged for the duration of any resultant agreement(s) and shall supersede and take precedence over any vendor agreement forms. Additional or different terms proposed by the vendor are hereby rejected unless agreed to in writing by NMIMT.

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

Any and all clarifications of instructions, specifications, scope, requirements, terms and conditions, insurance, bonds, or proposal preparation, etc. shall be made only by the Chief Procurement Officer listed in STEP 1, I., BUYER INFORMATION. All requests for clarification or questions regarding the instructions, terms and conditions, specifications, requirements, scope, insurance, bonds, or proposal preparation, etc. must be made in writing through the Buyer and submitted by the Questions Deadline as identified in STEP 1, V. TENTATIVE SCHEDULE OF EVENTS. If appropriate in NMIMT's sole judgment, NMIMT may issue a written Amendment answering any questions or requests for clarification received prior to the Questions Deadline, which shall thereafter become part of this Request for Proposals. No oral interpretations shall be binding upon NMIMT unless reduced to a written Amendment issued by NMIMT prior to the proposal due date and time.

Each Respondent, by submitting a Response, represents that the Respondent has read and completely understands the RFQ documents and agrees to abide by the terms of this RFQ and any resulting Agreement. Failure of the selected Contractor to fulfill the provisions of this RFQ shall in no way relieve the obligation of the Contractor to furnish all services necessary to carry out the provisions of the Agreement.

The Purchase Order terms and conditions are an equal and integral part of this request for proposals (RFP) and are listed in STEP 1, SECTION B. The terms, conditions and specifications contained in this RFP (STEP 1, SECTIONS A & B) along with any attachments and the Offeror's Response, are hereby incorporated into all purchase orders issued as a result of this RFP, including any Amendments / Addenda. NMIMT reserves the right to negotiate with a successful Offeror provisions in addition to those stipulated in this RFQ. The contents of this RFQ and RFP, as revised and / or supplemented, and the successful Offeror's proposal will be incorporated into the Contract. Should an Offeror object to any of the NMIMT Terms and Conditions (found in STEP 1, SECTIONS A & B), that Offeror must attach specific alternative language in STEP 1, EXHIBIT 2, that would be acceptable to NMIMT by stating the requested changes. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to NMIMT and will result in disqualification of the Offeror's proposal. Offerors must provide a brief

statement of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

NMIMT is not responsible for representations made by any of its officers or employees prior to the execution of the Agreement(s) unless such understanding or representation is included in the RFP or in subsequent written Amendments/Addenda or responses provided to all proposers by NMIMT's Purchasing Services Office. NMIMT is responsible only for that which is expressly stated in the solicitation document and any authorized Amendments/Addenda thereto. Any cost incurred by the Respondent in preparation, transmittal or presentation of any proposal or material submitted in response to the RFQ/RFP shall be borne solely by the Respondent.

Contractor shall not be an employee of NMIMT and is responsible for federal and state payroll and service taxes such as social security, unemployment and gross receipts taxes. Service required by this RFP for which the successful Offeror does not identify costs will be borne at the Offeror's expense and will not be charged to NMIMT.

This RFQ and RFP are governed by the New Mexico Statutes Annotated 1978, Chapter 13.

Pursuant to Procurement Code 13-1-111 NMSA 1978, NMIMT has made a determination that the use of the competitive sealed bidding method is not advantageous to ensure that the project described herein is delivered within time and budget constraints and in a quality manner. It is hereby determined that soliciting competitively sealed Qualifications Statements, issuing a Request for Proposal to Short-Listed Finalists and interviewing said Finalists for construction of the Kelly Hall, is the most effective means to ensure the Project is delivered on time, within budget, and in accordance with guidelines and criteria described herein.

And, finally, pursuant to NMSA 1978, 13-1-124.4.B, this method of procurement shall be procured utilizing the Three-Step process. The limits governing the number of steps used in this procurement are:

Three-Step CMAR Process:

- Available Project funding is more than \$500,000
- Issue a Request for Qualifications
- Issue a Request for Proposals to Short-Listed Qualified CMAR Offerors or firms
- Conduct Interviews and recommend award of a contract to the governing body

The Owner will be accepting proposals from experienced Construction firms interested in providing Construction Manager at Risk (CMAR) services for the construction of the Kelly Hall Project. The Owner intends to award this project pursuant to the Educational Facility Construction Manager at Risk Act (Section 13-1-124.1 through 13 -1-124.5 NMSA 1978). The first step shall be the submittal of qualifications. A Selection Committee will review the Statement of Qualifications received in response to this request to determine the Offerors that meet the minimum qualifications. Then, utilizing the criteria set forth in this document, the Selection Committee will evaluate the Statements of Qualifications from the qualified Offerors

and identify the qualified Offerors who will be sent a Request for Proposal for Fee and General Conditions. The Selection Committee will evaluate the proposals and the qualifications and conduct interviews with up to three of the highest ranked Offerors. After conducting interviews and after considering the factors, the Selection Committee shall rank the Offerors and recommend one firm that it feels would be most advantageous to the Owner for selection.

STEP 1, III: REQUIRED SUBMITTALS

- STEP 1, EXHIBIT 1: EVALUATION CRITERIA RESPONSE FORM
- STEP 1, EXHIBIT 2: OFFEROR'S ACCEPTANCE OF THE REQUEST FOR QUALIFICATIONS, AMENDMENTS, TERMS AND CONDITIONS
- STEP 1, EXHIBIT 3: DEBARMENT/SUSPENSION STATUS & NON-COLLUSION AFFIDAVIT
- STEP 1, EXHIBIT 4: NEW MEXICO RESIDENT & RESIDENT VETERAN'S PREFERENCE CERTIFICATION
- STEP 1, EXHIBIT 5: CAMPAIGN CONTRIBUTION DISCLOSURE FORM
- STEP 1, EXHIBIT 6: CURRENT ACTIVE PROJECTS
- STEP 1, EXHIBIT 7: SURETY DECLARATION
- STEP 1, EXHIBIT 8: CERTIFICATE OF INSURANCE

STEP 1, IV: SUBMITTAL INSTRUCTIONS

1. **SUBMITTING YOUR RESPONSE.** All Responses must be submitted to NMIMT via USPS, FedEx, UPS, or similar service. Responses may also be hand delivered Monday to Friday to West Hall, Rm 104. NMIMT Purchasing Services Office is closed for lunch from noon to 1 p.m.
2. **DUE DATE AND TIME:** All Responses must be received by NMIMT on or before the "Closing Date" and time listed in this RFQ. Responses which are received after the date and time specified in this RFQ shall not be accepted.
3. **REQUIRED SUBMITTALS:** To respond to the goods or services specified herein,
4. **CORRECTIONS:** Corrections can be made by the Offeror at any time prior to the RFQ closing date and time.
5. **WITHDRAWING AN OFFER:** RFQ Responses may be withdrawn at any time prior to the time and date set for RFQ closing. Offers may not be withdrawn after the RFQ Opening Date and Time.
6. **VENDOR QUESTIONS:** All questions must be submitted in writing to purchasing@nmt.edu or by facsimile at 575-835-6679.
7. **DEADLINE:** All questions must be received on or before the deadline listed in this RFQ. No questions will be accepted after the posted date and time.

8. REQUEST FOR QUALIFICATIONS OPENING: RFQ Response openings are not open to the public. Offerors are not invited to attend.

9. NMIMT reserves the right to accept or reject any or all Responses and to waive technical irregularities.

STEP 1, V: TENTATIVE SCHEDULE OF EVENTS

Step 1, RFQ issued	March 27, 2022
Step 1, Mandatory Pre-Qualifications site visit	April 6, 2022 at 10:00 a.m. Kelly Hall parking lot on Olive Lane
Step 1, Questions submittal deadline	April 19, 2022
Step 1, RFQ Amendments	April 20, 2022
Step 1, RFQ Responses due date and time	April 27, 2022 at 2:00 pm local time
Step 2, NMIMT issues RFP to qualified Respondents	May 17, 2022
Step 2, RFP Responses due date and time	June 17, 2022
Step 3, Interviews of the three (3) most qualified Respondents	Week of June 27, 2022
Award to selected contractor	August 25, 2022

NOTE: NMIMT reserves the right to amend this Tentative Schedule of Events as it deems necessary under the circumstances.

EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Tentative Schedule of Events shown above.

- STEP 1, RFQ Issued: This STEP 1, RFQ is issued by NMIMT in accordance with the provisions of Sections 13-1-124.1 through 13-124.5 NMSA 1978.
- STEP 1, Mandatory Pre-RFQ Conference: Interested firms are required to attend the mandatory Pre-Qualifications site visit. This may be the only opportunity Respondents will have to visit the site and speak with NMIMT regarding this Step 1, RFQ.
- STEP 1, Questions/Clarifications: Between the time of issuance of this STEP 1, RFQ and the question submission deadline, interested firms are encouraged to send any questions or requests for clarification regarding this STEP 1, RFQ, the scope of the Project or the Schedule

for the STEP 1, RFQ. Only questions submitted in writing will be answered and all submitted written questions and their answers will be summarized in the form of an Amendment to this STEP 1, RFQ. Verbal questions/discussions will have no binding effect. All Amendments, if any, will be posted on NMIMT's website for the benefit of all Respondents.

- STEP 1, RFQ Amendments: Should any Amendment to this STEP 1, RFQ be deemed necessary between issuance of the STEP 1, RFQ and the STEP 1, Response Submission Deadline, it will be posted using NMIMT's website. If an Amendment requires a time extension, the Response submission date will be changed as part of a written Amendment.
- STEP 1, RFQ Responses: STEP 1, RFQ Responses received after the Submission Deadline are non-responsive. Responses will be reviewed for completeness and compliance with all requirements by NMIMT's Purchasing Services Department and the Selection Committee. If any Response submitted is deemed non-responsive or non-compliant, the Respondent will be notified in writing of such determination. The method of protesting such a determination can be found in NSMA 13-1-172 through 13-1-176.
- STEP 1, RFQ Evaluation: The Selection Committee will review each Respondent's submission. The Selection Committee will identify the qualified Respondents who will be sent the STEP 2, RFP for CMAR Fee and Specified General Conditions.
- STEP 2, Request for Proposals (RFP): Respondents invited to submit STEP 2, RFP Responses shall submit three (3) proposal cost numbers on the Form of Proposal for CMAR Fee and Specified General Conditions provided in the STEP 2, RFP. The first cost proposal number shall be the "CMAR Fee" percent and the second cost proposal number shall be the product of the "CMAR Fee" applied to the estimated Cost of the Work for the Project. The estimated Cost of the Work will be printed on the Form of Proposal. **DO NOT ALTER THE ESTIMATED COST OF THE WORK.** The third figure shall be the lump sum amount for the "Specified General Conditions Work". The terms "CMAR Fee" and "Specified General Conditions Work" will be defined in the Contract for Construction Manager at Risk, the Matrix of Cost Allocation, and the General Conditions for Contract for Construction Manager at Risk found in the STEP 2, RFP to be provided to those Respondents who are deemed qualified.
- STEP 2, RFP Response Submissions: STEP 2, RFP Responses received after the Submission Deadline will be deemed non-responsive. STEP 2, RFP Responses will be reviewed for completeness and compliance with requirements by the Purchasing Services Office and the Selection Committee. If any STEP 2, RFP Response submitted is deemed non-responsive or non-compliant, the Respondent will be notified in writing of such determination. The method of protesting such a determination can be found in NSMA 13-1- 172 through 13-1-176.

- STEP 3, Interviews, Determination of Most Qualified Respondents: After evaluating and scoring the STEP 1, RFQ Responses and after receiving and scoring the STEP 2, RFP Responses, the Selection Committee will invite up to three of the highest cumulatively scored Respondents to participate in STEP 3, Interviews.
- STEP 3, Interviews with Finalists: Respondents selected and invited to participate in STEP 3, Interviews, will receive notices to Finalists that will include the Interview date and time and the location where the Interviews will be held. The notices will also provide the Finalists with a list of questions that must be addressed during their Interviews. The same list of questions shall be provided to all invited Finalists in the STEP 3, Interviews process. The Interviews are usually one hour in duration and will be held at NMIMT in Socorro, location TBD.
- STEP 3, Final Selection: At the completion of STEP 3, Interviews, the Selection Committee will recommend the Respondent (the Apparent Awardee) it believes is most qualified based upon its review and scoring of the STEP 1 RFQ, STEP 2 RFP and the presentations and responses to the questions posed to the Respondents in the STEP 3 Interviews. NMIMT will begin negotiations for the Contract for Construction Manager at Risk Services with the Apparent Awardee at this time. This Contract will not become effective until final approval is granted by all agencies and entities having jurisdiction over this procurement.
- Contract Negotiations: If NMIMT is unable to negotiate a Contract with the Apparent Awardee that it believes, in its sole discretion, is fair and reasonable, it will terminate negotiations with that firm and begin negotiations with the next highest scored firm.
- Notice of Award: The Procurement Manager will notify Finalists in writing (email) of the final Award within fifteen (15) calendar days of the Award in accordance with NMSA 13-1-124.4.

STEP 1, PART 1: GENERAL RFQ INFORMATION

STEP 1, NOTICE FOR REQUEST FOR QUALIFICATIONS (RFQ) - #2204029C

RFQ, Statement of Qualifications Submission Deadline

Title: Construction Manager at Risk Services – Kelly Hall Construction

This Request for Qualifications is STEP 1 of a three step procurement process for Construction Manager at Risk Services. The three steps of the entire procurement process are: STEP 1, Request for Qualifications (Maximum up to 200 points possible), plus any validated New Mexico Resident or New Mexico Resident Veteran preference points.

STEP 2, Request for Proposals (Maximum up to 400 points possible), plus any validated New Mexico Resident or New Mexico Resident Veteran preference points.

STEP 3, Interviews (Maximum up to 400 points possible), plus any validated New Mexico Resident or New Mexico Resident Veteran preference points.

Details of all three steps are discussed in STEP 1, TENTATIVE SCHEDULE OF EVENTS.

The scores from this STEP 1, RFQ will determine which Respondents will be asked to provide a Response to STEP 2, RFP. The scores from STEP 2 will be averaged with the scores from this STEP 1 to determine the scores of the Respondents once STEP 2 is completed. Up to three of the Respondents to STEP 2 may be invited to participate in STEP 3, Interviews. Scores resulting from STEP 3 will be averaged together with the scores from STEPS 1 and 2 to determine the Apparent Awardee for this Procurement.

NMIMT is requesting STEP 1, RFQ, Statement of Qualifications (SOQ) from firms interested in providing Construction Manager at Risk (CMAR) Services as described and identified within this STEP 1, RFQ. Please carefully read all instructions, specifications and terms and conditions of this STEP 1, RFQ. Failure to comply with the instructions, terms and/or conditions may result in the submitted Response to this STEP 1, RFQ, Statement of Qualifications being classified as unresponsive and therefore disqualified.

STEP 1, RFQ, Statement of Qualifications Terms and Conditions

NMIMT reserves the right to request clarification and modification of any Response to this STEP 1, RFQ, Statement of Qualifications submitted prior to the Contract award being made. The purchases of any material(s) and/or service(s) awarded under this STEP 1 RFQ, STEP 2 RFP, STEP 3 Interviews and Contract that follow are subject to the specifications and to NMIMT's CMAR Standard Terms and Conditions and Purchase Order Terms and Conditions attached to this STEP 1, RFQ as STEP 1, SECTIONS A and B respectively. NMIMT reserves the right to accept and/or reject, at its sole discretion, any or all Responses to this STEP 1, RFQ, Statements of Qualifications, or parts thereof, waive technicalities, to cancel and/or re-advertise this Procurement when, at its sole discretion, NMIMT feels that its best interest will be realized thereby.

Organization Profile

NMIMT is a state-supported, coeducational institution offering undergraduate and graduate degrees in science, engineering, and technology related fields. The campus is located in the central Rio Grande valley city of Socorro, New Mexico, south of Albuquerque. The City of Socorro has a population of 9,000. NMIMT has a student population of approximately 2,000 and a staff/faculty population of 1000.

NMIMT is a world leader in many areas of research, including hydrology, astrophysics, atmospheric physics, geophysics, homeland security, information technology, geosciences, energetic materials engineering, and petroleum recovery. The main campus is 101 acres of administrative and academic buildings, residence halls, and research facilities. The remainder

of the campus is 1,888 acres. The New Mexico Tech website is: <http://www.nmt.edu>

STEP 1, RFQ GENERAL INFORMATION

This section of the STEP 1, RFQ specifies general requirements and outlines and describes the major events of the selection process. STEP 1, "Tentative Schedule of Events", lists the key action dates/times for this STEP 1, RFQ. If NMIMT finds it necessary to change any of the information in the schedule, an Amendment to this STEP 1, RFQ will be issued and posted on NMIMT's website. NMIMT will notify the document takers from STEP 1, RFQ when an Amendment is posted for this STEP 1, RFQ.

Purpose of this STEP 1, RFQ

NMIMT is requesting STEP 1, RFQ, Statement of Qualifications from firms interested in providing Construction Manager at Risk (CMAR) Services based on the scope of work described herein. This procurement is issued pursuant to, and all proposals submitted in response hereto shall be subject to, the Educational Facility Construction Manager at Risk Act, New Mexico Procurement Code, §13-1-124.1 through 13-1-124.5 NMSA 1978. By submitting a Response, all Respondents acknowledge that they have read, understand and accept the requirements of this STEP 1, RFQ.

This STEP 1, RFQ is designed to provide interested firms with sufficient basic information to submit Responses to this STEP 1, RFQ that meet the minimum requirements, but is not intended to limit a firm's content or exclude any relevant or essential data.

CMAR Standard Terms and Conditions and Purchase Order Terms and Conditions

By submitting a Response to this STEP 1, RFQ, all Respondents agree to be bound by the terms of STEP 1, SECTION A "CMAR Standard Proposal Terms and Conditions" and SECTION B "Purchase Order Terms and Conditions". STEP 1, SECTIONS A and B apply to all STEPS of the entire Procurement, including any resulting Contract.

Procurement Management

Procurement Manager: NMIMT has designated a Procurement Manager who is responsible for the conduct of this Procurement and whose name and contact information is listed in STEP 1, I., BUYER INFORMATION.

Inquiries: Any inquiries or requests regarding this STEP 1, RFQ or this Procurement in general must be submitted in writing via email or by fax.

STEP 1, PART 2: MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC)

The Maximum Allowable Construction Cost (MACC) for this Project is \$13,540,248 plus NMGR.T.

STEP 1, PART 3: CONDITIONS GOVERNING THE RFQ

Payment and Performance Bonds: The selected Respondent shall submit Payment and Performance Bonds for the full amount of the cost of construction prior to issuance of a Notice to Proceed with construction.

Licensing Requirement: Each Respondent must have a current and active New Mexico business license, licensing required by Construction Industries Division to perform the type of work undertaken, and an active registration with the New Mexico Department of Workforce Solutions.

Contract Compliance Monitoring: The NMIMT Purchasing Office shall monitor the successful Respondent's compliance with, and performance under the terms and conditions of the Contract resulting from this procurement. The successful Respondent shall make available for inspection and / or copying by NMIMT, within 24 hours of a written request therefore, all records and accounts relating to the work performed or the services provided in this Project.

Cost Segregation: The selected Respondent shall identify and provide receipts for tangible personal property as defined by New Mexico Statute that is incorporated into the construction of the Project so that gross receipts for the identified equipment can be deducted from Gross Receipts Tax paid by NMIMT.

Utility Rebates: The selected Respondent shall provide data necessary for NMIMT to apply for and obtain Utility Rebates.

Personnel Conduct/Compliance: Any personnel executing services under this Project while on the NMIMT premises will conduct themselves in an acceptable, appropriate manner, and comply with all conduct and compliance policies and procedures of NMIMT. NMIMT reserves the right to request immediate removal of any personnel it deems, in its sole discretion, to be exhibiting inappropriate behavior not in compliance with NMIMT policies and procedures.

STEP 2, RFP, Proposal Guarantee: Respondents that are selected to submit a STEP 2, RFP Response for CMAR Fee and Specified General Conditions, shall provide a verification of the Maximum Allowable Construction Cost (MACC) and furnish a Request for Proposal Bond in the amount of five (5%) percent of the MACC as required by Section 13-1-146 NMSA 1978.

STEP 1, PART 4: RESPONSE FORMAT AND ORGANIZATION

STEP 1, RFQ, Response Organization

Responses to STEP 1, RFQ, Statement of Qualifications should be organized in a manner that will enable the Selection Committee to quickly access pertinent information.

WHEN MAKING ATTACHMENTS TO YOUR STEP 1, RFQ RESPONSE, BE SURE TO ATTACH THE DOCUMENT(S) IN THE CORRECT SECTION TO ALLOW THE SELECTION COMMITTEE TO EASILY ASSOCIATE YOUR ATTACHED DOCUMENT(S) TO THE PROPER SECTION.

STEP 1, RFQ, Statement of Qualifications Submission

1. STEP 1, RFQ Responses must be submitted prior to the deadline time and date for receipt of Responses as indicated herein. The original deadline may be extended only by a written Amendment hereto. NMIMT will not allow Responses to be received after the deadline time and date for receipt of STEP 1, RFQ Responses. The Respondent assumes full responsibility for timely submission of their STEP 1, RFQ Response. It is the Respondent's responsibility to ensure that their Response is completely and successfully submitted prior to the due date / time. It is the Respondent's responsibility to complete all required documents and exhibits fully and submit the Response with sufficient time for receipt by NMIMT.
2. Confidentiality of STEP 1, RFQ: Responses to STEP 1, RFQ will not be opened publicly and shall not be open to public inspection until after a Respondent has been selected and a Contract has been successfully executed, unless otherwise required by law.
3. Pursuant to the New Mexico Inspection of Public Records Act, §14-2 NMSA 1978, NMIMT must allow public inspection of all records unless otherwise exempted from inspection by that Act. NMIMT shall make its own determination as to whether information marked confidential is subject to public inspection. Respondents must identify what they consider to be confidential information by typing "CONFIDENTIAL" at the beginning of any confidential information portion(s) of the Response and at the end of the confidential information the Respondent must type "END OF CONFIDENTIAL INFORMATION". Respondents should specify the specific rule of law that authorizes non-disclosure of a record. The Chief Procurement Officer (CPO) will examine the Responses to determine the validity of any requests for non-disclosure. If it is determined that some parts of the Response designated by the Respondent as confidential should be subject to disclosure, the CPO or designee shall inform the Respondent in writing that, unless the Respondent withdraws its Response, those parts will be available for public inspection. Prices, make, model or catalog numbers of items, deliveries or terms of payment shall not be classified confidential and shall be publicly available. Responses shall not be made available for public inspection until after Contract execution and award.
4. Non-Conforming STEP 1, RFQ Responses: Responses will be reviewed for completeness, format, and compliance with the requirements of the STEP 1, RFQ. If any Response is deemed non-responsive, the Respondent will be notified in writing of such determination.

STEP 1, PART 5: RFQ EVALUATION CRITERIA AND SELECTION PROCESS

STEP 1, RFQ Statement of Qualifications (SOQ) will be evaluated by the Selection Committee based on the evaluation factors found in this STEP 1, PART 5. Each Respondent must address all elements required by this STEP 1, RFQ. Respondents are hereby informed that in making evaluations and determinations, NMIMT is not restricted to the minimum information required

by this STEP 1, RFQ and that any relevant information regarding the evaluation criteria from reliable sources may be considered.

NMIMT may also require additional relevant information related to the Respondent's past performance or present capability to perform this Contract.

The owner's selection committee shall comprise up to five (5) committee members to include an Architect (Design Professional) and/or Engineer of record, NMIMT's Project Manager and three (3) other NMIMT employees and/or independent consultants or agents (provided appropriate precautions are taken to avoid potential conflicts of interest) with expertise as deemed necessary by NMIMT to successfully evaluate the responses. NMIMT at NMIMT's sole discretion may increase or decrease the number of Evaluation Committee members.

The Maximum Score for STEP 1, RFQ is up to 200 points possible, plus any validated New Mexico Resident or New Mexico Resident Veteran preference points).

EVALUATION CRITERIA:

(The Evaluation Criteria response form is found in STEP 1, EXHIBIT 1)

1. **PAST PERFORMANCE OF THE RESPONDENT IN COMPLETING CMAR PROJECTS OR PROJECTS WITH A GUARANTEED MAXIMUM PRICE (up to 25 points possible).** What has been the experience of your firm in completing CMAR projects or projects with a Guaranteed Maximum Price? Provide a list of five completed projects. For each project listed, provide the duration of construction, the final cost, a description of the preconstruction services performed by your firm, a reference who is familiar with your firm's performance in completing the project and note if any of the personnel in your anticipated Project Team for the Project outlined in this solicitation from NMIMT participated as members of the project team for the listed project.

2. **PAST PERFORMANCE IN COMPLETING PROJECTS SIMILAR TO THE PROJECT (up to 25 points possible).** What has been the experience of your firm in completing projects of a similar size and type to the Project? Provide a list of five completed projects. For each project listed provide the duration of construction, the final cost, a reference who is familiar with your firm's performance in completing the project and note if any of the personnel in your anticipated Project Team for the Project outlined in this solicitation from NMIMT participated as members of the project team for the listed project.

3. **PRESENTATION OF THE PROJECT TEAM (up to 25 points possible).** Describe the organization that you feel is appropriate for the Project during the Preconstruction, Procurement, Construction, Closeout and Warranty phases. Identify the personnel and/or consultants that will serve in those roles and provide the qualifications, experience and hourly rate (for Preconstruction Services) for each.

4. **CONCEPT OF THE PROPOSAL (up to 40 points possible).** In your answers to items a. through i. below, discuss the major challenges your firm envisions the Project Team will encounter in completing the work for the Project and how your firm will address those challenges. Provide your firm's plan to address the following contractual responsibilities of the CMAR:

- a. Preconstruction Services, including estimating, scheduling, constructability reviews, logistics planning and value engineering **(up to 5 points possible).**
- b. Procurement Management including developing subcontractor interest, conducting pre- bid or pre-proposal meetings, pre-qualifying subcontractors and suppliers, receiving and evaluating bids and entering into contracts **(up to 5 points possible).**
- c. Construction Management Services including services to ensure a quality product is delivered on time and within budget **(up to 5 points possible).**
- d. Safety and Site Management including the services to be rendered and plans to be developed in connection with student, faculty and worker safety, hazardous material control, fire protection, emergency medical response and site security **(up to 5 points possible).**
- e. Commissioning, start-up services and follow through to ensure that all building systems are in full operation at Substantial Completion **(up to 5 points possible).**
- f. Project Closeout Services to ensure that as-built documentation is accurate, maintenance and operation manuals are complete, warranty and guarantees are provided and NMIMT personnel are trained in the maintenance and operation of the facility **(up to 5 points possible).**
- g. Warranty Services to ensure that problems or issues identified and transmitted to the CMAR for resolution during the Warranty Period by the NMIMT Facilities Staff are resolved expeditiously **(up to 5 points possible).**
- i. Provision of information required for NMIMT to apply for and receive utility rebates to which it might be entitled **(up to 5 points possible).**

5. **ABILITY OF THE RESPONDENT TO MEET TIME AND BUDGET REQUIREMENTS (up to 25 points possible).** Provide the following additional information for each of the five projects listed in your firm's response to the question above entitled: "Past Performance of the Offeror in completing CMAR projects or projects with a Guaranteed Maximum Price".

- a. Owner's Original Construction Estimate.
- b. Original Guaranteed Maximum Price.
- c. Final Contract Cost.
- d. Original Completion Date.
- e. Actual Date of Substantial Completion.

6. **RESPONDENT'S EXPERIENCE AND UTILIZATION OF SUBCONTRACTORS AND MATERIAL SUPPLIERS IN NEW MEXICO (up to 25 points possible).** Demonstrate your firm's experience in

successfully completing construction projects in New Mexico. Indicate your firm's familiarity with the local labor market and capability in developing viable pricing alternatives working with subcontractors and suppliers owned and operated by New Mexico residents.

7. **RECENT, CURRENT AND PROJECTED WORKLOADS (up to 25 points possible).** What has been your firm's annual volume (in dollars) of construction for the past five years? What is your firm's anticipated volume for the current year and what is your plan for the next two years? How would your firm's participation in the Project affect that plan?

8. **LEED EXPERIENCE (up to 5 points possible).** What has been your firm's experience in completing projects achieving LEED certification? List up to five projects where your firm has participated as a member of the project team where LEED Certification was achieved. For each project listed, describe the services your firm provided that contributed to LEED certification.

9. **REFERENCES (up to 5 points possible).** Offerors must identify three (3) clients / customers / institutions that they have completed projects similar to the project identified in this RFP. Please provide a valid organization, address, contact name, title, phone number and email address for each reference provided. The NMIMT buyer will contact each reference via email and request that they fill out the attached questionnaire. **DO NOT INCLUDE NMIMT AS A REFERENCE.**

STEP 2, Request for Proposals (RFP)

The Selection Committee will review and score each responsive STEP 1, RFQ Statement of Qualifications Response received. The Selection Committee will identify the qualified Respondents who will be sent the STEP 2, RFP for CMAR Fee and Specified General Conditions.

Respondents invited to submit STEP 2, RFP Responses shall submit three proposal cost numbers on the Form of Proposal for CMAR Fee and Specified Conditions provided in the STEP 2, RFP. The first cost proposal number shall be the "CMAR Fee" percent and the second cost proposal number shall be the product of the "CMAR Fee" applied to the estimated Cost of the Work for the Project. The estimated Cost of the Work will be provided and printed on the Form of Proposal. **RESPONDENTS SHALL NOT ALTER THE ESTIMATED COST OF THE WORK PROVIDED ON THE FORM OF PROPOSAL.** The third figure shall be the lump sum amount for the "Specified General Conditions Work". The terms "CMAR Fee" and "Specified General Conditions Work" will be defined in the Contract for Construction Manager at Risk, the Matrix of Cost Allocation, and the General Conditions for Contract for Construction Manager at Risk found in the STEP 2, RFP to be provided to those Respondents who are deemed qualified.

The STEP 2, RFP Responses will be evaluated as follows:

(Low conforming response) divided by (response being considered) x 400 – Point Value for the response being considered.

Maximum score for STEP 2, RFP: Up to 400 points possible
(plus any validated New Mexico Resident or New Mexico Resident Veteran preference points)

SELECTION PROCESS

NMIMT's Purchasing Service Office will review all STEP 1, RFQ Responses received for conformance with the requirements of 13-1-83 and 13-1-85 NMSA 1978. The Purchasing Services Office will reject the Response of any Respondent who is not a responsible Respondent or fails to submit a responsive proposal as defined in 13-1-83 and 13-1-85 NMSA 1978.

Each member of the Selection Committee will independently review and score each STEP 1, RFQ Response submitted utilizing the evaluation factors listed above.

New Mexico Resident Contractor or New Mexico Resident Veteran Contractor Preference. Respondents submitting a valid New Mexico Resident or New Mexico Resident Veteran Certificate issued by the New Mexico Taxation and Revenue Department will be given additional percentage(s) of the total possible evaluation points added to their scores, as determined by statute. Please include a copy of your valid preference certificate.

To complete STEP 2, RFP, each Selection Committee member's score from STEP 1, RFQ will be added to the STEP 2, RFP score. The most points possible by adding STEPS 1 & 2 together is 600 points (plus any applicable New Mexico Resident or New Mexico Resident Veteran preference points).

The Selection Committee will review the results of the cumulative scores from STEP 1, RFQ and STEP 2, RFP and determine a "short-list" of up to three Respondents to be invited to participate in the STEP 3, Interviews.

STEP 3, Interviews

The Selection Committee will invite the short-listed Respondents to the STEP 3, Interviews. Prior to the Interviews, the short-listed Respondents will be given a list of questions to be addressed during the Interview. All STEP 3 invitees will receive the same list of questions. During the Interview there may be additional follow-up questions.

After the STEP 3 Interviews are completed, each member of the Selection Committee will individually score each short-listed Respondent's Interview presentation. Scoring for the

Interviews will be based upon responses to the questions sent to the short-listed Respondents and responses to any follow-up questions that may arise during the Interview.

Each Selection Committee member's scores for STEP 3 will be added to the scores from STEPS 1 and 2, resulting in a FINAL score for each Respondent.

Maximum score for STEP 3, Interviews: up to 400 points possible
(plus any validated New Mexico Resident or New Mexico Resident Veteran preference points)

FINAL SCORE

(All maximum points below may be increased to include applicable New Mexico Resident or New Mexico Resident Veteran preference points)

STEP 1, RFQ:	200 Points
STEP 2, RFP:	400 Points
STEP 3, Interviews:	400 Points
Total Possible Points:	1000 Points

All three STEPS are used to determine each Respondent's final score.

FINAL SELECTION

At the completion of STEP 3, Interviews, the Selection Committee will recommend the Respondent (the Apparent Awardee) it believes is most qualified based upon its review and scoring of the STEP 1 RFQ, STEP 2 RFP and the presentations and responses to the questions posed to the Respondents in the STEP 3 Interviews. NMIMT will begin negotiations for the Contract for Construction Manager at Risk Services with the Apparent Awardee at this time. This Contract will not become effective until final approval is granted by all agencies and entities having jurisdiction over this procurement.

STEP 1, SECTION A: CMAR STANDARD TERMS AND CONDITIONS

1. **ACCEPTANCE.** Right to reject services not conforming to specifications. All services furnished will be subject to inspection and testing by Owner and Owner's agents. Any services found by Owner in its sole discretion to be not in accordance with the specifications, drawings, plans, instructions, performance criteria, samples or other description furnished or adopted by Owner for the Procurement or otherwise not in conformance with the terms of the Procurement shall be subject to rejection, return and back charge as appropriate. Owner's payment of all or any part of the purchase price prior to such inspection, testing and non-acceptance of the services involved shall not constitute a waiver of any of Owner's rights hereunder.

2. **ACKNOWLEDGMENT OF AMENDMENTS.** Email notifications are sent to prospective Contractors on Amendments and are made available for inspection using NMIMT's website and

must be acknowledged on the Offer. If the Contractor submits an offer, and a new Amendment is issued, then it is the Contractor's responsibility to resubmit their offer confirming agreement to any new Amendments.

3. **ADDRESSES FOR NOTICES.** Any notice required to be given or which may be given under this Procurement or the resultant Agreement shall be in writing and delivered in person or via first class mail to: NMIMT, Purchasing Services, 801 Leroy Place, West Hall, Rm 104, Socorro, NM 87801.

4. **ATTORNEYS' FEES.** If any action resulting from this Procurement is brought against NMIMT, such action shall be brought in the County of Socorro, State of New Mexico. If NMIMT prevails, NMIMT shall be entitled to reasonable attorneys' fees. The laws of the State of New Mexico shall govern these matters.

5. **AUTHORITY TO BIND NMIMT.** Contractor shall not have the authority to enter into any contracts binding upon NMIMT or to create any obligations on the part of NMIMT, except such as shall be specifically authorized by the NMIMT representative, acting pursuant to authority granted by NMIMT.

6. **AWARD OF CONTRACT/SELECTION PROCESS.** For a description of the process for award of the Contract for Construction Manager at Risk, see STEP 1, PART 5.

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

8. **CANCELLATION.** NMIMT reserves the right to cancel without penalty this Procurement and/or the resultant Contract for Construction Manager at Risk or any portion thereof for unsatisfactory performance, unavailability of funds, or when NMIMT determines, at its sole discretion, that it is in its best interest to do so.

9. **CHANGE IN CONTRACTOR REPRESENTATIVES.** NMIMT reserves the right to request a change in Contractor representatives if the assigned representatives are not, in the sole opinion of NMIMT, meeting its needs adequately.

10. **CHANGES/ALTERATIONS AFTER AWARD.** Changes or alterations after the award can only be made if agreed to in writing by NMIMT.

11. **NMIMT'S RESPONSIBILITIES.** NMIMT shall designate a Representative to act on its behalf as Project Manager for the Project. The Representative shall have limited authority to give general direction to the Construction Manager at Risk, answer questions, to approve pay applications and to initiate the Change Order process. NMIMT's Executive Director of Purchasing, or their designee, shall administer the resultant Contract and shall have the authority to 1) modify or interpret the Contract, 2) authorize the Construction Manager at Risk to perform Additional Services or 3) approve Change Orders, all of which are decisions which are reserved to be made by NMIMT's Executive Director of Purchasing. No action,

representation, or conduct by any NMIMT Representative shall relieve the Construction Manager at Risk of its responsibilities to carry out its duties and obligations under the resultant Agreement. In no event shall NMIMT have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted NMIMT in the Contract Documents.

12. **NMIMT'S RIGHTS TO ACCEPT/REJECT RESPONSES TO THIS PROCUREMENT.** NMIMT reserves the right to accept and/or reject any Responses received for any part of this Procurement, to waive technicalities, or to re-advertise the Project, when NMIMT determines, at its sole discretion, that it is in its best interest to do so.

13. **CONFIDENTIALITY.** Any information provided to or developed by the Contractor in the performance of the resultant Agreement shall be kept confidential and shall not be made available to any other individual or organization by the Contractor without prior written approval of NMIMT.

14. **CONSTRUCTION RECORD DRAWINGS.** The successful Contractor will be required to provide NMIMT, upon completion of the Work, three (3) sets of record drawings showing any changes from the Contract Drawings (especially electrical, plumbing, utility lines, etc.) added or affected by the work the Contractor has performed, unless provisions for pre- approval of drawings is contained elsewhere in this Procurement. All computer software drawings shall become property of NMIMT.

15. **CONTRACT.** The Contract for Construction Manager at Risk, including all Exhibits and Attachments thereto, shall be considered the binding Agreement/Contract. In the event of any inconsistent or incompatible provisions, the Contract for Construction Manager at Risk, including all Exhibits and Attachments thereto, shall take precedence, followed by the provisions of the STEP 1, RFQ and the STEP 2, RFP (each given equal weight), the terms of the Contractor's Response to this Procurement, and then lastly followed by the provisions of the purchase order. The Contract for Construction Manager at Risk shall not be construed to create a contractual relationship of any kind between NMIMT and a subcontractor or any lower-tier subcontractor.

16. **CONTRACTOR SCHEDULE.** Contractor shall provide to Owner a Schedule as required by the solicitation documents of this Procurement.

17. **COPIES OF STEP 1, REQUEST FOR QUALIFICATIONS (RFQ) AND STEP 2, REQUEST FOR PROPOSALS (RFP).**

a. A complete set of the STEP 1, RFQ and STEP 2, RFP and all their Exhibits may be obtained from NMIMT email or facsimile.

b. A complete set of the STEP 1, RFQ and STEP 2, RFP shall be used by the Contractor in preparing and submitting their Responses to this Procurement. NMIMT assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the STEP 1, RFQ or STEP 2, RFP.

c. NMIMT, in making the STEP 1, RFQ and STEP 2, RFP available on the above terms,

does so only for the purpose of obtaining Responses to the Procurement and does not confer a license or grant for any other use.

d. A complete copy of the STEP 1, RFQ and STEP 2, RFP shall be made available for public inspection and shall be posted on NMIMT email or facsimile.

18. CORRECTION OR WITHDRAWAL OF CONTRACTOR RESPONSES.

a. Contractor Responses containing a mistake discovered before the Response opening may be modified or withdrawn by the Contractor prior to the time set for the Response opening by delivering written notice to the Procurement Manager designated in the Procurement.

b. Withdrawn Responses may be resubmitted up to the time and date designated for the receipt of the Response, provided they are then fully in conformance with the STEP 1, RFQ or STEP 2, RFP, whichever may apply.

c. Only modifications received prior to the time specified for the closing will be accepted. No modifications will be accepted following the closing date/time deadline. Technical clarifications of any Response may be requested by NMIMT following the opening.

19. DEBARRED OR SUSPENDED CONTRACTORS. A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and § 13-3-11 through § 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with NMIMT and shall not be considered for award of the Contract during the period for which it is debarred or suspended with NMIMT.

20. DELIVERY DELAYS. If after award the Contractor becomes aware of possible problems that could result in a delay to the agreed-to delivery schedule, the Contractor must immediately notify NMIMT or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Contractor of its contractual obligations. Failure to notify NMIMT promptly will be a basis for determining Contractor responsibility in an otherwise excusable delay.

21. DISCREPANCIES. Should Contractor find discrepancies in any part of the listed specifications or the terms and conditions, or find any part of the listed specifications or the terms and conditions to be incomplete or otherwise questionable in any respect, Contractor shall immediately call such matters to the attention of NMIMT, in writing, prior to the established opening date.

22. EMPLOYEE CERTIFICATION. The Contractor and all Contractor's employees utilized on the Work to be performed under this Procurement must have the proper certification(s) and license(s) to comply with State and local requirements connected to this Procurement. The Contractor shall use only fully qualified and approved service technicians to perform inspections, service and/or repairs under this Procurement.

23. EMPLOYEES PERFORMANCE AND CONDUCT. The Contractor certifies that its employees and the employees of its subcontractors will be instructed to be professional and courteous in all of their dealings with NMIMT and its faculty, staff, and/or students, as well as any other customers, contractors or individuals with whom the Contractor, including its

subcontractors, comes in contact as a result of this Agreement or in the course of providing goods or services hereunder. If NMIMT, in its sole discretion, believes that an employee, agent or subcontractor of the Contractor assigned to provide goods or services to NMIMT pursuant to this Agreement has engaged in conduct inconsistent with the requirements of this Article, then NMIMT may so notify the Contractor and the Contractor shall promptly reassign said employee, agent or subcontractor so that they will no longer provide goods or services pursuant to this Agreement. The requirements of this Article shall also apply to all subcontractors and subcontractors' employees brought in by the Contractor to provide goods or services under this Agreement.

24. **ENTIRE AGREEMENT.** NMIMT'S PURCHASE ORDER AND OTHER ATTACHED CONTRACT DOCUMENTS INCLUDING ATTACHMENTS AND AMENDMENTS ISSUED BY NMIMT, THE STEP 1, RFQ, THE STEP 2, RFP THAT FOLLOWS, THE CONSTRUCTION MANAGER AT RISK'S (CMAR) PROPOSAL FOR CMAR FEE AND SPECIFIED GENERAL CONDITIONS, THE CONTRACT FOR CONSTRUCTION MANAGER AT RISK, THE MATRIX OF COST ALLOCATION, THE GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION MANAGER AT RISK AND THE GUARANTEED MAXIMUM PRICE AMENDMENT CONSTITUTES THE ENTIRE CONTRACT AGREEMENT BETWEEN THE PARTIES. This Procurement, along with all of its attachments, will be considered to be part of the resultant Agreement, with the purchase order and other Contract Documents incorporated by reference.

25. **ERRORS.** NMIMT is not liable for any errors or misinterpretations made by any Offeror responding to this Procurement. No advantage shall be taken by Offerors in the omission of any details. Any misstatements of fact, misrepresentations or errors in the Offeror's proposal may, at the sole discretion of NMIMT, be cause for disqualification. Each Offeror is responsible for ensuring that all information provided in its proposal is accurate and complete in its entirety.

26. **EVALUATION AND SELECTION PROCESS.** See STEP 1, PART 5 of this procurement, where the three-step Construction Manager at Risk Evaluation and Selection Process is described.

27. **EXCLUSIVE RIGHTS.** Under no circumstances shall this Agreement be construed or deemed to be a contract whereby NMIMT grants Contractor exclusive right to furnish NMIMT its needs or requirements for services or goods described herein.

28. **FINANCIAL STATEMENTS.** If requested, all Contractors may be required to submit their most recent Income Statement, Balance Sheet, and Statement of Cash Flows.

29. **FORCE MAJEURE.** Neither party to the resultant Agreement will be liable to the other for any failure or delay in performance under the resultant Agreement due to circumstances beyond its reasonable control including, but not limited to, acts of God, accidents, labor disputes, acts or omissions and defaults of third parties, and official, government or judicial action not the result of negligence of the party failing or late in performing.

30. **GOVERNING LAW.** This Procurement and all resultant Agreements shall be interpreted

and governed by the Laws of the State of New Mexico.

31. **INDEMNIFICATION.** Each party will be solely responsible for its liability for bodily injury, including death, or damage to property under the common law or statutory law of New Mexico and for only its own attorney fees and costs arising from the act or failure to act of such party or of its regents, directors, members, shareholders, officers, agents and employees pursuant to this Agreement; provided however, the foregoing obligation is a statement of responsibility pursuant to common and statutory law only and does not constitute an agreement to indemnify. The liability and responsibility of New Mexico Institute of Mining and Technology shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4- through 41-4-27, and of any amendments thereto, and shall be construed and applied in accordance with the laws of the State of New Mexico, irrespective of the conflict of law and choice of law principles of New Mexico or any other jurisdiction.

32. **INSURANCE AND BONDING REQUIREMENTS.** See STEP 1, ATTACHMENT A for the insurance requirements. For Proposal Bond requirements, see STEP 1, PART 2.0. For Payment and Performance bonding requirements, see Article 41 of this STEP 1, SECTION A.

33. **INTERPRETATIONS.**

a. NMIMT is not liable for any errors or misinterpretations made by any Offeror responding to this Procurement. No advantage shall be taken by Offerors in the omission of any details. Any misstatements of fact, misrepresentations or errors in the Offeror's Response may, at the sole discretion of NMIMT, be cause for disqualification. Offerors are responsible for ensuring that all information provided in their Response is accurate and complete in its entirety.

b. All questions about the meaning or intent of the Procurement shall be submitted using email or facsimile. Replies will be issued by Amendments that will be posted on NMIMT email or facsimile. It is all Offerors' responsibility to monitor NMIMT email or facsimile for Amendments to the Procurement. Questions received after the deadline for questions stated in the Tentative Schedule of Events in the Procurement may not be answered. Only questions answered by formal written amendments will be binding. Oral and other interpretations or clarifications will be without legal effect.

c. Offerors shall promptly notify NMIMT of any ambiguity, inconsistency, or error, which they may discover upon examination of the Procurement.

34. **LATE SUBMISSIONS.** NMIMT email or facsimile will not process a Response that is submitted after the deadline for that Response.

a. The Offeror shall assume full responsibility for timely delivery of Responses to this Procurement. All Responses must be submitted using NMIMT email or facsimile.

b. Oral, telephonic, or Responses submitted by email or hand-delivered are invalid and will not receive consideration.

35. **MEDIATION.** Notwithstanding any provision of any Contract Documents to the contrary, any claim, dispute or other matter in question between the Contractor and NMIMT, except to those which have been waived by the making or acceptance of final payment, shall be subject to mediation pursuant to and under the provisions of the New Mexico Public Works Mediation Act, NMSA 1978 § 13 4C 1 et seq. as amended. A party seeking to resolve a dispute under this Agreement or any of the Contract Documents shall proceed under the procedures and

provisions of the Public Works Mediation Act.

36. **MODIFICATIONS.** Only modifications received prior to the time specified for closing for any of this Procurement's STEPS will be accepted. No modifications will be accepted following any closing date/time deadline. The Owner may request technical clarifications of any Response following any opening.

37. **NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR.**

a. All Responses to this Procurement are subject to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of this Procurement.

b. In submitting a Response, the Offeror represents that it has familiarized itself with the nature and extent of the federal, state and local requirements, which are a part of this Procurement. Offeror agrees to be bound by and abide by and perform any and all of its duties, obligations and responsibilities awarded in response to this Procurement in strict accordance with the ethics of its profession and all federal and state municipal laws, regulations, and ordinances regulating construction.

c. Offeror agrees to perform all work and services awarded as a result of this Procurement in accordance with normal standards of professional care. The Offeror agrees to cooperate with NMIMT and other contractors and coordinate work involving other contractors through NMIMT's authorized representative.

38. **OFFEROR'S TERMS AND CONDITIONS.** Not applicable.

39. **OWNERSHIP OF MATERIAL.** Any and all data, material, documentation, notes, drawings, designs, specifications and other work prepared by, developed or performed by the Offeror in conjunction with a resultant award of an Agreement to this Procurement shall and will become the property of and belong exclusively to NMIMT. Before receiving final payment, the successful Offeror shall be required to deliver to NMIMT the original Construction Documents and details and a bound volume of the specifications. NMIMT shall not have the right to use the Construction Documents for other building projects except as may be required for reference without the successful Offeror's consent. NMIMT shall not have the right to sell the Construction Documents, drawings and specifications. The successful Offeror shall not be permitted to reuse the drawings developed for the project identified within this Procurement in whole or in part for other projects without obtaining NMIMT's prior written permission.

40. **PAYMENT DISCOUNTS.** NMIMT will take advantage of payment discounts offered whenever possible; however, payment discounts will not be used as a means to determine the highest evaluated Offer.

41. **PERFORMANCE AND PAYMENT BONDS.** If the Project value is greater than twenty five thousand dollars (\$25,000.00), a performance bond and a payment bond, covering materials and labor, each in the amount of 100% of the Contract for Construction Manager at Risk cost is required. The bonds must be executed by the Contractor with a surety company authorized to do business in New Mexico or other suitable sureties approved by the New Mexico State Board of Finance. The performance and payment bonds must be provided to NMIMT prior to the beginning of work. CMAR shall be responsible for its subcontractors providing Performance

and Payment Bonds for work to be performed on the Project when the subcontractor's contract for work to be performed on the Project is one hundred and twenty-five thousand dollars (\$125,000) or more, as required by NMSA 13-1-148.1. Failure of a subcontractor to provide required bonds shall not subject NMIMT to any increase in cost due to any substitution of an approved subcontractor. All substitutions must be in compliance with NMSA 13-4-36. NMIMT requires the CMAR to provide a copy of all applicable bonds to the Purchasing Services Office before any applicable work begins.

42. PROTESTS.

a. Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to NMIMT's Buyer for the Procurement and the NMIMT Executive Director for Purchasing in accordance with the requirements of NMIMT's Procurement Regulations and the New Mexico State Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto.

b. In the event of a timely protest under this Article, NMIMT shall not proceed further with the Procurement unless NMIMT makes a determination that the award of an Agreement is necessary to protect the substantial interests of NMIMT.

c. The Executive Director of Purchasing or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning the Procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 13-1-174 NMSA 1978).

d. The Executive Director of Purchasing or designee shall promptly issue a determination relating to the protest. The determination shall:

i. state the reasons for the action taken; and

ii. inform the protestant of the right to judicial review of the determination pursuant to § 13-1-183 NMSA 1978.

e. A copy of the determination issued under § 13-1-175 NMSA 1978 shall immediately be mailed to the protestant or Offerors involved in the Procurement (§ 13-1-178 NMSA 1978).

43. PUBLIC/CONFIDENTIAL INFORMATION. Pursuant to the New Mexico Inspection of Public Records Act, §14-2 NMSA 1978, NMIMT must allow public inspection of all records unless otherwise exempted from inspection by that Act. NMIMT shall make its own determination as to whether information marked confidential is subject to public inspection. All information, except that marked as confidential, will become public information at the time that the Contract for Construction Manager at Risk is awarded.

a. Respondents must identify confidential information by typing "CONFIDENTIAL" at the beginning of any confidential information portion(s) of the Response and at the end of the confidential information the Respondent must type "END OF CONFIDENTIAL INFORMATION". Respondents should specify the specific rule of law that authorized non-disclosure of a record.

b. The Executive Director of Purchasing will examine the Responses to determine the validity of any requests for nondisclosure. If it is determined that some parts designated by the Respondent as confidential should be subject to disclosure, the

Executive Director of Purchasing or designee shall inform the Respondent in writing that, unless the Respondent withdraws its proposal, those parts will be available for public inspection.

c. Prices, make, model or catalogue numbers of items, deliveries or terms of payment shall not be classified confidential and shall be publicly available. Responses shall not be made available for public inspection until after award.

44. **PURCHASE ORDER TERMS AND CONDITIONS.** NMIMT's Purchase Order Terms and Conditions are an equal and integral part of this Procurement.

45. **REBATES.** Contractor is required to participate and work with any utility company to assist NMIMT in obtaining any and all available rebates that may result from the Work under this Procurement.

46. **RECORDS AND AUDIT.** The successful Offeror shall be required to maintain detailed time records that show the date, time and nature of services rendered. These records shall be subject to inspection by NMIMT, its representatives, and the State Auditor. NMIMT, its representatives, and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of NMIMT to recover excessive and/or illegal payments. NMIMT, its representatives and the State Auditor shall have access to and the right to examine and/or audit any directly pertinent records, books, documents and papers of the successful Offeror involving transactions related to any Contract entered into as a result of this Procurement for a period of three (3) years after final payment.

47. **REFERENCES.** Contractor should furnish the minimum number of references requested within this Procurement. Failure to submit the information may result in the Response being considered non-responsive. Contractor, by furnishing these references, agrees to allow NMIMT to contact any person or organization listed, and to utilize information obtained in the evaluation of the Offer. NMIMT reserves the right to contact any other party regarding the Contractor's history of performing similar Work or the Contractor's ability to perform the Work outlined in this Procurement.

48. **RELEASES.** Upon final payment of the amount due under the terms of the resultant Contract, the successful Contractor shall release NMIMT, its Governing Board, officers, agents and employees from all liabilities, claims and obligations arising from or under the terms of the resultant Agreement. The successful Contractor agrees not to purport to bind NMIMT to any obligation not assumed herein by NMIMT unless NMIMT has expressly authorized in writing the successful Contractor to do so and then only within the strict limits of that authority.

49. **REPORTS AND INFORMATION.** At such times and in such forms as NMIMT may require, there shall be furnished to NMIMT such statements, records, reports, data and information, as NMIMT may request pertaining to matters covered by all resultant agreements to this Procurement.

50. **REQUIREMENTS FOR CRIMINAL BACKGROUND AND SEX OFFENDER CHECKS.** With respect to all persons employed or contracted by Contractor to perform services under this Agreement (including subcontractors), the Contractor warrants that pre-

employment or pre-contracting criminal background and sex offender registry checks are conducted, at its own expense, on all personnel directly performing services under this Agreement (which shall include but not be limited to, all such persons who shall come on to the premises of Owner in the performance of their duties or tasks). The Contractor will be responsible for insuring that federal, state and county of residence criminal and sex offender background checks are conducted on all personnel so employed or contracted and shall exclude from any direct participation in the performance of the services any dishonest, unreasonably dangerous or otherwise unqualified persons. The criminal background and sex offender checks must demonstrate that workers have no convictions or pending criminal charges that would render any worker unsuitable for regular contact with minors. Disqualifying convictions or charges include, but are not limited to, sexual offenses, violent offenses, and drug offenses. The Contractor will abide by all applicable laws, rules, regulations and/or any equal opportunity laws, rules, regulations or ordinances. The Contractor agrees to defend, indemnify and hold harmless the Owner, its officers, directors and employees for any claims, suits or proceedings alleging a breach of this warranty.

51. RESPONDENT QUALIFICATIONS. The Selection Committee may make such investigations as necessary to determine the ability of the Respondent to adhere to the requirements specified within this Procurement. The Selection Committee will reject the response of any Respondent who is not a responsible Respondent or fails to submit a responsive offer, as defined in § 13-1-83 and 13-1-85 NMSA 1978.

52. RESPONSE EVALUATIONS.

- a. Responses to this Procurement shall be evaluated on the basis of demonstrated competence and qualifications for the type of service required, and shall be based on the evaluation factors set forth in this Procurement.
- b. NMIMT shall have the right to waive technical irregularities that may be found in Responses received from the Offeror that do not alter the price, quality or quantity of the services, construction or items of tangible personal property offered.

53. RESPONSE OPENINGS.

- a. Responses to this Procurement will be opened on the due dates and times specified in NMIMT email or facsimile. These are not public openings and Contractors are not invited to attend.
- b. Offerors may request in writing nondisclosure of confidential data and trade secrets. Refer to Article 46 below regarding the notation of Confidential Information.

54. RESPONSIBLE OFFEROR.

- a. All work shall be under the direction of the applicable Construction Manager at Risk legally licensed by the state of New Mexico. The Contractor and all Contractor's employees and subcontractors and subcontractors' employees utilized on the work to be performed under this Procurement must have the proper certification(s) and license(s) to comply with all Federal, State and local requirements connected to this Procurement. The Contractor shall use only fully qualified and approved service technicians to perform inspections and services under this Procurement.
- b. NMIMT reserves the right to conduct any investigations deemed necessary to determine the responsibility of a Contractor (i.e., prove that its financial resources, production or service facilities, personnel, service reputation and experience are

adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the Procurement). Contractor shall provide audited financial statements if requested by NMIMT.

c. Offeror's Qualification Statement. Offeror to whom award of a Contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in this Procurement.

d. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the NMIMT Buyer. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror.

55. **SCHEDULE DELAYS.** If after award the Contractor becomes aware of possible problems that could result in a delay of the completion of the Work on the agreed-to Schedule, the Contractor must immediately notify NMIMT or NMIMT's designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this Article will be interpreted as relieving the Contractor of its contractual obligations. Failure to notify NMIMT promptly will be a basis for determining Contractor responsibility in an otherwise excusable delay.

56. **SEVERABILITY.** If any provision of the resultant Agreement is found invalid or unenforceable, the remainder of the resultant Agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant Agreement will not be affected.

57. **SIGNATURE.** All Responses must be electronically authorized using NMIMT email or facsimile by the Contractor's authorized representative in order for the Response to be considered responsive.

58. **SITE FAMILIARITY.** The Contractor shall be responsible for thoroughly inspecting the site and Work to be done prior to submitting an Offer. The Contractor warrants by its submission of a Response that it has had the opportunity to inspect the site and Work to be done and that its Offer includes all costs required to complete the Work. The failure of the Contractor to be fully informed regarding the requirements of this Procurement will not constitute grounds for any claim, demand for adjustment or the withdrawal of an Offer after the opening.

59. **SITE INSPECTION.** The site(s) referenced in this Procurement are available for inspection. Arrangements can be made by contacting NMIMT's Project Manager for this Procurement. Offerors shall not consider any comments made by employees of NMIMT to be modifications to the specifications unless distributed as a written Amendment to this Procurement by NMIMT's Purchasing Services Office.

60. **STATE AND LOCAL ORDINANCES.** The successful Contractor shall perform work under

the resultant Contract in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Contractor. Where the drawings and specifications require materials or construction in excess of the code requirements, the drawings and specifications shall govern. The Contractor shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.

61. **STATUS OF CONTRACTOR.** The successful Contractor is an independent contractor performing services for NMIMT and neither it nor its agents or employees shall, as a result of the resultant Agreement, accrue leave, retirement, insurance, bonding authority, use of NMIMT vehicles, or any other benefits, prerequisites or allowances normally afforded only to employees of NMIMT. The successful Contractor acknowledges that all sums received under the resultant Agreement are personally reportable by it for income, self-employment and other applicable taxes.

62. **SUBCONTRACTORS AND CONSULTANTS.** Any work subcontracted by the successful Contractor shall require the prior written approval of the subcontractor by NMIMT. Any consultant(s) used by the Contractor shall require the prior written approval of the consultant(s) by NMIMT.

a. **Definitions.** A subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “subcontractor” is referred to throughout the Contract Documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor. The term “subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

b. A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the Work at the site. The term “sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

c. **Award of Subcontractors.** All awards of subcontracts shall be in accordance with the New Mexico Subcontractors Fair Practices Act as applicable.

d. Contractor agrees to employ competent and New Mexico licensed and registered consultants, subcontractors and other professionals for the Project, as might be necessary for the proper construction/demolition of the Project. Contractor represents that the performance of any consultant or subcontractor assigned by Contractor to work on the Project shall be in accordance with sound professional standards, and the requirements of the resultant Contract.

e. Contractor shall list and state the qualifications for each consultant or subcontractor the Contractor proposes to use for all consulting and subcontracted Work.

f. Contractor is specifically advised that any person or other party to whom it is proposed to engage as a consultant or subcontractor must be acceptable to NMIMT after verification by NMIMT of the current eligibility status, including but not limited to suspension or debarment by NMIMT. Any work to be performed by a consultant or subcontractor by the Contractor shall require the prior written approval of NMIMT.

g. All subcontractors must be currently registered with the New Mexico Department of Workforce Solutions.

63. **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's work, which the Contractor, by these Documents, assumes toward NMIMT. Each subcontract agreement shall preserve and protect the rights of NMIMT under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against NMIMT. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

64. **SUBMISSIONS OF SAMPLES/DRAWINGS/LITERATURE.** It may be necessary to test samples or have demonstrations to make an award. All samples, when required, shall be furnished free of expense to NMIMT. Returns shall only be made at the Contractor's request and expense. Contractor samples or descriptive literature should not be submitted unless expressly requested; and, regardless of any attempt by a Contractor to condition its offer, unsolicited samples or descriptive literature shall be submitted at the Contractor's risk.

65. **SUBMITTALS.**

a. Offerors are hereby expressly instructed that all Responses to this Procurement shall meet all specifications and requirements of this Procurement.

b. Responses shall be submitted electronically using NMIMT email or facsimile prior to the deadline stated in NMIMT email or facsimile for this procurement.

c. In submitting Responses to this Procurement, the Offeror represents that the Offeror is familiar with the nature and extent of the Procurement dealing with federal, state, and local requirements which are part of the Procurement. The successful Offeror shall perform work under the resultant Contract in strict accordance with the latest version of all Federal, State and local codes, rules, laws, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Contractor. All Responses must be electronically submitted using NMIMT email or facsimile by an authorized representative of the Contractor in order for the Response to be considered responsive.

66. **SUCCESSORS AND ASSIGNS.** Contractor shall not assign the Contract as a whole without written consent of Owner. If Contractor attempts to make such an assignment without

such consent, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

67. **TAXES.** NMIMT is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials, except construction materials used by a contractor. Services are not exempt from gross receipts taxes. Taxes, if any, on services must be included as a separate line item and not included in the base price proposed.

68. **TECHNICALITIES.** NMIMT reserves the right to waive minor irregularities in any Response to this Procurement. NMIMT also reserves the right to waive mandatory requirements provided that all of the otherwise responsive Responses 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 NMIMT.

69. **TERMINATION.** See the General Conditions of the Contract for Construction Manager at Risk.

70. **WAGE RATE DECISIONS.** Jobs with an estimated cost greater than sixty thousand dollars (\$60,000.00) will be subject to the Public Works Minimum Wage Act (13-4-11 through 14-4-17, NMSA 1978). Wage Rate Decisions must be obtained from the New Mexico Department of Workforce Solutions prior to the beginning of work.

71. **WAGE RATES AND PAYROLL SUBMITTALS.** For all federally funded construction projects greater than \$2,000, the Contractor and all subcontractors and their tiers shall deliver or mail legible copies of the certified weekly payrolls for all costs/services invoiced for the Project awarded resulting from this Procurement to the appropriate oversight agency and NMIMT's Purchasing Services Office. The Contractor shall certify that all payrolls submitted meet or exceed the applicable wage determination as shown in this Procurement. Contractor shall be responsible for the collection and submittal of all certified payrolls and shall retain a copy of all payrolls for a period of three (3) years from the completion of the Project. A copy of all certified payrolls shall be sent weekly to NMIMT's Purchasing Services Office. The Contractor shall be responsible for labeling each submittal with the Project name, payroll period, contractor and/or subcontractor name, each employee's full name and social security number, address and zip code, birth date, sex and occupation, time and day of when employees work week begins, hours worked each day, total hours worked each workweek, basis on which employee wages are paid, regular hourly pay rate, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all additions to or deductions from the employee's wages, date of payment and the pay period covered by the payment.

72. **WAIVERS OF SUBROGRATION.** NMIMT and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Design Professional, Design Professional's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Procurement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by NMIMT. NMIMT or Contractor, as appropriate, will require of the Design Professional, Design Professional's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of

them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies will provide such waivers of subrogation by endorsements or otherwise. A waiver of subrogation will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, that did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

73. **WARRANTIES.** Contractor warrants the goods and/or services furnished to be exactly as specified in the Contract for Construction Manager at Risk, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated therein and with any samples furnished by Contractor. All applicable UCC warranties express and implied are incorporated therein. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional or NMIMT, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Should the Contractor fail or refuse to make the necessary repairs, replacements, and tests when requested by the Design Professional or NMIMT, the Design Professional or NMIMT may perform, or cause the necessary work and tests to be performed, at the Contractor's expense. Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by NMIMT, nor expiration of warranty stated herein, will constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any responsibility for non-conforming work. The Contractor shall immediately remedy any defects in the Work and pay for any resulting damage upon written notice from NMIMT. Should the Contractor fail or refuse to remedy the non-conforming work, NMIMT may perform, or cause to be performed the work necessary to bring the work into conformance with the Contract Documents at the Contractor's expense.

74. **WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by NMIMT on account of Contractor or its employees or agents. Contractor shall comply with all workers compensation laws with respect to Contractor and Contractor's employees and agents.

75. **WORKMANSHIP/COOPERATION.** All work shall be done in a neat, workman-like manner using acceptable equipment and methods that meet normal standards of professional care. The Contractor will cooperate with NMIMT and other contractors and coordinate the work involving other contractors through NMIMT's authorized representative. NMIMT assumes no responsibility or liability for the physical conditions or safety of the work site or any improvements located on the work site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. NMIMT shall not be required to make any adjustment in either the Contract Sum or Schedule concerning any failure by the Contractor or any subcontractor to comply with the requirements of this Article.

The terms “**must, shall, will is required, or are required**” identify a mandatory item or factor. Failure to comply with such an item or factor may result in the rejection of the Respondent’s proposal.

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

GRAMM-LEACH-BLILEY ACT

Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, (NMIMT) requires its Service Providers to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Service Provider shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of NMIMT. In addition, the Service Provider will require and ensure that any of its agents, subcontractors, or sub-consultants, to which it provides confidential Customer Information of NMIMT, implements appropriate security measures to protect confidential Customer Information of NMIMT.

The Service Provider shall not use or disclose covered data and information received from or created on behalf of NMIMT except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by NMIMT. Upon becoming aware of a security breach in which NMIMT Customer Information is used or disclosed in a manner not authorized or covered by this Agreement, including any reasonable belief that an unauthorized individual has accessed a database containing covered data and information, or in violation of any applicable state or federal laws, the Service Provider will report to NMIMT any security incident immediately upon being aware of such a breach and take such corrective steps/action to remedy the breach as requested by NMIMT and required by law.

Upon termination, cancellation, expiration or other conclusion of this Contract, the Service Provider shall return to NMIMT covered Customer Information and data unless NMIMT requests in writing that such Customer Information and data be destroyed. The Service Provider shall complete such return or destruction not less than thirty (30) days after the conclusion of this Contract. Within such thirty (30) day period, the Service Provider shall certify in writing to NMIMT that such return or destruction has been completed. To the extent return or destruction is not feasible; this Agreement shall remain in full force and effect.

Service Provider means any person or entity that receives, maintains, processes, or otherwise is permitted access to Customer Information through its direct provision of services to a Financial Institution. The Gramm-Leach-Bliley Act broadly defines “Financial Institution” as any institution engaging in the financial activities enumerated under the Bank Holding Company Act of 1956, including “making, acquiring, brokering, or servicing loans” and “collection agency services”. Because higher education institutions participate in financial activities, such as processing student financial aid and student loans, FTC regulations consider them Financial Institutions for purposes of the Gramm-Leach-Bliley Act.

Customer Information means any record containing nonpublic information as defined in 16 CFR 313.3(n), about a customer of a Financial Institution, whether in paper, electronic or other form that NMIMT has obtained from a customer in the process of offering a financial product or service including offering student aid and loans to students as defined in 12 CFR 225.28. Any and all Customer Information provided by NMIMT to the Service Provider or which the Service Provider acquires through its own efforts in rendering or providing any goods or services under this Agreement, shall be considered confidential and held in strict confidence and shall only be released to the Service Provider's own personnel, agents, subcontractors and sub-consultants only to the extent necessary to provide or perform the goods and/or services required by this Agreement. Such information shall not be released by the Service Provider to any other person or organization without the prior written consent and approval of NMIMT.

STEP 1, SECTION B: CMAR PURCHASE ORDER TERMS AND CONDITIONS

In the event that this STEP 1, SECTION B conflicts with the mutually agreed to and fully executed Contract for Construction Manager at Risk found as an attachment to STEP 2, EXHIBIT 1, the Contract for Construction Manager at Risk shall control.

1. **Agreement.** When the NMIMT Purchasing Office issues a purchase order to a Vendor, a binding contract is created. This Purchase Order is the sole and entire agreement between the parties; any documents incorporated into this agreement are listed explicitly on the front side of this Purchase Order, or are incorporated by implication by the terms of this Purchase Order. Any terms inconsistent with or in addition to this Purchase Order proposed by Seller are deemed rejected unless agreed to in writing by NMIMT Purchasing Services Office.
2. **Assignment.** This order is assignable by NMIMT. Except as to any payment due hereunder, this order is not assignable by Vendor without written approval of NMIMT.
3. **Changes.** NMIMT may make changes to this order by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by the Vendor shall be recognized without written approval of NMIMT. Any claim by Vendor for an adjustment under this paragraph must be made in writing within thirty (30) days from the date of receipt of Vendor of notification of such change, unless NMIMT waives this condition. Nothing in this paragraph shall excuse Vendor from proceeding with performance of the order as changed hereunder.
4. **FOB.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is NMIMT's designated campus address.
5. **Termination and Delays.**
 - a. NMIMT may terminate this order for convenience in whole or in part at any time. NMIMT shall pay Vendor as full compensation for performance until such termination based upon the unit or pro-rata order price for the delivered and accepted portion, provided however, compensation hereunder shall in no event exceed the total

order price. Such amount will be limited to Vendor's actual cost and shall not include anticipated profits.

b. NMIMT may terminate this order at any time in whole or in part for Vendor's default if Vendor refuses or fails to comply with the provisions of this order or fails to make progress so as to endanger performance and does not cure such failure within what NMIMT considers to be a reasonable period of time.

6. **Inspection.** NMIMT may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of this Purchase Order. Final inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or inspection procedures required by the specifications.
7. **Acceptance and Rejection.** All items are to be NEW and most current production, unless otherwise specified. If prior to final acceptance, any goods or services are found to be defective or not as specified, or if NMIMT is entitled to revoke acceptance of them NMIMT may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at NMIMT's option. Seller shall reimburse NMIMT for all incidental and consequential costs related to unaccepted goods or service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
8. **Title and Delivery.** Title to the materials and supplies passed hereunder shall pass to NMIMT upon acceptance at the FOB point specified, subject to the right of NMIMT to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the NMIMT Purchasing Services Office. Time is of the essence and the Purchase Order is subject to termination for failure to deliver on time.
9. **Warranties.** Seller warrants the good and/or services furnished to be exactly as specified in this Purchase Order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications Incorporated herein and with samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
10. **Packing, Shipping and Invoicing.**
 - a. NMIMT's purchase order number and the Vendor's name shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipment. NMIMT's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packaging ticket.
 - b. The Vendor's invoice shall be submitted, duly certified and shall contain the following information: purchase order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices shall be rendered for each and every complete shipment.

- c. Invoices must be submitted to NMIMT's Accounts Payable via email to apinvoice@npe.nmt.edu
11. **Instrumentalities.** Vendor shall supply all equipment, tools, materials and supplies to accomplish the designated tasks except as set forth in this purchase order, its attachments or any Agreement/Contract relating to this order.
 12. **Payment Terms.** Upon written request from Seller for payment NMIMT shall, within thirty (30) days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within thirty (30) days after certification of acceptance. Late payment charges shall be paid in the amount and under the conditions stated in Section 13-1-158, NMSA 1978.
 13. **Foreign Payments.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
 14. **Discounts.** If prompt payment discounts apply to this order, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice is received by NMIMT's Business Office. In the event testing is required, the discount time shall begin upon the completion of the tests.
 15. **Taxes.** The unit price shall exclude all applicable taxes. NMIMT is tax exempt on Supplies. Taxes shall apply on Services only.
 16. **Audit.** The Vendor shall maintain detailed time records which indicate the date, time and nature of any services rendered. Vendor shall maintain detailed records of all materials or supplies delivered to NMIMT under this order, including serial numbers and other appropriate identifiers. These records shall be subject to internal and external audit. NMIMT shall have the right to audit billings both before and after payment. Payment under any related Agreement/Contract shall not preclude NMIMT from recovering excessive, erroneous or illegal payments previously made to the Vendor.
 17. **Indemnification and Insurance.** Vendor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of any work performed by Vendor, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of NMIMT. In any event, NMIMT's liability shall be subject to the limitations of the New Mexico Tort Claims Act, NMSA 1978 41-4-1 through -27, as amended. Vendor shall indemnify and hold harmless NMIMT, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Vendor will also indemnify, defend and hold harmless NMIMT against any joint and several liabilities imposed against NMIMT with

respect to strict products liability claims attributable to the fault of the Vendor. Vendor agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering all obligations under this order.

18. **Patent and Copyright Indemnity.** Vendor shall pay all royalty and license fees relating to deliverables and other items covered under this order. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered under this order infringes any copyright, trademark, patent, or other intellectual property rights.
19. **Workers Compensation.** No Workers Compensation insurance has been or will be obtained by NMIMT on account of Vendor or its employees or agents. Vendor shall comply with state laws and rules pertaining to workers compensation benefits for its employees.
20. **Equal Opportunity and Affirmative Action.** Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
21. **Independent Business.** Neither Vendor nor any of its agents shall be treated as an employee of NMIMT for any purpose whatsoever. Vendor declares that Vendor is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this order. Vendor further declares that it is engaged in the same or similar activities for other clients and that NMIMT is not Vendor's sole or only client or customer.
22. **Sellers Employees and Agents.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of NMIMT.
23. **Payroll or Employment Taxes.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid NMIMT with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. Seller may be liable for self-employment (social security) tax, to be paid by Seller according to law.
24. **Conflict of Interest.** Vendor shall disclose to NMIMT's Purchasing Services Office the name(s) of any NMIMT employee or member of NMIMT's Governing Board who has a direct or indirect financial interest in the Vendor or in the proposed transaction. A

NMIMT employee (or NMIMT Governing Board Member) has a direct or indirect financial interest in the Vendor or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Board Member or a close relative has an ownership interest in the Vendor (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Vendor, is a partner, officer, director, trustee or consultant to the Vendor, has received grant, travel, honoraria or other similar support from the Vendor, or has a right to receive royalties from the Vendor. Vendor shall immediately notify NMIMT's Purchasing Services Office in regard to any conflict of interest.

25. **Penalties.** The Procurement Code, Section 13-1-28 et seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
26. **Applicable Law.** Each party acknowledges that this order is subject to the laws of the State of New Mexico and the New Mexico Procurement Code, NMSA 1978 13-1-28 through -199, as amended, all of which shall apply to every NMIMT purchase or Agreement/Contract for tangible personal property, services and construction, including participation made pursuant to this order. Other Applicable Laws may include any provision required to be included in an Agreement/Contract by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
27. **NMIMT Policy.** Vendor will comply with all applicable laws, NMIMT policies and industry standards in performing services under this purchase order, including but not limited to laws, policies, and regulations mandated during any government emergency or pandemic.

STEP 1, SECTION C: CMAR SCOPE OF WORK AND PROJECT SUMMARY

SCOPE OF WORK

The CMAR shall actively participate as a member of the Project Team with NMIMT and the Design Professional beginning with design concept and constructability reviews and construction cost estimating at the completion of Programming and will continue through the Design, Construction, Commissioning, Closeout and Warranty phases of the Project. The purpose of these Preconstruction, Construction, Commissioning, Closeout and Warranty responsibilities is to provide the expertise necessary to ensure that the Program objectives are realized, the Project budget and Schedule are met, the facility is fully operational when occupied, and defects detected during the Warranty Period are addressed.

The CMAR shall provide Preconstruction services, including, but not limited to attending and participating in design meetings with NMIMT and the Design Professional, attending and participating in LEED meetings and charrettes with NMIMT and the Design Professional, identifying safe work practices and requirements for construction, assessing and recommending site logistics requirements, recommending phasing and sequencing of the work, construction scheduling, cost estimating, assessing alternative construction methods and products for Value Engineering and life cycle cost considerations and participating in NMIMT's phased design and construction document reviews utilizing BIM and REVIT technology.

The CMAR shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work, its Preconstruction Fee and its proposal for Specified General Conditions and Construction Manager at Risk Fee (CMAR Fee). The CMAR shall indicate the percentage of the Guaranteed Maximum Price that it will perform with its own work forces.

The CMAR, in cooperation with NMIMT and the Design Professional, shall seek to develop subcontractor interest in the Project, conduct pre-bid or pre-proposal meetings, advise NMIMT and the Design Professional about bidding or proposals, evaluate submissions by responsible bidders and Offerors and enter into subcontracts for the execution of the Work.

The CMAR shall manage and superintend the Work.

The CMAR shall assist NMIMT and the Design Professional by providing the documentation required for the submittal to the US Green Building Council for a minimum of LEED Silver Certification.

The CMAR will cooperate with the Owner's Commissioning Agent, providing manpower and technical assistance as required to ensure that the facility systems are commissioned and in full operation at Substantial Completion.

The CMAR shall complete all punchlist work and project documentation and expeditiously address any issues that arise during the Warranty Period.

This is a Construction Manager at Risk project, pursuant to the Educational Facility Construction Manager at Risk Act (§13-1-124.1 through 13-1-124.5 NMSA 1978). NMIMT is required to attain a LEED® Silver certification or higher for this project within the available funding and standards. The CMAR will be expected to participate with NMIMT and the Design Professional in ensuring that all LEED® criteria is maximized in every aspect of this Project while ensuring that building costs are maintained within budget. The intent of using the CMAR option is to help contain costs within current available resources while maintaining the scope and design requirements of the project. Thus, the selected CMAR will be expected to demonstrate fiscal and design integrity with respect to the project. The maximum price will be based upon strong collaboration with the CMAR, the design professional, and NMIMT to reach this goal.

PROJECT SUMMARY

NMIMT has undertaken a project to modernize the Petroleum Recovery Research Center housed in Kelly Hall. Kelly Hall is comprised of the original building built in 1978 and an Annex building completed in 2009. The key component of this modernization is to replace the original Kelly Hall which has reached the end of its functional life. However, the demolition of Kelly Hall cannot happen immediately as there is a severe lack of temporary lab and office spaces. Thus the new replacement building would occur first, followed by the demolition of the existing building

The location chosen is physically close to adjacent lab and research buildings on campus. NMIMT will build the new replacement building to the south of the existing Annex and connect with them via a sky way or bridge as is currently the case with the existing building. Virtually no disruption to operations in either building would be seen, as a new standalone structure will be built and then connected to the existing annex. Upon demolition of the existing building, a parking lot will be constructed in its place to serve both the Annex and new building.

With the proposed design approach and current available funding sources, a laboratory building on the order of 22,000 – 25,000 square feet with two stories, deep foundations, and a penthouse containing the building mechanical components all built to the campus standard is recommended. The CMAR process will strive to provide the appropriate building space and functionality within the current available resources.

STEP 1, SECTION D: CMAR MASTER DEFINITION LIST

Action Submittals: Written and graphic information and physical samples that require Architect's (and Construction Manager's) responsive action. Action submittals are those submittals indicated in individual Specification Sections as "action submittals."

Activity: A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources. **Critical Activity:** An activity on the critical path that must start and finish on the planned early start and finish times. **Predecessor Activity:** An activity that precedes another activity in the network. **Successor Activity:** An activity that follows another activity in the network.

Additional Service: (a written Authorization): Expenses in addition to the basic services compensation that include actual expenditures made by the Design Professional or its employees in the interest of the Project pursuant to this Agreement

Affiliate: Affiliate shall mean any subsidiary of Construction Manager at Risk (CMAR), and any other entity in which Construction Manager at Risk has a financial interest or which has a financial interest in Construction Manager at Risk (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls Construction Manager at Risk.

Allowance: A device that is used in regards to equipment and materials that have not been selected with sufficient detail for the CMAR to ascertain a cost at the time of GMP proposal is given.

Allowances: Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.

Amendment: A change to an already existing document. This may be used to correct, improve or include supplementary information to a document.

GMP Amendment: Amendment shall mean a written modification of this Contract to establish the GMP, and without limitation to any Early Work Amendments, to allow phasing, that will culminate in a final GMP Amendment, executed by CMAR and Owner's representative and approved in writing through a revision to Purchase Order, that establishes within the limitations of the agreed project MACC notwithstanding any modifications to the MACC in accordance with the contract documents.

As Built Drawings: The contractors annotated set of Construction Documents that have been contemporaneously revised by the contractor during the course of the projects construction to identify changes to the project subsequent to the issue of the bidding documents so as to record the actual physical constructed condition.

Available Budget: Amount that NMIMT funding approved for the specific project.

Award of Contract: shall mean a formal written notice by NMIMT that a firm has been selected to enter into a contract for services.

Basis-of-Design Product Specification: A specification in which a specific manufacturer's product is named and accompanied by the words "basis-of-design product," including make or model number or other designation, to establish the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of additional manufacturers named in the specification. **Bidding:** The solicitation process to procure an offer to enter into contract for Work within the procurement rules of the Central Purchasing Office and in accordance with the Contract Documents and this agreement.

Bidding Documents: all required documents for the public which may include advertisement, bidding, selection, award, construction and administration of the Construction Documents for the project in conformance with the New Mexico procurement Code.

BIM: Building Information Modeling. The development of a computer based parametric model of a project and from this model then extracting information to convey a project (a construction document package) This differs from a CAD-based approach wherein individual drawings are created to collectively convey a project. For this definition BIM is taken to mean Autodesk's Revit or similar software by others.

Purchasing Services Office: The Purchasing Services Office at NMIMT is located in West Hall, Room 104, 801 Leroy Place, Socorro, NM 87801.

CM Services: CM Services shall have the meaning given in a Construction Manager at Risk Methodology for Construction.

Consolidate: To strengthen loose or deteriorated materials in place.

Construction Cost: The total cost to NMIMT for the construction and completion of all elements of the Project designed or specified by the Design Professional, including construction, site development costs (utilities, infrastructure, landscaping, site improvements, demolition, etc.), and built-in equipment, but excluding professional fees, testing fees, NMIMT's project

contingency, acquisition costs or other administrative costs. Construction Cost may include furniture, fixtures and equipment (“FF&E”) depending on whether the FF&E is being provided as a part of the Construction Contract.

Construction Documents: All documents that constitute the agreement between the Owner and the CMAR to provide construction of the project in accordance with the terms and conditions of the contract. Construction documents shall include: Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Bid Forms, Agreement Forms, Wage Rates and Addenda/Amendments that will be incorporated into the Construction Contract and all required documents for the advertisement, bidding, selection, award, construction and administration of the Construction Documents for the Project must be in conformance with the New Mexico Procurement Code and any other applicable laws.

Construction Document Phase: The portion of the work during which the Construction Documents are created.

Construction Manager at Risk (CMAR): A contractor/person who, pursuant to a contract with NMIMT, provides the pre-construction services and construction management required in a construction manager at risk delivery method in accordance with NMSA 13-1-124.1-5. The construction manager at risk also serves as the General Contractor on the project.

Construction Manager at Risk Delivery Method: A construction method for a project wherein a Construction Manager at Risk provides a range of preconstruction services and construction management, including without limitation the maintenance of the MACC and the Construction Manager at Risk’s delivery of a Guaranteed Maximum Price (GMP), cost estimation, cost control, value engineering, consultation with design professionals, preparation and coordination of bid packages for subcontractors, scheduling, and while acting as the general contractor during construction, detailing the material and subcontractors’ scopes of work, prequalifying and evaluating material suppliers and subcontractors, holding all subcontractors to complete the Work and providing all necessary management and construction services to successfully complete the Work within a Guaranteed Maximum Price for which the Construction Manager at Risk is solely responsible. All CMAR work with NMIMT must be in compliance with the New Mexico Procurement Code and all applicable laws including the governing law from General Conditions of the Agreement between the Owner and the Design Professional Where the Owner will use the construction Manager at Risk Delivery Method).

Construction Manager at Risk Field Work: Construction Manager at Risk Field Work shall mean customary layout, surveying, hoisting, safety enforcement, provisions of toilet facilities, temporary heat, trash removal, clean up, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in the construction documents undeveloped design owing to

deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the Construction Manager at Risk has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, (ii) such Work is identified as Construction Manager at Risk Field Work in monthly billings and (iii) Construction Manager at Risk receives prior approval of Owner’s Representative as to the scope of such Construction Manager at Risk Field Work.

Construction Phase: The Construction Phase shall mean the period commencing on the Owner's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

Construction Phase Services: Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.

Construction Manager at Risk Responsibilities: The CMAR shall be responsible for the performance of all the work, at a total cost not exceeding GMP, within the contract time. The CMAR shall also be required to follow the requirements of the contract documents and remain in compliance with applicable laws.

Construction Waste: Building and site improvement materials and other solid waste resulting from construction, remodeling, renovation, or repair operations. Construction waste includes packaging.

Contract: An agreement in the form of a mutually agreed to and fully executed Contract and associated documents between NMIMT and a contractor. “Contract” and “Agreement” may be used interchangeably.

Contractor/Vendor: A successful Offeror awarded the contract from NMIMT. “Contractor” and “Vendor” may be used interchangeably to mean the Construction Manager at Risk (CMAR).

Cost Loading: The allocation of the schedule of values for the completion of an activity as scheduled. The sum of costs for all activities must equal the total Contract Sum unless otherwise approved by the Design Professional.

Cost of the Work: The Cost of the Work is the estimated cost to complete the Work for the Project as described in the plans and specifications and in the GMP Amendment including

Construction Manager at Risk Contingency, but not including preconstruction services fee, the fixed cost for Specified General Conditions, Construction Manager at Risk Fee or New Mexico Gross Receipts Tax (NMGRT).

CPM: Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of Project.

Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no float.

Cutting: Removal of in-place construction necessary to permit installation or performance of other work.

Day: The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

Demolition Waste: Building and site improvement materials resulting from demolition or selective demolition operations.

Design Development Documents: Design Development Documents shall have the meaning given in the General Conditions of the Agreement between the Owner and the Design Professional for this Project.

Design Professional (DP): Is the legal entity qualified to do business in State of New Mexico that employs an individual or individuals licensed to practice the discipline or disciplines for the services to be performed under this agreement.

Design Professional Principal(s): Individuals of the Design Professional's firm authorized to sign on behalf of the firm to act as signatories to agreements for this project (from General Conditions of the Agreement between the Owner and the Design Professional Where the Owner will use the construction Manager at Risk Delivery Method).

Determination: The written documentation of a procurement decision made by the NMIMT Purchasing Services Office, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

Dismantle: To disassemble and detach items by hand from existing construction to the limits indicated, using small hand tools and small one-hand power tools, so as to protect nearby historic surfaces; and legally dispose of dismantled items off-site, unless indicated to be salvaged or reinstalled.

Disposal: Removal off-site of demolition and construction waste and subsequent sale, recycling, reuse, or deposit in landfill or incinerator acceptable to authorities having jurisdiction.

Early Work: Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall require written Owner authorization and be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.

Early Work Amendment: Early Work Amendment shall mean an Amendment to this Contract executed by and between the parties to authorize Early Work.

Energy Star: Is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum federal standards for energy consumption by a certain amount. Design Professional will be required to assist NMIMT in putting data to determine energy efficiency, but will not be required to register the project.

Entity: Means NMIMT for the purposes of Section 13-1-120(B)(6), NMSA 1978; Evaluation Criteria; and is the entity requesting proposals.

Event: The starting or ending point of an activity.

Existing to Remain: Existing items that are not to be removed or dismantled.

Experienced: When used with an entity or individual, "experienced" means having successfully completed a minimum of previous projects or body of work similar in nature, size, and extent to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.

Field Quality-Control Testing: Tests and inspections that are performed on-site for installation of the Work and for completed Work.

File Transfer Protocol (FTP): Communications protocol that enables transfer of files to and from another computer over a network and that serves as the basis for standard internet protocols. An FTP site is a portion of a network located outside of network firewalls within which internal and external users are able to access files.

Fixed Cost for Specified General Conditions Work: Fixed Cost for Specified General Conditions Work (SGC Work) shall mean the fixed sum proposed by the Construction Manager at Risk for this work in its response to the Request for Proposal.

Float: The measure of leeway in starting and completing an activity. Float time [belongs to Owner] [is not for the exclusive use or benefit of either Owner or Contractor, but is a jointly owned, expiring Project resource available to both parties as needed to meet schedule milestones and Contract completion date].

1. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
2. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned Project completion date.

Furnishings and Equipment Needs: A general description of required furnishings needed to be installed in the building(s) as well as any equipment that is anchored to the building(s). Equipment required for departmental use is not a component of this requirement.

General Conditions of the Contract between the Owner and the Construction Manager at Risk: The General Conditions of the Construction Manager at Risk Agreement known herein as the General Conditions.

General Conditions of the Agreement between the Owner and the Design Professional: The General Conditions of the Design Profession where a Construction Manager at Risk method is used known herein as the General Conditions between the Owner and the Design Professional.

Governing Board: The Regents of New Mexico Institute of Mining and Technology.

GMP Amendment: GMP Amendment shall mean an Amendment to this Contract, issued in the form of Exhibit A and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

GMP Change Request: A request to change the GMP from the CMAR. Changes made prior to the setting of the GMP shall be through an amendment to the GMP per Exhibit A. Changes made to the GMP after the GMP setting shall be through a MCR/Change Order.

GMP Contingency: A sum established by the CMAR for the CMAR's use (approved by Owner's Representative) to cover additional development of Plans and Specifications which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.

GMP Supporting Documents: GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting

Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.

Guaranteed Maximum Price (GMP): The maximum amount to be paid by NMIMT for the construction of the Work including the General Conditions, fees charged by the CMAR, GMP contingency and allowances and any other costs or requirements not specifically excluded in the Construction Documents or Agreement between NMIMT and the CMAR, but excluding New Mexico gross receipts tax. The Guaranteed Maximum Price of this Agreement shall be stated in dollars within the GMP Amendment, as determined in accordance with the Contract Documents and as it may be adjusted from time to time pursuant to the provisions of this Agreement.

Historic: Spaces, areas, rooms, surfaces, materials, finishes, and overall appearance which are important to the successful [preservation] [rehabilitation] [restoration] [and] [reconstruction] as determined by Architect. Designated historic [spaces] [areas] [rooms] [and] [surfaces] are [indicated on Drawings] [and] [scheduled in this Section].

1. [Restoration Zones] [Grade 1 Areas]: Areas of greatest architectural importance, integrity, and visibility; to be preserved and restored to the original, circa , design and finish as shown on Drawings:
2. [Renovation Zones] [Grade 2 Areas]: Areas of significant architectural importance, integrity, and visibility; to be preserved and restored consistent with the remaining historic fabric and to the extent shown on Drawings:
3. [Alteration Zones] [Grade 3 Areas]: Areas of slight architectural importance, integrity, and visibility; to leave any remaining original fabric untouched insofar as is consistent with accommodating modern uses for the building as shown on Drawings.

Informational Submittals: Written and graphic information and physical samples that do not require Design Professional's and Construction Manager's responsive action. Submittals may be rejected for not complying with requirements. Informational submittals are those submittals indicated in individual Specification Sections as "informational submittals".

Initial Guaranteed Maximum Price (IGMP): The Initial Guaranteed Maximum Price is the price submitted in the price proposal at the date and time appointed for receipt of proposals for work to be performed. The IGMP shall also be evaluated, confirmed and monitored by the Owner, Design Professional and the CMAR throughout the pre-construction process. Installer/Applicator/Erector: Contractor or another entity engaged by Contractor as an employee, Subcontractor, or Sub-subcontractor, to perform a particular construction operation, including installation, erection, application, and similar operations.

Use of Trade: Specific terminology in referring to a trade or entity does not require that certain construction activities be performed by accredited or unionized individuals, or that requirements specified apply exclusively to specific trade(s).

LEED Silver: U.S. Green Council Leadership in Energy and Efficiency Design (LEED) Silver Certification.

LEED Silver Certification Requirements: Leadership in Energy and Environmental Design Silver Certification or better is required per current U.S. Green Building Council requirements.

Liquidated Damages: An amount, typically allocated per calendar day, that the CMAR agrees to pay if a breach typically associated with the contractor not attaining a completion date as promised and is caused by the CMAR, its subcontractors, suppliers or other parties responsible to the CMAR.

MACC (Maximum Allowable Construction Cost): The maximum allowable Construction Cost established by NMIMT, excluding New Mexico gross receipts tax. The Maximum Allowable Construction Cost is set by the Owner and represents the total sum available for construction purposes including general conditions, and fee of the Construction Manager at Risk excluding gross receipts tax, but may include furnishings, fixtures and equipment. The MACC shall not include preconstruction costs, professional fees, testing fees, Owner's project contingency funds, acquisition costs or other soft costs in accordance with the contract.

MACC Adjustment: MACC Adjustment is defined as a change in the MACC which occurs after award of the Agreement Between the Owner and the Construction Manager at Risk but before the execution of the GMP Amendment in accordance with the contract documents.

MACC Reconciliation: MACC Reconciliation is defined as the process by which the Construction Manager at Risk and the Design Professional determine the Probable Construction Cost at the end of the Schematic and Design Development Phases in accordance with the contract.

MACC Verification: A process in which the Construction Manager at Risk verified the project MACC as part of a proposal to enter into this Agreement. That verification was based upon information the CMAR deemed sufficient as to allow general and broad unit pricing and to provide the Proposal Bond that holds the CMAR accountable to maintaining the MACC until execution of the Guaranteed Maximum Price Amendment.

Major Categories of Work: Key components, systems and sub-assemblies of a project. These categories include, but are not limited to the demolition, site preparation, foundations, exterior enclosure, interiors, construction, mechanical, electrical, plumbing systems, built-in casework

and equipment, site improvements and landscape. Specific categories and subcategories are defined with the Unifomat construction component classification system.

Match: To blend with adjacent construction and manifest no apparent difference in material type, species, cut, form, detail, color, grain, texture, or finish; as approved by Architect.

Materials: Materials and systems specified in the Construction Documents available at the time of this Agreement, or reasonably believed to be available prior to the Bidding Phase.

Modification Change Request (MCR): A request for changes to the contract as part of the change order process. **Mockups:** Full-size physical assemblies that are constructed on-site. Mockups are constructed to verify selections made under Sample submittals; to demonstrate aesthetic effects and, where indicated, qualities of materials and execution; to review coordination, testing, or operation; to show interface between dissimilar materials; and to demonstrate compliance with specified installation tolerances. Mockups are not Samples. Unless otherwise indicated, approved mockups establish the standard by which the Work will be judged. **Laboratory Mockups:** Full-size physical assemblies constructed at testing facility to verify performance characteristics.

1. **Integrated Exterior Mockups:** Mockups of the exterior envelope erected separately from the building but on Project site, consisting of multiple products, assemblies, and subassemblies.
2. **Room Mockups:** Mockups of typical interior spaces complete with wall, floor, and ceiling finishes, doors, windows, millwork, casework, specialties, furnishings and equipment, and lighting.

Normal Consulting and Engineering Services: Professional services provided by the Design Professional, civil engineer, landscape Design Professional, structural, electrical and mechanical engineers and the cost estimators which are necessary and appropriate to define the project design and direct the project construction.

Offeror: An independent contractor who may be an individual, corporation, or partnership who chooses to submit a proposal in response to an RFP.

Owner: Owner is the person or entity identified as such in the Agreement and is referred to throughout the Construction Documents as if singular in number. The Owner shall designate in writing the representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Owner referred to throughout this Agreement shall be (NMIMT). Owner and NMIMT may be used interchangeably throughout this Agreement.

Owner Representatives: The individual who is an employee of NMIMT named in this Agreement. The Owner's Purchasing Director and Vice President for Finance and Operations shall be the Owner's Contractual Representatives, authorized to Act on the Owner's behalf with respect to oversight and approval of the Construction contracts including any amendments or change orders to the contract. The Owner's Facilities Construction Project Manager and the Facilities Executive Director shall be the Owner's representative with oversight of the project and work completed. The Executive Director of Purchasing further Designates the Owner's Facilities Construction Project Manager and the Facilities Executive Director to pre-approve change orders that do not exceed \$20,000.00. Changes made within the IGMP for early work may also be approved through a limited notice to proceed signed by the Design Professional, the CMAR and the Facilities Director (or project manager) with the authority to bind the Owner with respect to this Agreement in accordance with Article 3.

Patching: Fitting and repair work required to restore construction to original conditions after installation of other work.

Portable Document Format (PDF): An open standard file format licensed by Adobe Systems used for representing documents in a device-independent and display resolution-independent fixed-layout document format.

Preconstruction Phase: The Preconstruction Phase shall mean the period commencing on the date of the contract award Contract and ending upon commencement of the Construction Phase; provided that if the Owner and Construction Manager at Risk agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both Phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

Preconstruction Phase Services: Preconstruction Phase Services shall mean all services described in the contract documents and any similar services described in the Request for Proposals, including such similar services as are described in the Design Professional's Response or the Construction Manager at Risk's Response to the Request for Proposals to the extent they are accepted by Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.

Preconstruction Testing: Tests and inspections performed specifically for Project before products and materials are incorporated into the Work, to verify performance or compliance with specified criteria.

Preliminary Design Documents: Design Drawings, outline specifications and cost estimates developed from the schematic design documents prepared to more comprehensively define

the size, character and quality of the project and to further confirm compliance of the design with the project scope and budget.

Procurement Officer/Buyer: The person or Procurement Officer or their designee authorized by NMIMT to administer a procurement.

Products: Items obtained for incorporating into the Work, whether purchased for the Project or taken from previously purchased stock. The term "product" includes the terms "material," "equipment," "system," and terms of similar intent.

1. **Named Products:** Items identified by manufacturer's product name, including make or model number or other designation shown or listed in manufacturer's published product literature that is current as of date of the Contract Documents.
2. **New Products:** Items that have not previously been incorporated into another project or facility. Products salvaged or recycled from other projects are not considered new products.
3. **Comparable Product:** Product that is demonstrated and approved through submittal process to have the indicated qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics that equal or exceed those of a specified product.

Product Testing: Tests and inspections that are performed by an NRTL, an NVLAP, or a testing agency qualified to conduct product testing and acceptable to authorities having jurisdiction, to establish product performance and compliance with specified requirements.

Program: A written statement prepared by the Owner with assistance of the Design Professional setting forth the conditions and objectives for a building project including, but not limited to, its general purpose and detailed requirements, such as complete listing of rooms required, their sizes, special facilities.

Project: The Project is the total administration, design, construction and post-construction of which Work performed under this Agreement and the Construction Documents may be the whole or a part and which may include design or construction by the Owner or by separate professionals or contractors.

Project Design Professional: The individual Design Professional registered in the State of New Mexico who shall sign and affix a New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports required for the Project. The Project Design Professional shall be mutually agreed upon by Owner and Design Professional at the time this Agreement is entered into and shall be named herein.

Project Management Data and Information: Data and information to be input, stored, and housed in NMIMT's project management software system.

Project Management Site: This will be a web or similar site in which all contract documents shall reside.

Proposal: The Offeror's response to an RFP.

Quality-Assurance Services: Activities, actions, and procedures performed before and during execution of the Work to guard against defects and deficiencies and substantiate that proposed construction will comply with requirements.

Quality-Control Services: Tests, inspections, procedures, and related actions during and after execution of the Work to evaluate that actual products incorporated into the Work and completed construction comply with requirements. Services do not include contract enforcement activities performed by Architect or Construction Manager.

Recycle: Recovery of demolition or construction waste for subsequent processing in preparation for reuse.

Reconstruct: To remove existing items, replicate damaged or missing components, and reinstall in original position.

Record Documents: An archive reference edition for the Construction Documents prepared by the Design Professional/engineer incorporating changes from the original construction documents indicated in the As-Built drawings.

Refinish: To remove existing finishes to base material and apply new finish to match original or as otherwise indicated.

Regulatory Authorities: Authorities having jurisdiction related to health or safety laws, codes, standards and regulations applicable to the locale, municipal, county, state, regional or federal authority which may require information of the filing of drawings, specifications, applications, etc. including but not limited to: The State Fire Marshal, State of New Mexico Construction Industries Division, or other organizations charged with enforcing regulatory compliance in connection with this project.

Reimbursable Expenses to the Design Professional: Expenses in addition to the Basic Services compensation that include actual expenditures made by third parties contracted under the Design Professional contract made in the interest of the Project pursuant to this Agreement.

Reinstall: To protect removed or dismantled item, repair and clean it as indicated for reuse, and reinstall it in original position, or where indicated.

Remove: Specifically for historic spaces, areas, rooms, and surfaces, the term means to detach an item from existing construction to the limits indicated, using hand tools and hand-operated power equipment, and legally dispose of it off-site, unless indicated to be salvaged or reinstalled.

Repair: To correct damage and defects, retaining existing materials, features, and finishes while employing as little new material as possible. Includes patching, piecing-in, splicing, consolidating, or otherwise reinforcing or upgrading materials.

Replace: To remove, duplicate, and reinstall entire items with new material. The original item is the pattern for creating duplicates unless otherwise indicated.

Replicate: To reproduce in exact detail, materials, and finish unless otherwise indicated.

Reproduce: To fabricate a new item, accurate in detail to the original, and in either the same or a similar material as the original, unless otherwise indicated.

Request for Proposals (RFP): All documents, attached or incorporated by reference, used for soliciting proposals from NMIMT.

Resident Business or Resident Contractor: An entity that has a valid resident certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-21 NMSA 1978.

Resident Veteran Business or Resident Veteran Contractor: An entity that has a valid resident veteran certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.

Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

Responsible Offeror: An Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that her/his/its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal (Section 13-1-83 NMSA 1978).

Responsive Offer or Responsive Proposal: An offer or proposal, which conforms in all material respects to the requirements set forth in the RFP. Material respects of a RFP include, but are not limited to quality, quantity or delivery requirements.

Restore: To consolidate, replicate, reproduce, repair, and refinish as required to achieve the indicated results.

Retain: To keep existing items that are not to be removed or dismantled.

Reversible: New construction work, treatments, or processes that can be removed or undone in the future without damaging historic materials unless otherwise indicated.

RFI: Request for Interpretation or Information. Construction Manager, Architect, Contractor, Owner or other applicable parties seeking information required by or clarifications of the Contract Documents.

Roofing Consultant: The Owner's separate consultant providing design review and/or field observation services on the Project scope of work involving roofing.

Salvage for Waste Management and Disposal: Recovery of demolition or construction waste and subsequent sale or reuse in another facility.

Salvage for Treatment Procedures: To protect removed or dismantled items and deliver them to Owner ready for reuse.

Salvage and Reuse for Waste Management and Disposal: Recovery of demolition or construction waste and subsequent incorporation into the Work.

Schedule of Values: A statement furnished by Contractor allocating portions of the Contract Sum to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

Schematic Design Documents: Schematic Design Documents shall have the meaning given in the General Conditions of the Agreement between the Owner and the Design Professional where the Method of Construction is the Construction Manager at Risk for this Project.

Schematic Documents: The Schematic Documents submittal should include preliminary Schematic Drawings and a Preliminary Project Description (PPD) that together clearly indicate the extent and relationship of the project components. A PPD helps the Owner and the Design Professional understand the various components and systems proposed for the project. It also

serves as an early basis for discussion of the overall building and site systems including site drainage and other geotechnical considerations.

Scope Change Following GMP: Scope Change Following the GMP Amendment shall mean only (i) changed site conditions not reasonably inferable from information available to CMAR at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under this Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to Owner of the Allowance items exceeds the total amount of the Allowances and will be changed through the issuance of a change order).

Selection Committee: A body created to perform the evaluation of Offeror proposals to a NMIMT RFP. "Evaluation Committee" may be used interchangeably with "Selection Committee".

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

Source Quality-Control Testing: Tests and inspections that are performed at the source, e.g., plant, mill, factory, or shop.

Specialty Design Consultant: Consultants other than those listed in the agreement such as laboratory designer, acoustical engineer, theater designer, food service designer, specialty lighting consultant, LEED compliance documentation, etc., which are desirable and appropriate to augment the normal consulting design services of the Design Professional engineer to develop the project's design and direct the projects construction.

Specified General Conditions: Shall mean that portion of the work required to support construction operations that is not included within overhead on general expenses but is called out in "Summary Matrix".

Stabilize: To provide structural reinforcement of unsafe or deteriorated items while maintaining the essential form as it exists at present; also, to re-establish a weather-resistant enclosure.

Strip: To remove existing finish down to base material unless otherwise indicated.

Testing Agency: An entity engaged to perform specific tests, inspections, or both. Testing laboratory shall mean the same as testing agency.

Uniformat: A construction classification system published by the Construction Specifications Institute (CSI) for organizing construction information into a standardized order and sequence to facilitate project budget analysis. Uniformat divides construction work into various categories and subcategories referred to as levels. The higher the level the more detailed the division of the work becomes.

Use of Trade: Specific terminology in referring to a trade or entity does not require that certain construction activities be performed by accredited or unionized individuals, or that requirements specified apply exclusively to specific trade(s).

User: The students, faculty, staff and others as determined by NMIMT, occupying the facility or facilities, for which a project is being designed.

User Contact: The person designated by NMIMT to speak on behalf of the staff concerning the scope of work and programming requirements for the project.

User Representative: Individuals that may be designated by the Owner to represent the needs of facility, students, staff or others as determined by NMIMT for which the project is being designed.

Value Engineering: A systematic and organized approach to provide the necessary functions in a project at the lowest cost. Value Engineering promotes the substitution of materials and methods with less expensive alternatives, without sacrificing functionality. It is focused solely on the functions of various components and materials, rather than their physical attributes.

The terms "must," "shall," "will," "is required," or "are required" identify a necessary item or factor. Failure to comply with such an item or factor may result in the rejection of the Offeror's proposal.

The terms "can," "may," "should," "preferably," or "prefers" identifies a desirable or discretionary item or factor. Failure to comply with such an item or factor may result in the rejection of the Offeror's proposal. Rejection of the proposal will be subject to review and the final decision on rejection will be made by the NMIMT Purchasing Services Office.

Other Definitions: Words or combinations of words, if not defined herein, shall be defined in the following order of precedence: (1) Definitions, of the General Conditions; (2) Within the context they are used; (3) As to well-known technical or construction industry meaning if used in accordance with such recognized meanings; (4) By the Webster's Collegiate Dictionary.

STEP 1, EXHIBIT 1: EVALUATION CRITERIA RESPONSE FORM

STEP 1, RFQ EVALUATION CRITERIA AND SELECTION PROCESS

STEP 1, RFQ Statement of Qualifications (SOQ) will be evaluated by the Selection Committee based on the evaluation factors found in STEP 1, EXHIBIT 1. Each Respondent must address all elements required by STEP 1, RFQ. Respondents are hereby informed that in making evaluations and determinations, NMIMT is not restricted to the minimum information required by this STEP 1, RFQ and that any relevant information regarding the evaluation criteria from reliable sources may be considered.

NMIMT may also require additional relevant information related to the Respondent's past performance or present capability to perform this Contract.

The Maximum Score for STEP 1, RFQ IS UP TO 200 POINTS POSSIBLE (plus any validated New Mexico Resident or New Mexico Resident Veteran preference points).

Item #	Item Name	Response
1.1	<p>PAST PERFORMANCE OF THE RESPONDENT IN COMPLETING CMAR PROJECTS OR PROJECTS WITH A GUARANTEED MAXIMUM PRICE (UP TO 25 POINTS POSSIBLE). What has been the experience of your firm in completing CMAR projects or projects with a Guaranteed Maximum Price? Provide a list of five completed projects. For each project listed, provide the duration of construction, the final cost, a description of the pre- construction services performed by your firm, a reference who is familiar with your firm’s performance in completing the project and note if any of the personnel in your anticipated Project Team for the Project outlined in this solicitation from NMIMT participated as members of the project team for the listed project. DO NOT INCLUDE A NMIMT PROJECT.</p>	
1.2	<p>PAST PERFORMANCE IN COMPLETING PROJECTS SIMILAR TO THE PROJECT</p>	

	<p>(UP TO 25 POINTS POSSIBLE). What has been the experience of your firm in completing projects of a similar size and type to the Project?</p> <p>Provide a list of five completed projects. For each project listed provide the duration of construction, the final cost, a reference who is familiar with your firm's performance in completing the project and note if any of the personnel in your anticipated Project Team for the Project outlined in this solicitation from NMIMT participated as members of the project team for the listed project.</p>	
1.3	<p>PRESENTATION OF THE PROJECT TEAM (UP TO 25 POINTS POSSIBLE).</p> <p>Describe the organization that you feel is appropriate for the Project during the Preconstruction, Procurement, Construction, Close-out and Warranty phases. Identify the personnel and/or consultants that will serve in those roles and provide the qualifications, experience and hourly rate (for Preconstruction Services) for each.</p>	
1.4	<p>CONCEPT OF THE PROPOSAL (UP TO 40 POINTS POSSIBLE). In your answers</p>	

	to items a. through i. below, discuss the major challenges your firm envisions the Project Team will encounter in completing the work for the Project and how your firm will address those challenges. Provide your firm's plan to address the following contractual responsibilities of the CMAR:	
1.4.1	Preconstruction Services, including estimating, scheduling, constructability reviews, logistics planning and value engineering (UP TO 5 POINTS POSSIBLE).	
1.4.2	Procurement Management including developing subcontractor interest, conducting pre-bid or pre-proposal meetings, pre-qualifying subcontractors and suppliers, receiving and evaluating bids and entering into contracts (UP TO 5 POINTS POSSIBLE).	
1.4.3	Construction Management Services including services to ensure a quality product is delivered on time and within budget (UP TO 5 POINTS POSSIBLE).	
1.4.4	Safety and Site Management including the services to be rendered and plans to be developed in connection with student, faculty and worker safety, hazardous material control, fire	

	protection, emergency medical response and site security (UP TO 5 POINTS POSSIBLE).	
1.4.5	Commissioning, start-up services and follow through to ensure that all building systems are in full operation at Substantial Completion (UP TO 5 POINTS POSSIBLE).	
1.4.6	Project Closeout Services to ensure that as-built documentation is accurate, maintenance and operation manuals are complete, warranty and guarantees are provided and NMIMT personnel are trained in the maintenance and operation of the facility (UP TO 5 POINTS POSSIBLE).	
1.4.7	Warranty Services to ensure that problems or issues identified and transmitted to the CMAR for resolution during the Warranty Period by the NMIMT Facilities Staff are resolved expeditiously (UP TO 5 POINTS POSSIBLE).	
1.4.8	Provision of information required for NMIMT to apply for and receive utility rebates to which it might be entitled (UP TO 5 POINTS POSSIBLE).	
1.5	ABILITY OF THE RESPONDENT TO MEET TIME AND BUDGET REQUIREMENTS (UP TO 25 POINTS POSSIBLE).	

	<p>Provide the following additional information for each of the five projects listed in your firm’s response to the question above entitled: “Past Performance of the Offeror in completing CMAR projects or projects with a Guaranteed maximum Price”.</p> <ul style="list-style-type: none"> a. Owner’s Original Construction Estimate. b. Original Guaranteed Maximum Price. c. Final Contract Cost. d. Original Completion Date. e. Actual Date of Substantial Completion 	
1.6	<p>RESPONDENT’S EXPERIENCE AND UTILIZATION OF SUBCONTRACTORS AND MATERIAL SUPPLIERS IN NEW MEXICO (UP TO 25 POINTS POSSIBLE).</p> <p>Demonstrate your firm’s experience in successfully completing construction projects in New Mexico. Indicate your firm’s familiarity with the local labor market and capability in developing viable pricing alternatives working with subcontractors and suppliers owned and operated by New Mexico residents.</p>	
1.7	<p>RECENT, CURRENT AND PROJECTED WORKLOADS</p>	

	<p>(UP TO 25 POINTS POSSIBLE). What has been your firm’s annual volume (in dollars) of construction for the past five years? What is your firm’s anticipated volume for the current year and what is your plan for the next two years? How would your firm’s participation in the Project affect that plan?</p>	
<p>1.8</p>	<p>LEED EXPERIENCE (UP TO 5 POINTS POSSIBLE). What has been your firm’s experience in completing projects achieving LEED certification? List up to five projects where your firm has participated as a member of the project team where LEED Certification was achieved. For each project listed, describe the services your firm provided that contributed to LEED certification.</p>	
<p>1.9</p>	<p>REFERENCES (UP TO 5 POINTS POSSIBLE). Offerors must Identify three (3) clients/customers/ institutions that they have completed projects similar to the project identified in this RFP. Please provide a valid organization, address, contact name, title, phone number and email address for each reference provided. DO NOT INCLUDE NMIMT AS A REFERENCE</p>	

STEP 1, EXHIBIT 2: OFFEROR'S ACCEPTANCE OF THE REQUEST FOR QUALIFICATIONS, AMENDMENTS AND TERMS AND CONDITIONS

IMPORTANT NOTICE - READ BEFORE ACCEPTING

By completing the information below, Contractor's authorized representative acknowledges that Contractor is a competent firm capable of providing the items and / or services requested, is properly licensed for providing the items and / or services specified, has read this Request for Qualifications / Proposals, understands it, and agrees to be bound by its terms and conditions. Contractor hereby agrees to furnish items and / or services, at the prices quoted, pursuant to all requirements and specifications contained in this solicitation, upon receipt of an authorized purchase order from NMIMT's Purchasing Services Office, and further agrees that the language of the documents of this solicitation shall govern in the event of a conflict with the Contractor's Proposal. The Contractor's authorized representative, being duly authorized to digitally accept the solicitation documents and act on behalf of the Contractor in an official capacity, certifies that the items and / or services offered in response to this Request for Qualifications / Proposals meets or exceeds all specifications and terms and conditions as described in this Request for Qualifications / Proposals without exceptions. Contractor understands that items and / or services not meeting all specifications and/or terms and conditions will be rejected and all costs shall be borne by the Contractor.

Should an Offeror object to any of the CMAR Standard Terms and Conditions as specified in STEP 1, SECTION A, CMAR STANDARD TERMS AND CONDITIONS, or the CMAR Purchase Order Terms and Conditions as specified in STEP 1, SECTION B, CMAR PURCHASE ORDER TERMS AND CONDITIONS, that Offeror must attach specific alternative language in its Response to this STEP 1, EXHIBIT 2 that would be acceptable to NMIMT. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to NMIMT and may result in disqualification of the Offeror's proposal. Offerors must provide a brief statement of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

Please complete the below form.

Item	Item Name	Response
a.	Legal Company Name as shown on W-9/Income tax return	
b.	Business name, if different than above (enter N/A if	

	not applicable)	
c.	Address	
d.	City, State, Zip Code	
e.	Contract Person for clarification of Offeror's Response	
e.1	Name	
e.2	Title	
e.3	Email Address	
e.4	Telephone Number	
f.	Contact Person Authorized to Negotiate the Contract on Behalf of the Firm	
f.1	Name	
f.2	Title	
f.3	Email Address	
f.4	Telephone Number	
g.	Company Fax Number	
h.	Applicable New Mexico License Numbers. Include your New Mexico Contractor's License Number (attach a current copy of this license) and active Labor Enforcement Fund Public Works Registration Number with the New Mexico Department of Workforce Solutions (attach a current copy of the Certificate of Public Works Registration). ALL NEW MEXICO LICENSE NUMBERS LISTED HEREIN OR PURPORTED BY THE OFFEROR MUST BE ISSUED IN THE OFFERING FIRM'S LEGAL COMPANY NAME. LICENSE NUMBERS LISTED UNDER A NAME OTHER	

	<p>THAN THE LEGAL COMPANY NAME MAY RENDER THE OFFER AS BEING NON-RESPONSIVE. NON-RESPONSIVE OFFERS WILL NOT BE CONSIDERED FOR AWARD.</p>	
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STEP 1, EXHIBIT 2.1: AUTHORIZED REPRESENTATIVE'S ACCEPTANCE OF RFP AMENDMENTS, TERMS AND CONDITIONS

I hereby affirm that the information provided in STEP 1, Exhibits 2 through 2.1 is true and complete to the best of my knowledge. I understand that any falsified information, misrepresentations or omissions may invalidate any resultant award and may be grounds for debarment regardless of the time period in which misrepresentation is discovered. I further affirm that by clicking on "I Agree" that the firm that I represent is a competent firm capable of providing the items and / or services requested, is properly licensed, has read this Request for Proposals, understands it, and agrees to be bound by its terms and conditions as described in this RFP and any amendments.

Item #	Item Name	Name	Title	Email
1	Firm's Authorized Representative			

Original Signature: _____

STEP 1, EXHIBIT 3: DEBARMENT/SUSPENSION STATUS & NON-COLLUSION AFFIDAVIT

IMPORTANT NOTICE - READ BEFORE ACCEPTING DEBARMENT/SUSPENSION STATUS

1. The Vendor / Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice of proposed debarment from any State agency or local public body.
2. The Vendor / Contractor agrees to provide immediate notice to NMIMT's Purchasing Services Office in the event of being suspended, debarred or declared ineligible by any State or Federal department or agency, or upon receipt of a notice of proposed debarment that is received after the submission of this Bid / Proposal but prior to the award of the purchase order/contract.

NON-COLLUSION AFFIDAVIT

As the duly Authorized Representative to represent the persons, firm and/or corporation joining and participating in the submission of the foregoing Proposal (such persons, firm and/or corporation hereinafter being referred to as the Vendor / Contractor), being duly sworn, on their oath, states that to the best of their belief and knowledge no person, firm, or corporation, nor any person duly representing the same joining and participating in the submission or the foregoing Bid / Proposal, has directly or indirectly entered into any agreement or arrangement with any other Vendor / Contractors, or with any employee of NMIMT, or any person, firm or corporation under contract with NMIMT whereby the Vendor / Contractor, in order to induce the acceptance of the foregoing bid by NMIMT has paid or is to pay any other Vendor / Contractor or to the aforementioned persons anything of value whatsoever, and that the Vendor / Contractor has not directly or indirectly entered into any agreement or arrangement with any other vendor/contractor which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Bid/RFP.

CERTIFICATION

By completing the below form and clicking "I Affirm" below, firm's Authorized Representative hereby certifies that they have read the above Non-Collusion Affidavit and Debarment / Suspension Disclosure Statement in this STEP 1, EXHIBIT 3 and that they understand it and will comply with these requirements. The Authorized Representative certifies that they have the authority to certify compliance for the Vendor / Contractor named below.

Item #	Item Name	Name	Title	Email
1	Firm's Authorized Representative			

Original Signature: _____

STEP 1, EXHIBIT 4: NEW MEXICO RESIDENT & RESIDENT VETERAN PREFERENCE CERTIFICATION

NEW MEXICO RESIDENT PREFERENCE

OFFERORS WISHING TO RECEIVE THE NEW MEXICO RESIDENT PREFERENCE AS APPLICABLE PER NMSA 13-1-21 MUST ATTACH A VALID NEW MEXICO RESIDENT PREFERENCE CERTIFICATE WITH THEIR RESPONSE. SUBMITTED CERTIFICATES SHALL BE VALIDATED BY NMIMT WITH THE NEW EXICO TAX and REVENUE DEPARTMENT.

STEP 1, EXHIBIT 4.1: NEW MEXICO RESIDENT VETERAN PREFERENCE

NEW MEXICO RESIDENT VETERAN PREFERENCE

OFFERORS WISHING TO RECEIVE THE NEW MEXICO RESIDENT VETERAN PREFERENCE AS APPLICABLE PER NMSA 13-1-22 MUST ATTACH A VALID NEW MEXICO RESIDENT VETERAN PREFERENCE CERTIFICATE WITH THEIR ONLINE RESPONSE AND COMPLETE THE FOLLOWING.

Copy of certification is attached: yes _____ no _____

OR

STEP 1, EXHIBIT 4.2: FIRM'S DECLARATION OF NEW MEXICO RESIDENT VETERAN PREFERENCE

Copy of certification is attached: yes _____ no _____

STEP 1, EXHIBIT 5: 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. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR

Pursuant to NMSA 1978, § 13-1-191.1, any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal / small purchase / sole source, 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

This form must be filed by any prospective contractor whether or not they or their family member, or representative has made any contributions subject to disclosure. Disclosure of contributions:

Contribution Made By: _____
Relation to Prospective Contractor: _____
Name of Applicable Public Official: _____
Date Contribution(s) Made: _____
Amount(s) of Contribution(s): _____
Nature of Contribution(s): _____
Purpose of Contribution(s): _____
(Attach extra pages if necessary)

Name of Firm's Authorized Representative *Title*

Signature *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.

Name

Title

Signature

Date

STEP 1, EXHIBIT 6: CURRENT ACTIVE PROJECTS

List all the major projects your organization has in progress. List the name of the project and its location, the Owner, the MACC or contract amount, the phase of the project (preconstruction or construction), the percent complete and the planned or actual Substantial Completion Date. Complete the below table insomuch as possible. For example, if only three (3) projects can be identified, then enter N/A in the response field for items 4 & 5.

Item #	Project Name	Project Title and Location	Owner	MACC	Phase	Percent Complete	Substantial Completion Date
1.							
2.							
3.							
4.							
5.							

STEP 1, EXHIBIT 7: SURETY DECLARATION

Provide a Notarized Declaration from a Surety meeting the requirements of NMSA 13-4-18 stating the amount of bonding capacity available to your firm for this Project. Attach a scanned copy of the Notarized Declaration to this STEP 1, EXHIBIT 7 in your response.

Provide the name, email address and phone number of a contact at the Surety so they can be contacted by the Selection Committee if necessary.

If selected, respondent will be required to submit the original documents. If the original documents cannot be provided then the respondent's offer will be deemed non-responsive. Non-responsive offers cannot be considered for award.

Item #	Item Name	Respondent's Authorized Representative	Surety Firm's Name, Title and Email	Name of Contact Person at Surety Firm	Surety Email Address	Surety Telephone	I Affirm
1.	Affirmation by Firm's Authorized Representative that a Surety issued in Firm's name has been attached in response to this Exhibit 7, Contact Details of Surety Firm. Confirmation that failure to attach the Surety or to provide the original upon request will render the firm's offer as being non-responsive.						

STEP 1, EXHIBIT 8: CERTIFICATE OF INSURANCE

Item #	Item Name	Name	Title	Email	I confirm COI is attached
	<p>I confirm that my firm has attached the required Certificate of Insurance (COI) as described in this Exhibit 8. I understand that failure to provide the COI will result in our offered being deemed non-responsive and that non-responsive offers cannot be considered for award</p>				

Please ensure NMIMT is named as the Certificate Holder.