



City of Las Cruces[®]

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Council Action and Executive Summary

Item # 8Ordinance/Resolution# 12-13-441For Meeting of _____
(Ordinance First Reading Date)For Meeting of August 5, 2013
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AWARDING AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR AIRPORT ARCHITECTURAL, PLANNING, AND ENGINEERING SERVICES TO DELTA AIRPORT CONSULTANTS, INC. FOR A PERIOD OF UP TO FIVE YEARS SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS.

PURPOSE(S) OF ACTION:

To approve a contract.

COUNCIL DISTRICT: 4		
<u>Drafter/Staff Contact:</u> Cheryl Rodriguez 	<u>Department/Section:</u> Transportation/Airport	<u>Phone:</u> 541-2471
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces International Airport has annual capital improvement projects that require unique architectural, planning, and engineering needs. The City organization does not have staff with the needed airport engineering knowledge and expertise and therefore must contract with airport engineering firms that can provide such expertise. Airport engineering firms are typically retained on an "on-call basis" and can provide a number of services such as large scale project design, preparation of construction documents, assistance with bidding and negotiating construction contracts, airport planning, and minor day-to-day technical assistance. The Federal Aviation Administration (FAA) and New Mexico Department of Transportation (NMDOT) – Aviation Division encourage the use of such on-call contracts.

At the request of the user department, the Purchasing section solicited proposals from interested firms to enter into a contract to perform Airport Architectural, Planning, and Engineering Services for the City of Las Cruces. Six firms responded to the Request for Proposal; however, two firms were eliminated as they did not submit the necessary federal forms as part of the submittal process. Four firms were evaluated by the Selection Advisory Committee (SAC) on June 25, 2013. The top three firms were invited back for in-person interviews with the Selection Advisory Committee on July 9, 2013. Based on both the written proposal and in-person interviews, the

(Continue on additional sheets as required)

SAC recommended award of a contract to the highest rated firm, Delta Airport Consultants, Inc. The City and Delta Airport Consultants, Inc. have completed negotiations and have agreed to the attached contract.

The contract is intended to be for a total of up to five-years subject to annual renewals and approved budget appropriations. Funding may come from project-specific FAA Airport Improvement Program funds or NMDOT- Aviation Division funds subject to a minimum of 5% City of Las Cruces match. Projects will be budgeted under Fund 4300 (Airport Improvement).

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract.
3. Exhibit "B", Agreement for Airport Architectural, Planning, and Engineering Services between Delta Airport Consultants, Inc. and the City of Las Cruces.
4. Attachment "A", Proposal Evaluation Report.

SOURCE OF FUNDING:

Is this action already budgeted? N/A			
	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue? N/A			
	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

As projects are identified each year, funds will be budgeted under Fund 4300 (Airport Improvement).

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize City to enter into a contract for airport architectural, planning, and engineering services with Delta Airport Consultants, Inc. for a term not exceed five years and subject to annual renewals and approved budget appropriations.
2. Vote "No"; the City will not enter into a contract for airport architectural, planning, and engineering services with Delta Airport Consultants, Inc. and this may delay upcoming airport design and construction projects.
3. Vote to "Amend" the Resolution as deemed appropriate.
4. Vote to "Table" and direct staff accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A

RESOLUTION NO. 12-13-441

A RESOLUTION AWARDED AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR AIRPORT ARCHITECTURAL, PLANNING, AND ENGINEERING SERVICES TO DELTA AIRPORT CONSULTANTS, INC. FOR A PERIOD OF UP TO FIVE YEARS SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, the City of Las Cruces advertised a Request for Proposals, RFP No. 12-13-441, Airport Architectural, Planning, and Engineering Services; and

WHEREAS, six responses to the Request for Proposals were received and opened by Purchasing staff on May 24, 2013; and

WHEREAS, two firms were eliminated for failure to submit the required federal forms and the Selection Advisory Committee reviewed the responses from four firms at meetings on June 25, 2013 and July 9, 2013; and

WHEREAS, based on the written proposal and in-person interview scores, the Selection Advisory Committee recommends award of a contract to the highest ranked respondent, Delta Airport Consultants, Inc.; and

WHEREAS, the work will consist of architectural, planning, and engineering services for airport projects.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT an indefinite cost, indefinite quantity contract between the City of Las Cruces and Delta Airport Consultants, Inc. for airport architectural, planning, and engineering services is hereby approved as per the Professional Services Agreement

attached hereto as Exhibit "B", and made part of this Resolution, for a period of up to five years subject to annual renewals and approved budget appropriations.

(II)

THAT the Purchasing Manager is authorized to contract with Delta Airport Consultants, Inc. of Albuquerque, New Mexico as outlined in Exhibit "A", Purchasing Manager's Request to Contract Form, attached hereto and made part of this Resolution.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20_____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: August 5, 2013

Resolution No.: 12-13-441

Contract Purchase For Airport Architectural, Planning, and Engineering Services

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

1. RFP No./ Due Date: RFP No. 12-13-441 / May 24, 2013
2. Description: Airport Architectural, Planning, and Engineering Services
3. Using Department: Transportation/Airport
4. Number of Responses Solicited: Fifty-six (56)
5. Number of Responses Accepted: Six (6)
6. Award Recommendation To: Delta Airport Consultants, Inc.
of Albuquerque, NM
7. Total Award Amount: Indefinite Quantity/Cost
8. Contract Duration: Five year term subject to annual renewals
and approved budget appropriations

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No	<input checked="" type="checkbox"/>	LCMC §24-100 not applicable to this solicitation	
	Yes	<input type="checkbox"/>		Made A Difference To Awards(s)
		<input type="checkbox"/>		Made No Difference To Bid Award(s)

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92.**


Purchasing Manager

17/18/13
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	TBD
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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this date, _____ 2013 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Company Name, of Street Address, City, Town, State, Zip Code, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Airport Architectural, Planning and Engineering Services

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No. 12-13-441 incorporated herein by reference and as set forth in Exhibit A.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a written Notice to Proceed (for each assigned project) from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on (date of award) for a term of 365 days through month/day/year and, pending mutual written agreement, may be extended annually thereafter for up to four more years through month/day/year.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the

time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole

property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Cheryl Rodriguez, Airport Manager

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Company Name
Address and Street
City, State and Zip
ATTENTION:

23. SCOPE OF AGREEMENT

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

CONTRACTOR

THE CITY OF LAS CRUCES

BY: _____
PRINCIPAL

BY: _____
PURCHASING MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM: _____
CITY ATTORNEY

EXHIBIT A

SERVICES

Delineate any and all negotiated services, deliverables, and other items not identified in RFP.

EXHIBIT B

SCHEDULE

Delineate all details relative to the time of any deliverables, events, benchmarks, etc. If costs relate to these items, list accordingly.

EXHIBIT C

FEDERAL PROVISIONS

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Reference

49 CFR Part 21
AC 150/5100-15

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Reference

Airport and Airway Improvement Act of 1982, Section 520
 Title 49 47123
 AC 150/5100-15, Para. 10.c.

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The City shall pay design consultants and other consultants (henceforth referred to as "prime contractors" collectively) in accordance with the NM Prompt Payment Act (New Mexico Statutes Annotated, 1978 Annotated (henceforth referenced as "NMSA", 57-28-1 et. seq.) for their respective contract amount for undisputed, acceptable work within twenty-one (21) calendar days. The consultant shall pay all sub-consultants (henceforth referred to as "subcontractors" collectively) their respective subcontract amount for undisputed, acceptable work within seven (7) calendar days from the receipt of each payment the consultant receives from the City of Las Cruces.

The City shall not retain any portion of the prime contract from the prime contractor. The prime contractor acknowledges that the City will not allow retainage to be retained by the prime contractor for any subcontractor. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Las Cruces. This clause applies to both DBE and non-DBE subcontracts.

Contractors shall include in their subcontracts language providing that prime and subcontractors will use appropriate alternative dispute resolution mechanism to resolve payment disputes, subject to New Mexico Public Works Mediation Act, NMSA 1978, Section 13-4C-1 et. seq.

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City of Las Cruces shall notify the non-compliant party in writing. A compliance conference to discuss the area(s) of non-compliance will be held. In the event that the noncompliant party fails or refuses to perform in compliance with this program, a "Notice of Non-Compliance" will be transmitted. If the non-compliant party corrects the deficiencies, the "Notice of Non-Compliance" will be rescinded, and the party

will be notified as to compliance. If the deficiencies are not corrected, the City will initiate administrative action against the non-compliant party, which may include but not be limited to:

- Termination of Contract.
- Initiation of appropriate suspension, debarment or de-certification proceedings pursuant to 49 CFR Part 26.
- Referral of any unlawful actions to the appropriate enforcement agencies pursuant to 49 CFR Part 26.
- Prosecution pursuant to 18 USC 1001.
- Other action as appropriate, at the discretion of the City.

Reference

49 CFR Part 26

(If applicable, the form on the following page **MUST** be submitted with the proposal.)

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) **If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.**

Reference

49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

Reference

49 CFR Part 18.36(i)
FAA Order 5100.38

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Reference

49 CFR Part 18.36

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

Reference

49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Reference

49 CFR Part 30.13
FAA Order 5100.38

TERMINATION OF CONTRACT

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Reference

49 CFR Part 18.36(i)(2)
FAA Order 5100.38

(This certification **MUST** be signed and submitted with the proposal.)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the offeror or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Signature of Authorized Official

Name and Title of Authorized Official

Date

Reference

49 CFR Part 29
FAA Order 5100.38

SCHEDULE AGENERAL CONDITIONS FOR RESPONSES

1. Proponents are advised that this solicitation is subject to the provisions of the City of Las Cruces (City) Procurement Code incorporated herein by reference.
2. **Inquiries and Related Addenda:**
 Except for communications during any informational meeting conducted by the City for this solicitation and to ensure information is consistent to all prospective respondents, any direct or indirect contact with City elected officials or staff other than the City Purchasing Section staff relating to this solicitation is strictly prohibited throughout the duration of the solicitation and evaluation process, and, upon such finding, will render a respondent and/or related proposal non-compliant.
 - a. Any and all inquiries must be submitted by the prospective respondent to the Purchasing Section no later than one week before the due date/time unless otherwise specified in the solicitation documents. Inquiries received after the deadline may not be considered.
 - b. Inquiries may be mailed or hand delivered to the address stated on Section 4 below, emailed to bidclerk@las-cruces.org, or faxed to 575-541-2515. When faxing in questions, the following rules must be followed to ensure proper handling:
 1. All transmissions should include a cover sheet.
 2. Cover sheet shall contain:
 - a. The RFP number.
 - b. Opening Date and Time of the RFP.
 - c. Proponent name, contact person, phone number, and return fax number.
 - c. Telephone inquiries will not be responded to, including the results of this solicitation.
 - d. Inquiries will be compiled and responded to via written addendum issued before the due date/time.
 - e. In the event addendum is received by a proponent after its response is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Section via fax/email/mail.
 - f. In the event addendum is received by a proponent after its response is submitted and forces a change to its response, the proponent must submit a revised response, clearly marked as a revised response.
 - g. Failure to acknowledge receipt of addenda may render response as non-compliant.
3. **Response Format Requirements:**
 Proposal must include all submittal requirements called out in solicitation documents.
 - a. Responses are limited to a maximum of 15 pages (excluding index; transmittal letter; title page) and printed on one side only. Any and all forms incorporated in the RFP solicitation documents and submitted with response also do not count towards the specified page limit.
 - b. Pages incorporated within the specified page limit must be numbered and typed in no less than 12 points per inch on one side only.
 - c. All pages must be bound on left hand margin, not single stapled on top left corner.
 - d. Responses must include the **RFP COMPLIANCE DECLARATION** page that is included within the solicitation documents. This requirement cannot be waived as the page confirms the respondent's understanding and compliance with the RFP submittal requirements, required federal certification and conduct of this solicitation. This declaration must be completed and signed with each copy of response. **FAILURE TO RETURN THE RFP COMPLIANCE DECLARATION SHEET WILL SUBJECT THE RESPONSE TO REJECTION.**
 If applicable, respondents should provide business, tax, registration numbers etc. on the RFP COMPLIANCE DECLARATION page where listed. Such numbers shall be listed as City, County, State, or Federal. These may be submitted on a separate sheet if not enough room is available.
 - e. Response shall include ten (10) copies of the proposal, unless otherwise specified in the solicitation documents, and be marked clearly showing the RFP number and proponent name.
 - f. Enclose the Proposal in one shipping container to be mailed or delivered to the City Purchasing Section. Cover envelope and/or shipping container shall be marked with the RFP number, due date and time, plus have the respondent's return address prominently marked for identification.
 - g. Should include any samples or other material required by the City on or before the specified due date and time provided in the request for proposal.
 - h. No other materials are to be submitted, unless specifically requested in proposal.
4. **Proposals must be submitted by the due date/time to:**

<u>If Mailed (U.S. Postal Service):</u>	<u>If Hand Delivered (FedEx; UPS, etc):</u>
City of Las Cruces	City of Las Cruces

PHASE I - PROPOSAL EVALUATION REPORT					
TITLE: Airport Architectural, Planning & Engineering Services RFP NO.: 12-13-441	TOTAL POINTS POSSIBLE	POINTS DISTRIBUTION			
		Airport Development Group, Inc.	Delta Airport Consultants, Inc.	Parkhill Smith & Cooper	Molzen Corbin
NM RESIDENCE PREFERENCE (YES or NO)					
If "YES", Add (TOTAL POINTS POSSIBLE) X .05		0.0	0.0	0.0	0.0
CRITERIA					
1. Technical approach to the project.	400	290	290	290	270
2. Qualification/competence	1000	700	800	675	725
3. Capacity and capability of the firm	800	500	600	480	520
4. Management structure and approach	800	520	580	460	560
5. Previous Performance	800	640	680	640	640
6. Clarity of proposal	200	125	150	130	145
Rating Sheets Raw Scores	4000	2775	3100	2675	2860
Subtract Highest Scorer		420	420	395	420
Subtract Lowest Scorer		285	340	235	240
Rating Sheet Net Score		2070	2340	2045	2200
NET SCORE		2070.0	2340.0	2045.0	2200.0
Top Net Score Minus 10%		2106.0	2106.0	2106.0	2106.0
Qualifies for Interview or Phase II of Evaluation		Yes*	Yes	No	Yes
PHASE I - INTERVIEW EVALUATION RESULTS		180	270		210
TOTAL PHASE I SCORES		2250	2610		2410
TOP PHASE I SCORE		2610	2610		2610
TOP PHASE I SCORE MINUS 10%		2349.0	2349.0		2349.0
PROCEED TO PHASE II EVALUATION			PROCEED		PROCEED
PHASE II - EVALUATION REPORT					
DEDUCTION FOR PROJECTS IN PROGRESS					
Number of Committee Raters	8		8		8
CLC Projects in Progress by Respondent			0		1
Deduction (10 points per project X number of raters)			0		-80
TOTAL PH. I & II SCORES W/O PREFERENCE AND COST FACTORS			2610		2330

*Per Selection Advisory Committee Rules, the top three firms qualify for interviews

ATTN: Purchasing Department/Bid Clerk
P.O. Box 20000
Las Cruces, NM 88004

ATTN: Purchasing Department/Bid Clerk
700 N. Main St. Room 3134
Las Cruces, NM 88001 Phone 575-541-2525

- a. Please note, items mailed Certified or Registered to the post office box may be delayed up to three days, and will subject response to rejection in the event it is received by the City Purchasing Section after due date/time.
 - b. Proposals delivered after the closing date and time will not be accepted and will be returned unopened.
 - c. Faxed proposals will not be accepted.
5. **The City of Las Cruces reserves the sole right to:**
- a. Determine responsible respondents and responsive proposals.
 - b. Determine and waive minor technicalities in the responses from requirements not affecting price, quality, quantity of items, or services sought.
 - c. Delete, decrease or increase quantities of proposed items or service within effective price dates.
 - d. Reject any or all responses/proposals and terminate this solicitation process.
6. **Law Application:**
- a. Respondents shall be responsible for complying with the New Mexico laws prohibiting bribes, gratuities, and kickbacks.
7. **Award:**
- a. The evaluation of proposals and final selection typically takes 45 to 60 days after the closing date.
 - b. After the evaluation is complete, an evaluation a tabulation summary sheet will be available on the City website.
 - c. Whenever proposals are reviewed by the City Selection Advisory Committee (SAC) and upon request by the proponent, a summary of the results is mailed to the proponent(s).
 - d. Successful proponent will receive notice of award via a purchase order or will be contacted to coordinate contract.

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SCHEDULE B

PROPOSAL SCORING AND EVALUATION INFORMATION

SCORING CRITERIA

Each member shall rate each proposal on each criterion by scoring proposals according to the following standards:

5	=	Excellent
4	=	Exceeds Acceptable
3	=	Acceptable
2	=	Marginal
1	=	Poor
0	=	Unresponsive

I. PHASE I EVALUATION

Utilizing only the materials provided by the Purchasing Section, and only the criteria outlined within the request for qualification or proposal, each committee member will complete the evaluation form included in the materials. This will entail multiplying the score determined by the member for each criterion by the weights listed on the form and totaling the scores for each respondent. This preliminary evaluation shall be completed and may be submitted to the Purchasing Manager prior to a committee discussion meeting scheduled by the Purchasing Section.

At the committee meeting, the committee chair or designee will poll members of the committee to provide any comments relative to the proposals that influenced their scores.

Following discussion by the members, each member shall review their preliminary scores, may make any changes and confirm point totals on the evaluation forms. The committee will submit their finalized evaluation forms to the Purchasing Manager or designee who, after verifying, compiling and totaling the finalized scores, will discard the highest and lowest score for each respondent and recalculate a total of the remaining scores which will establish a PHASE I score for each respondent.

Unless interviews are otherwise waived by the RFP solicitation, the committee will conduct interviews if:

1. The estimated cost for the required services exceeds \$100,000.00, or,
2. If construction is part of the project, the construction cost exceeds \$1,000,000.00, or,
3. A majority of the members present determine interviews are in the best interest of the City.

Should interviews be determined to be conducted, the top three respondents will be interviewed. The Purchasing staff will coordinate with the qualifying interviewees as to the time, date and place for the interviews and the time allowed for each interview. Interviews will be closed to any persons not representing the interviewee. At the conclusion of all interviews, each member shall freshly score each interviewee in accordance with the RFP criteria and the scores will be added to the previous scores of the interviewees to arrive at a composite Phase I score.

The PHASE I point total will be the basis for considering respondents for PHASE II of the evaluation process.

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II. PHASE II: EVALUATION

Respondents whose PHASE I scores are within ten percent of the highest PHASE I score will be considered in PHASE II of the evaluation process along with the respondent with the highest PHASE I score. All other responses will be eliminated from further consideration.

A. Bonuses and Deductions

Unless otherwise waived by the RFP solicitation, the following factor will be incorporated into the PHASE I scores of those respondents being considered in this PHASE II evaluation process:

1. Equitable Distribution of Business Factor – Point Deduction

The City seeks to ensure that the City's business is distributed in an equitable manner to respondents interested in competing for City projects. To meet this goal, the committee will deduct points for each City project for which a respondent is under contract. This applies to all contracts of the City except open ended, multiple-source awarded contracts with appraisers, surveyors, lawyers, etc. with whom the City contracts on an as needed basis.

A project is under contract from the time City Council awards the contract and remains under contract until the final payment is made. Ten (10) points per project under contract shall be deducted from the PHASE I score for each individual rater. (If five (5) individual raters are included in the committee, a total of 50 points shall be deducted from the Phase I score for each project which is under contract; if six (6) individual raters are in the committee, a total of 60 points shall be deducted from that score for each project which is under contract.

III. AWARD RECOMMENDATION

A. The committee will base its award recommendation on the highest score resulting from PHASE I and PHASE II evaluations. Final scores will be the sum of the PHASE I AND PHASE II points.

NOTE: The terms "consultant", "respondent", "vendor", "contractor", and "proponent" are used interchangeably in Schedules A and B.