STATE OF NEW MEXICO
NEW MEXICO SPACEPORT AUTHORITY

REQUEST FOR PROPOSALS
RFP# 13-495-00-00293
FY2013-2014

Construction Management Services

Issue Date: August 10, 2012

TABLE OF CONTENTS

I. INTRODUCTION **1**

- **A. PURPOSE OF THIS REQUEST FOR PROPOSALS** 1
- **B. VISION** 1
- **C. SUMMARY SCOPE OF WORK** 1
- **D. SCOPE OF PROCUREMENT** 1
- **E. PROCUREMENT MANAGER** 2
- **F. DEFINITION OF TERMINOLOGY** 2
- **G. PROCUREMENT LIBRARY** 4

II. CONDITIONS GOVERNING THE PROCUREMENT **5**

- **A. SEQUENCE OF EVENTS** 5
- **B. EXPLANATION OF EVENTS** 5
- **C. GENERAL REQUIREMENTS** 7

III. RESPONSE FORMAT AND ORGANIZATION **14**

- **A. NUMBER OF RESPONSES** 14
- **B. NUMBER OF COPIES** 14
- **C. PROPOSAL FORMAT** 14

IV. SPECIFICATIONS **16**

- **A. INFORMATION** 16
- **B. MANDATORY SPECIFICATIONS** 16

V. EVALUATION **17**

- **A. EVALUATION SUMMARY** 17
- **B. EVALUATION FACTORS** 17
- **C. EVALUATION PROCESS** 18

APPENDIX A - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT OF RECEIPT FORM **20**

APPENDIX B - AGREEMENT TO TERMS AND CONDITIONS (EXAMPLE CONTRACT) **21**

APPENDIX C - COST RESPONSE FORM **29**

APPENDIX D - CAMPAIGN CONTRIBUTION DISCLOSURE FORM **30**

APPENDIX E - NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM **33**

APPENDIX F – PAY EQUITY INITIATIVE FORM **34**

APPENDIX G - STATEMENT OF CONFIDENTIALITY **35**

ATTACHMENT A – SCOPE OF WORK **36**

1. **PERFORMANCE MEASURES** 36
2. **ASSUMPTIONS** 36
3. **SUMMARY** 36
4. **PRE-CONSTRUCTION PHASE** 38
5. **PROCUREMENT PHASE** 38
6. **CONSTRUCTION PHASE** 38
7. **POST-CONSTRUCTION PHASE** 39
8. **DELIVERABLES** 40

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposals is to issue a Spaceport Construction Management Services contract to oversee and manage the phase 2 construction activities at Spaceport America. Activities include, but are not limited to the Visitor Experience facilities, the runway extension, internal road re-alignment, the entrance facility and associated utilities extension.

B. VISION

The vision of the Spaceport is to be the world's premier commercial space launch facility providing first class service to its customers and delighting and inspiring its visitors. The Spaceport Construction Management Services will assist NMSA in successfully completing Phase 2 construction activities.

C. SUMMARY SCOPE OF WORK

The scope of work shall consist of the performance of construction management activities primarily at Spaceport America in Upham, New Mexico. This contract includes all labor and materials required to perform day-to-day management of the construction process with the goal of a quality product on time and within budget. The Construction Manager (CM) shall oversee all aspects of pre-construction, construction and post-construction phases of the projects and represent NMSA in all aspects of quality control, value engineering, scheduling and budget management. The construction management services shall not duplicate and are in addition to the normal scope of separate architects or engineering contracts. Also note that two facilities will be built and owned by a third party - one Welcome Center and the Visitor Center. The role of the CM for those facilities will be as a Leasor's representative vice an Owner's representative as is the case with the other Spaceport facilities. The Offeror should clearly address in his proposal the approach to performing the two distinct roles on behalf of NMSA. NMSA believes the level of effort for each role will be significantly different. The CM shall hold in good standing a New Mexico General Contractor license (GB-98), and shall maximize the use of licensed New Mexico subcontractors as needed.

The primary envisioned projects are an off-site Welcome Center in Truth or Consequences, NM, an on-site Visitor Center, Security Facility/Gates, Runway Extension, rip/rap around the runway, internal road realignment, Fit out construction of the Virgin Galactic Gateway to Space 4000 sq ft NMSA area, Fit out construction of the Spaceport Operations Center (SOC) and water, wastewater, electric, communications extension to the Visitor Center and Security Facility.

The detailed scope of work is in Attachment A.

D. SCOPE OF PROCUREMENT

The contract is intended to be a Time and Materials (T&M) contract and is scheduled to begin on or about September 26, 2012. The contract term will be 18 months with possible options up to 4 years. In no circumstance shall this contract extend beyond a term of four years. Although it is the intention of NMSA to make a single award for this service, NMSA reserves the right to make multiple awards or no award if this is deemed in the best interest of NMSA with NMSA being the sole judge thereof. The NMSA reserves the right to make an award upon the basis of the technical and price proposals without discussions. Based on the

importance of this project, NMSA deems it to be in its best interest to consider award to other than the lowest priced Offeror.

E. PROCUREMENT MANAGER

The agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below and all deliveries via express carrier should be addressed the same:

Belinda Lucero
Procurement Manager
901 E. University Ave, Ste. 965L
Las Cruces, NM 88001
Phone: 575-373-6113
Fax: 575-373-6120
E-mail: belinda.lucero@spaceportamerica.com

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

F. DEFINITION OF TERMINOLOGY

This section contains definitions, acronyms and references that are used throughout this procurement document, including appropriate abbreviations.

"**Agency**" means the New Mexico Spaceport Authority.

"**Close of Business**" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

"**Contract**" means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITBs) or Request for Proposal (RFPs).

"**Contract Manager**" means the individual selected by the Agency to monitor and manage all aspects of the contract resulting from this RFP.

"**Contractor**" means an employer contracting with the State of New Mexico, which employer has, had, or anticipates having six (6) or more employees who worked, are working, or are expected to work an average of at least twenty hours per week over a six-month period, with said six month period being at any time during the year prior to seeking the contract(s) with the State, or any time during the term of the contract(s) with the State.

"**Deliverable**" means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

"**Department of Information Technology**" means the New Mexico Department of Information Technology which is responsible for operating the data center and all communications related items.

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

"**Determination**" means the written documentation of a decision of a procurement manager including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

"**DFA**" means the Department of Finance and Administration for the State of New Mexico.

"**DFA/CRB**" means the Contracts Review Board of the Department of Finance and Administration for the State of New Mexico.

"**Employer**" means any for-profit or not-for-profit business, regardless of location, that employs one or more persons that qualify as a "New Mexico Employee". (See below.) Such definition does not include governmental entities.

"**Evaluation Committee**" means a body appointed by the Agency management to perform the evaluation of Offeror proposals.

"**Evaluation Committee Report**" means a report prepared by the Procurement Manager and the Evaluation Committee that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive proposals.

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

"GS" is Spaceport General Services contractor.

"**ITB**" is Invitation to Bid.

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

"**Milestone**" means a significant event in a project, usually the completion of a major deliverable.

"**New Mexico Employee**" means any resident of the State of New Mexico, performing the majority of their work within the State of New Mexico, for any employer regardless of the location of the employer's office or offices.

"**Offer**" means to make available to all New Mexico employees, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of the Executive Order. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

"**Offeror**" is any person, corporation, or partnership who chooses to submit a proposal.

"**Procurement Manager**" means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive proposals.

"PS" is Spaceport Protective Services contractor.

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

"**Requirements**" are obligatory and mean the system functions that are related to the organization's goals and business opportunities. Requirements are defined by the project team and are usually prioritized.

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

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

"**Solicited and Awarded**" means an ITB or RFP was made available to the general public, through any means, after January 1, 2008 AND the contract(s) sought as a result of that solicitation was/were awarded after January 1, 2008.

"**Solicitations**" means ITBs and RFPs.

"**State (the State)**" means the State of New Mexico.

"**State Purchasing Agent**" or SPA means the state purchasing agent for New Mexico or a designated representative.

G. PROCUREMENT LIBRARY

The NMSA has established an Internet Procurement Library. Once your acknowledgement form is received, NMSA will send you a user name and password for the site. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided below.

http://spaceportamerica.com/procurement-library/

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

	Action	Responsibility	Date
1.	Issue of RFP	Agency	*8/10/2012*
2.	Acknowledgement of Receipt Due	Potential Offerors	*8/17/2012*
3.	Pre-Proposal Conference	Agency	*8/21/2012*
4.	Deadline To Submit Questions	Potential Offerors	*8/23/2012*
5.	Response to Written Questions/RFP Amendments	Agency	*8/27/2012*
6.	Submission of Proposal	Offerors	*9/10/2012*
7.	Proposal Evaluation	Evaluation Committee	*9/11-17/2012*
8.	Selection of Finalists	Evaluation Committee	*9/18/2012*
9.	Oral Presentation (optional)	Offerors	*9/24/2012*
10.	Revised Offers from Finalists (optional)	Offerors	*9/24/2012*
11.	Finalize Contract	Agency & Offeror	*9/25/2012*
12.	Contract Award	New Mexico Spaceport Authority	*9/26/2012*

This schedule is intended for planning purposes only. Although New Mexico Spaceport Authority will attempt to meet these milestones, progress towards these scheduled events is solely at the discretion of the New Mexico Spaceport Authority.

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by the Agency. Additional copies of the RFP can be obtained from the Spaceport America website at spaceportamerica.com.

2. Acknowledgement of Receipt Due

Potential Offerors should hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document (See Appendix A) to have their organization placed on the procurement list. This form should be signed by an authorized representative of the organization, dated, and returned by close of business to the procurement manager on the date referred to in Sec. II, A.

3. Pre-Proposal Conference

A pre-proposal conference will be held in the Civic Center in Truth or Consequences starting at 1000 on August 21, 2012. Upon completion of the formal portion, a site visit to Spaceport America will follow. Each potential Offeror will be allowed one vehicle on the site. NMSA will lead the convoy from the Civic Center to the site and conduct the tour. This conference is not mandatory for potential Offerors.

4. Deadline to Submit Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on the date referred to in Sec. II, A. All written questions must be addressed to the Procurement Manager (see Section I, Paragraph E).

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on the date referred to in Sec. II, A., via the Spaceport website.

6. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **2:00PM** LOCAL TIME on the date referred to in Sec. II, A. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph E. Proposals must be sealed and labeled on the outside of the package to clearly indicate a response to the "Spaceport Construction Management Services" Request for Proposals. Proposals submitted by facsimile will not be accepted.

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

7. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by Agency staff. The evaluation process will take place on the date referred to in Sec. II, A. During this time, the Procurement Manager may, at her option, initiate discussion with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors on the date referred to in Sec. II, A. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations/demonstrations will be determined at this time.

9. Oral Presentation by Finalists (optional)

Finalist Offerors may be required to present their proposals and respond to Evaluation Committee questions on the date referred to in Sec. II, A. Finalist Offerors will be limited to duration of not more than two (2) hours. The Agency reserves the right to extend or shorten the time at its sole discretion.

10. Revised Offers from Finalists (optional)

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining revised offers during/after the oral presentations on the date referred to in Sec. II, A.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror on the date referred to in Sec. II, A**.** In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or to cancel the award.

12. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Agency management, and the signed contract, the Agency will award the contract on the date referred to in Sec. II, A. This date is subject to change at the discretion of the Agency. This contract shall be awarded to the Offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in this RFP.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with §13-1-172 NMSA latest version and applicable procurement regulations. A protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to a protest. Protests must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protest must be delivered to the New Mexico Space Authority.

Wade Jackson
901 E. University Ave., Suite 965L
Las Cruces, NM 88001

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State's procurement code regulations, 1.4.1 NMAC

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the conditions governing the procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the evaluation factors contained in Section V of this RFP.

2. Incurring Cost

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

3. Prime Contractor Responsibility

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments only to the prime contractor.

4. Subcontractors

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after receipt of a revised offer if one is submitted.

8. Disclosure of Proposal Contents

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

Proprietary or confidential data shall be readily separable form the proposal in order to facilitate

eventual public inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualify as a trade secret in accordance with the Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 NMSA latest version]. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

9. No Obligation

The procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded.

10. Termination

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

11. Sufficient Appropriation

Any contract awarded as a result of the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the general requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the Agency and a contractor will follow the format specified by the Agency and

contain the terms and conditions set forth in Appendix B, "Agreement Terms and Conditions." However, the Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract. Should an Offeror object to any of the Agency's terms and conditions, as contained in Appendix B, that Offeror must propose specific alternative language and the Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the Offeror's proposal. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed changed followed by the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the Agency.

17. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between the Agency and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who fails to submit a responsive offer as defined in §13-1-83 and §13-1-85 NMSA latest version.

19. Right to Waive Technical Irregularities

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

20. Change in Contractor Representatives

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, meeting its needs adequately.

21. Notice

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

22. Agency Rights

The Agency reserves the right to accept all or a portion of an Offeror's proposal including the right to purchase software or services from State Purchasing Agent approved price agreements.

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the Agency and the State of New Mexico. Two complete copies of all proposals including the revised offer, if one was submitted, shall be placed into the procurement file.

25. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions/RFP Amendments).

26. Use of Electronic Versions of this RFP

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

27. Campaign Contribution Form

Offeror must complete and sign Appendix D, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not. (For purposes of this requirement, the applicable elected public officials within the executive branch are the current Governor and Lieutenant Governor.)

28. New Mexico Employees Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:

   (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $500,000 dollars or

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information http://insurenewmexico.state.nm.us/.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000.

29. Pay Equity Initiative

"For all contracts solicited on or after July 1, 2010 and before October 1, 2010: If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must agree to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) within thirty (30) calendar days of contract award.

"For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required reporting form annually within thirty (30) calendar days of the annual contract anniversary date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

"Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

"Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding

the size requirement."

30. Statement of Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency. The Contractor(s) agree to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall provide three (3) signed originals of their technical proposal (section 1), three (3) signed originals of the cost proposal (section 2), three (3) originals of supporting documentation (section 3) and one (1) CD of all three, sealed with the cost proposal, to the location specified in Section I, Paragraph E on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section. The cost proposal shall be in a separate sealed envelope.

1. Proposal Organization

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

Section #1 Technical (NTE 30 pages)

a) Letter of Transmittal
b) Table of Contents
c) Response to Specifications / Scope of Work
d) Response to Terms and Conditions
e) Offeror's Additional Terms and Conditions
f) Campaign Contribution Form
g) New Mexico Health Coverage Form
h) Pay Equity Initiative Form
i) Statement of Confidentiality / Non-Disclosure Agreement

Section #2 Cost Response Form (NTE 10 pages)

Section #3 Supporting Documentation (NTE 10 pages)

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

All discussion of proposed costs, rates, or expenses must occur only in Section 2 with the Cost Response Form.

Section 3 Supporting Documentation may be included by Offerors to provide the Evaluation Committee

with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

a. Identify the submitting organization;
b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
e. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
f. Be signed by the person authorized to contractually obligate the organization; and
g. Acknowledge receipt of any and all amendments to this RFP.

IV. SPECIFICATIONS

A. INFORMATION

1. Agency Resources

In preparing proposals, Offerors may assume that the Agency will not provide any resources. Agency Procurement Manager is primary Point of Contact.

2. Work Performance

Offerors are to assume that work will primarily be performed at Spaceport America in Upham, New Mexico. Offeror will be expected to attend management meetings and staff meetings at State offices in Las Cruces or Upham upon request of the NMSA General Operations Manager.

B. MANDATORY SPECIFICATIONS

1. Campaign Contribution Form

As defined in Section II, C, 27 of this proposal, Offerors must submit a completed Campaign Contribution form as found in Appendix D of this RFP.

2. New Mexico Employee Health Coverage Form

As defined in Section II, C, 28 of this proposal, Offerors must submit a completed Employee Health Coverage Form as found in Appendix E of this RFP.

3. Pay Equity Initiative Form

As defined in Section II, C, 29 of this proposal, Offerors must submit a completed Pay Equity Initiative form as found in Appendix F of this RFP.

4. Statement of Confidentiality / Non-Disclosure Agreement

As defined in Section II, C, 30 of this proposal, Offerors must submit a completed Statement of Confidentiality / Non-Disclosure Agreement as found in Appendix G of this RFP.

5. Oral Presentation (optional)

If selected as a finalist, the Offeror may be asked to provide the Evaluation Committee the opportunity to interview the proposed personnel during an oral presentation at a date, time, and place set by the Procurement Manager.

6. Revised Offers (optional)

The finalist(s) may be asked that a revised offer be submitted to NMSA in writing.

V. EVALUATION

A. EVALUATION SUMMARY

FACTORS		POINTS
Factor 1	**Specialized Design & Technical Competence**	**150**
Factor 2	**Capacity & Capability**	**150**
Factor 3	**Past Performance**	**150**
Factor 4	**Proximity to or Familiarity with Area**	**50**
Factor 5	**NM Business Design Work**	**50**
Factor 6	**Previous Work Volume**	**50**
Factor 7	**Price**	**400**
Total		**1000**

B. EVALUATION FACTORS

Points will be awarded on the basis of the factors listed above. Up to the maximum number of points listed above will be awarded based on the Offeror's response to the mandatory requirements.

1. Specialized design & technical competence of the business, including a joint venture or association, regarding the type of services required:

- The proposal must also describe any relevant and similar experiences of the Company with emphasis on the last five years. All relevant experiences described must clearly identify dates of participation on the project and list references for work performed in the past five years.

2. Capacity and capability of the business, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations:

- Also provide a copy of a professional certification and valid contractor license to be included in the proposal. Either the Certified Professional Constructor (CPC) or the Certified Construction Manager (CCM) is an acceptable certification and a New Mexico GB-98 is a mandatory license. Note: It is the Offeror's responsibility to determine what certifications and licenses are required by the New Mexico Regulation and Licensing Department (RLD);
- Demonstrate and explain the methodology for accomplishing the work. Information may be summary in nature, but should be of sufficient detail to adequately assess and determine Offeror's understanding of the work scope and mastery of the services and processes necessary to ensure successful execution in the field to include;
  - Pre-Construction Activities, including interaction with architects and construction bidders during bidders briefings;
  - Construction Activities, including mobilization to the field, job-site observations, job-site communication, meetings management, scheduling, quality control, adherence to project documents, plans and specifications, communications with the client, operations contractors, architects, tenants, and document control; and
  - Post-Construction Activities, including project close-out and punch-list management.

Note: for the Welcome Centers and the Visitor Center construction NMSA will provide the architectural specifications but will be the building leasor. Thus, the CM will serve as the Leasor's representative vice the Owner's representative. Describe how this may change the CM's role and responsibilities.

3. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules:

- Provide resumes to document the knowledge and experience of the proposed personnel relative to the job duties to be performed, as well as the level of knowledge and experience, as appropriate;
- All personnel must be US citizens or green card holders.
- Proposed personnel must have at least 10 years experience in construction management;
- Provide a certificate of insurance; and
- Provide Offeror's bonding capacity.

4. Proximity to or familiarity with, the area in which the project is located.

5. The amount of design work that will be produced by a New Mexico business within this state:

- Indicate the work to be performed by New Mexico firms (in accordance with Section 13-1-21 NMSA latest version); and
- Indicate the number of anticipated New Mexico based vendors that will be used, on an as needed basis.

6. Previous Work Volume

- The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of insuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

7. Price of construction management fees:

- Provide estimated total cost of contract (18 months) and hourly cost for types of services;
- List fringe, fee, overhead and G&A separately; and
- Provide estimated cost of supplies and equipment.

Note: required travel costs should be at the NM per diem rate. For purposes of this proposal evaluation mileage from Las Cruces to the Spaceport is 50 miles. Mileage from Truth or Consequences to the Spaceport is 30 miles. Mileage from Hatch to the Spaceport is 36 miles. Mileage for Albuquerque to the Spaceport is 250 miles.

C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

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

2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II, B-7.

3. The Evaluation Committee may use other sources of information to perform the evaluation.

4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsive Offerors with the highest scores will be selected as finalist Offeror's based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining revised offers will have their points recalculated accordingly. While specific points will not be awarded based on oral presentations, proposal points will be recalculated based on how well the Offeror further described their support of the evaluation factors listed in Section A above. The responsive Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor (i.e., any circumstance, experience, cost etc. that results in a score of less than half of the weight for any individual category) may be grounds for rejection regardless of overall score. Based on the importance of this project, NMSA deems it to be in the best interest to consider award to other than the lowest priced Offeror.

APPENDIX A - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal (#13-495-00-00293) the undersigned agrees that he/she/it has received a complete copy, beginning with the title page and table of contents, and ending with Attachment A.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on the date specified in Section II, A of this RFP. Only potential Offerors who elect to return this completed form with the intention of submitting a proposal will receive access to the procurement library.

FIRM:_____

REPRESENTED BY:_____

TITLE:_____ **PHONE NO.:**_____

E-MAIL:_____ **FAX NO.:** _____

ADDRESS:_____

CITY: _____ **STATE:** _____ **ZIP CODE:**_____

SIGNATURE: _____ **DATE:**_____

This name and address will be used for all correspondence related to the Request for Proposal.

APPENDIX B - AGREEMENT TO TERMS AND CONDITIONS (Example Contract)

STATE OF NEW MEXICO

New Mexico Spaceport Authority

PROFESSIONAL SERVICES CONTRACT #_____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **New Mexico Spaceport Authority**, hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION)

C. *Performance Measures.*

Contractor shall substantially perform the following Performance Measures:

1.

2.

The receipt of the deliverables contemplated under this Agreement shall assist the Agency in obtaining its goal(s) as set forth in its Strategic Plan on page(s)_____.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars ($_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and approval by NMSA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

(OR MULTI-YEAR)

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars ($_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and approval by NMSA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE NMSA. This Agreement shall consist of an 18 month contract with possible options up to 4 years unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA latest version, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA latest version.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations

paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT."*

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

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the

Contractor without the prior written approval of the Agency.

11. Product Service Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA latest version, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

14. Merger.

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

15. Penalties for Violation of Law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA latest version. By execution of this agreement, contractor acknowledges and agrees

to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this agreement.

18. Workers Compensation.

The contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this agreement may be terminated by the Agency.

19. Records and Financial Audits.

The contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this agreement. The records shall be subject to inspection by the Agency and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. Indemnification.

The contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this agreement, caused by the negligent act or failure to act of the contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the contractor resulting in injury or damage to persons or property during the time when the contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this agreement. In the event that any action, suit or proceeding related to the services performed by the contractor or any officer, agent, employee, servant or subcontractor under this agreement is brought against the contractor, the contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency by certified mail.

21. New Mexico Employees Health Coverage.

A. If contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor

has (250) or more employees' contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this contract was procured pursuant to a solicitation, and if contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this agreement.

23. Invalid Term or Condition.

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notice.

Any notice required to be given to either party by this agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: Belinda Lucero
Procurement Manager
901 E. University Ave, Ste. 965L
Las Cruces, NM 88001
575-373-6113
575-373-6120 (fax)

belinda.lucero@spaceportamerica.com

To the Contractor: Name
Address
E-mail

26. <u>Authority</u>.

If contractor is other than a natural person, the individual(s) signing this agreement on behalf of contractor represents and warrants that he or she has the power and authority to bind contractor, and that no further action, resolution, or approval from contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature below.

By:_____ Date:_____
Contractor

By:_____ Date:_____
EDD Legal Counsel
Certifying legal sufficiency

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

CRS #: **00-000000-00-0**

By:_____ Date:_____
Taxation and Revenue Department

This Agreement has been approved by the NMSA:

By:_____ Date: _____
Rick Holdridge
Chairman
New Mexico Spaceport Authority

APPENDIX C - COST RESPONSE FORM

The cost proposal shall address the following for an 18 month period:

Hourly Rates*
Travel Rates
Labor Table for all Personnel
Fringe Benefits Rate
G&A Rate
Fee Rate
Overhead Rate
Proposed Billing Schedule
Schedule of Values
Materials Cost if any
Proposed travel requirements per # of trips
Total proposed estimated cost per year

* Work is primarily in Upham, NM. Note: For the Welcome Center in T or C and the Visitor Center in Upham, NM, the CM will be the Leasor's representative vice an Owner's representative. That role should be reflected in your cost based on your approach. NMSA believes the level of effort for each role will be significantly different.

Travel rates should be at the New Mexico government per diem rates.

APPENDIX D - CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to § 13-1-191.1 NMSA latest version, 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 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 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, 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 federal, 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:

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)

_____ _____
Signature Date

_____
Title (position)

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____

Signature Date

_____

Title (Position)

APPENDIX E - NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:

   (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between contractor and the State exceed one million dollars or;

   (b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between contractor and the State exceed $500,000 dollars or

   (c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between contractor and the State exceed $250,000 dollars.

2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information http://insurenewmexico.state.nm.us/.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000.

Signature of Offeror:_____ Date_____

APPENDIX F – PAY EQUITY INITIATIVE FORM

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees' contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Signature of Offeror:_____ Date_____

APPENDIX G - STATEMENT OF CONFIDENTIALITY
NON-DISCLOSURE AGREEMENT

NEW MEXICO SPACEPORT CONSTRUCTION MANAGEMENT CONTRACT

The undersigned employee of _____, hereinafter referred to as "contractor", agrees, during the term of the contract between contractor and the New Mexico Spaceport Authority (NMSA) and forever thereafter, to keep confidential all information and material provided by NMSA or otherwise acquired by the employee/subcontractor, excepting only such information as is already known to the public, and including any such information and material relating to any client, vendor, or other party transacting business with NMSA, and not to release, use or disclose the same except with the prior written permission of NMSA. This obligation shall survive the termination or cancellation of the contract between contractor and NMSA or of the undersigned's employment or affiliation with contractor, even if occasioned by contractor's breach or wrongful termination.

The undersigned recognizes that the disclosure of information may give rise to irreparable injury to NMSA, a client or customer of NMSA, or to the owner of such information, inadequately compensable in damages and that, accordingly, NMSA or such other party may seek and obtain injunctive relief against the breach or threatened breach of the within undertakings, in addition to any other legal remedies which may be available. The undersigned acknowledges that he or she may be personally subject to civil and/or criminal proceedings for such breach or threatened breach.

_____
(Signature)

_____
(Title)

_____
(Date)

ATTACHMENT A – SCOPE OF WORK

1. Performance Measures

- Accurate and detailed construction budget and schedule reporting on a weekly basis
- Timely filing of CM contractually required reports (narrative and financial)
- Weekly status reports of all construction activities
- Responsiveness to and communication with New Mexico Spaceport Authority on a daily basis
- Minimal inter-contractor seam disputes

2. Assumptions

The CM shall provide a trailer on-site at the Spaceport for office space with water / toilet accommodations. CM shall provide own IT / Communications equipment. The CM shall manage the following activities:

- Off-site Welcome Center in Truth or Consequences*;
- On-site Visitor Center*;
- 2000ft runway extension plus rip/rap around the runway;
- Fit out construction of the Virgin Galactic Gateway to Space 4000 sq ft NMSA area;
- Fit out construction of the Spaceport Operations Center (SOC); and
- On-site security facility which includes internal road re-alignment and water, electric, communications and wastewater system extension construction from the Terminal Hangar Facility to the Security Facility.

*Note: the offsite Welcome Center and the onsite Visitor Center will be built and owned by a third party (not NMSA). NMSA will lease these facilities. Thus the CM will serve as a Leasor's representative for these two facilities vice an Owner's representative.

3. Summary

NMSA is seeking Construction Management proposals that are cost effective while producing a quality outcome ensuring construction contractors meet their commitments in terms of quality, price and schedule. NMSA anticipates approximately two (2) full time equivalents (FTE) to accomplish these services. NMSA's expectation is that the construction contractors are to be held accountable and deliver a quality product on time and within budget. The CM's role will be to manage these activities as NMSA's representative.

Note: Construction Management Services shall not duplicate and are in addition to the normal scope of separate architect or engineering contracts.

The primary responsibility of the CM shall be to represent NMSA throughout the construction process, maintain responsibility for day-to-day management of the construction process, and to deliver the project safely, on time, within budget, without claims, and of the highest quality. NMSA expects the selected firm to assume responsibility and accountability standards as if the selected firm were the NMSA.

The CM shall be required to provide the sufficient and appropriate number of experienced qualified personnel from time of hiring until final completion of the professional services contract. The CM shall provide a copy of a valid GB-98 license from New Mexico and any other certificate or license required by Federal or State

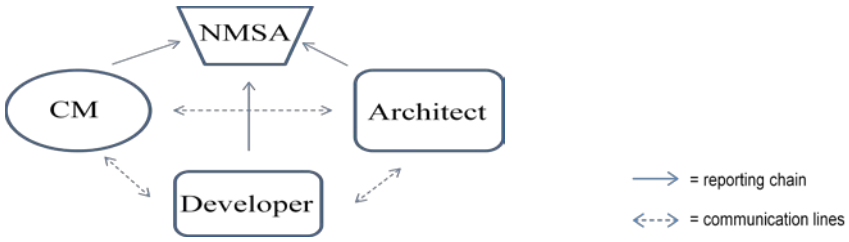
regulatory bodies with the proposal. On-site support staff will be as appropriate to the phase of work in progress.

The CM shall develop and implement a work plan that includes estimating and scheduling services as well as expertise in safety, wage rate compliance, partnering, and claims management of the State of New Mexico. All CM personnel shall have appropriate experience in construction management on complex construction projects of a similar nature. The CM shall develop and implement a system for monitoring construction in progress to ensure there are no deviations from cost, quality and completion dates. A more detailed explanation of the services to be provided by the CM is shown below. NMSA may request additional services be provided by the CM at NMSA's discretion.

For the purpose of preparing proposals, Offerors are to assume that on-site work will be performed primarily at the Spaceport near Upham, New Mexico. Offerors should assume that off-site work will be performed at Truth or Consequences. Contractor management staff will be expected to attend management meetings as required on request of NMSA.

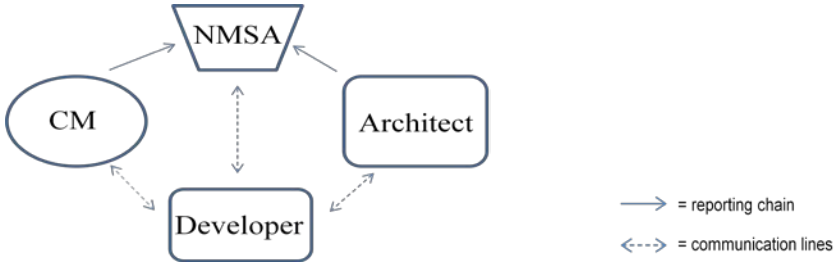
<u>The CM is expected to follow two different management models as explained herein:</u>

NMSA as Owner. This applies to the construction of the 2000ft Runway Extension; with rip/rap around the runway; the Security Facility (~500 sq ft); water, electric, communications, wastewater system extension from the Terminal Hangar Facility to the Security Facility ~300 ft and road realignment from the entrance to the Security Facility.



This model can be considered the traditional CM. The CM is expected to facilitate and conduct weekly and monthly NMSA construction meetings and put out the minutes/correspondence and action items of the meetings. CM provides to NMSA weekly progress reports for each project and will process and recommend payment of all construction pay applications in coordination with the architects. CM also will project and phase the overall budget and schedule. This will track and manage the inchstones and milestones for each project schedule.

NMSA as Leasor. This applies to the one Welcome Center in T or C and the on-site Visitor Center.



This model is the non-traditional CM. The CM is expected to participate in all Visitor Center and Welcome Center construction meetings as the Leasor's representative. The CM is expected to provide the Leasor with adequate information regarding the developer's progress. This should be accomplished by some sort of agreement to communicate between the CM, the architect and the developer.

4. Pre-Construction Phase

CM shall provide the following services during the pre-construction phase of the project including but not limited to:

- Review the existing plans and specifications prepared to date for the infrastructure elements, and provide advice and value analysis input regarding materials, methods, systems, schedules, labor and other conditions as they affect constructability;
- Prior to the beginning of construction work, develop a construction quality control system including a written work plan for utilizing field personnel of CM and architects/engineers to their best advantage;
- Develop an overall project schedule;
- Review the requirements for permitting and approvals according to New Mexico Procurement codes;
- Review the proposed contractual terms and conditions to be used in the construction contracts, and provide recommendations for improvement;
- Assist in development and review of the construction package RFPs;
- Prepare a communication and coordination plan to ensure construction contractors and architects interact effectively;
- Develop a plan to separate all construction activity from on-site Spaceport operations;
- Develop a plan to accommodate public construction site tours; and
- Establish construction trailer for onsite management.

5. Procurement Phase

CM shall participate in procurement phase activities and shall support NMSA during the process of procuring construction contractors as requested and directed by NMSA. CM's role during this phase may include but is not limited to participation in the following activities including but not limited to:

- Assist in developing bidder awareness, interest and understanding of the project;
- Participate in pre-bid conferences with interested bidders, subcontractors, material suppliers and equipment suppliers;
- Prepare when appropriate, prequalification criteria for bidders. Subcontractors and suppliers at all tiers must be properly licensed in the State of New Mexico and must meet all qualification requirements of the specifications/contract documents;
- Review all bid documents and provide due diligence on licensing, references, bid bonds, Department of Labor registration #, Federal Tax ID # and State Tax ID #;
- Review submitted offers and participate in any post-bid interviews;
- Observe evaluation proceedings and provide input as requested; and
- Update communication and coordination plan.

6. Construction Phase

CM shall provide the following services during the construction phase (may vary depending on CM role as Leasor's representative or Owner's representative) of the project including but not limited to:

- Establish and maintain a staffed and suitably-equipped office as deemed necessary by CM to manage all construction administration functions, including inspections by State appointed personnel, independent testing agency as required and site visits approved by NMSA. Note - all required equipment for performance on-site by the CM shall be provided by the CM, including but not limited to computers, word processors, calculators, telephones, blueprint machines, mobile radios, trucks/equipment, copiers and fax machines;
- Provide full-time, on-site and/or off-site staff as deemed necessary by CM to plan, manage and coordinate on-site contractor's activities in a manner that will ensure seamless and successful coordination and management of the project;
- Establish a communications plan for working as oversight to an independent construction contractor not employed by the State;
- Develop procedures and schedules for the processing of submittals, shop drawings, payment applications, etc. with the architects and NMSA;
- Establish and maintain on behalf of the NMSA a document control system, which will track all contractor submittals, change orders, correspondence, claims, etc. using software that tracks documents by issue;
- Conduct regular job site meetings with complete meeting minutes, record and track all action items;
- Maintain daily on-site project log and schedule report;
- Ensure consistent and thorough compliance by contractors with the plans and specifications;
- Maintain record copies of all contract documents;
- Maintain all change orders and other documentation on-site;
- Oversee construction management staff;
- Submit weekly written progress reports to the NMSA;
- Provide monthly written progress reports in a form acceptable to the NMSA and conduct progress meeting with contractor's;
- Develop and enforce the Quality Assurance (QA) Plan, in conformance with the plans and specifications;
- Oversee QA testing and inspection programs performed by the construction contractors and NMSA to ensure a quality outcome;
- Review contractor schedules and chair a monthly schedule meeting to assure timely completion of all phases. Work with contractor(s) to pro-actively address schedule concerns;
- Review any change requests submitted by contractor(s) and provide recommendations to NMSA for approval/disapproval. May also include performing independent estimate of the costs associated with any such change(s) and may require negotiations with contractors;
- Facilitate the development of record drawings, warranties and guarantees;
- Coordinate punch lists, final inspections, state inspections, federal inspections and NMSA acceptance;
- Prepare and administer payment and cost control procedures, including review and approval of pay applications from the contractors (this should not duplicate architect's role but complement that work) and make appropriate recommendations to NMSA; and
- As directed by NMSA, participate in and provide input/support to activities related to public relations, tours, media, documentaries, press releases and other related matters.

7. Post-Construction Phase

CM shall provide the following services during the post-construction phase of the project including but not limited to:

- Prepare initial punch list and consolidate comments into final punch list;
- Finalize the bid items, claims, change orders, punch list items and correct shop drawings;
- Identify and assist the NMSA in pursuing project and contract warranty corrections and repairs;
- Oversee completion of final record drawings as appropriate or coordinate with the responsible parties to do so; and
- Transmit all project files and record drawing to NMSA for archiving.

8. Deliverables

- A monthly invoice and report of progress documenting work performed and amount billed by CM;
- A detailed contract schedule with deliverables which shall include but not limited to those items called for in the SOW and shall be delivered to NMSA within 30 days of contract award;
- Updated budget for each construction project, where NMSA is Owner, being managed and a schedule presented at a minimum of monthly or whatever is deemed necessary by NMSA;
- Schedule for overall delivery of each construction project and identify the critical path and provide time advance notice of project delays. A schedule presented at a minimum of monthly or whatever is deemed necessary by NMSA;
- An open issues log update at a minimum of monthly or whatever is deemed necessary by NMSA;
- A weekly observation report of construction activities performed with construction photos;
- Conduct weekly safety meetings with complete meeting minutes and action items; and
- Conduct a weekly meeting with NMSA.