



CAPITAN MUNICIPAL SCHOOLS
REQUEST FOR PROPOSALS
FOR CONSTRUCTION SERVICES

RFP NO: 2019-002-BS Issued September 23, 2019

PROCUREMENT ON BEHALF OF: Capitan Municipal School District

CONTACT PERSON: Kimberly N. Stone, Chief Procurement Officer

ADDRESS: P.O. Box 278

CITY/STATE/ZIP: Capitan, NM 88316

TELEPHONE: 575-354-8512 FAX: 575-354-8005 E-MAIL: kimberly.stone@capitantigers.org

DEADLINE FOR RECEIPT OF PROPOSALS IS AS FOLLOWS:

DATE: Thursday, October 24th, 2019 TIME: 2:30 PM Local Time

DELIVER TO:

Capitan Municipal Schools

Attn: Kimberly N. Stone

(If Mailed) P.O. Box, 278, Capitan, NM 88316

(If Hand Delivered) 519 Smokey Bear Blvd, Capitan, NM 88316

Phone Number: 575-354-8512

Email: kimberly.stone@capitantigers.org

The date and time received will be stamped on the proposals by the District offices. Late proposals will not be accepted. It is the responsibility of the offeror to ensure that proposals are delivered on time to the correct address.

A PRE-PROPOSAL CONFERENCE IS MANDATORY

Commodity Codes: 96-149, 96-150

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

Capitan Municipal Schools (CMS) seeks sealed proposals from qualified contractors to provide task based mini bid construction services as required for Capitan Municipal Schools. CMS seeks to have multiple types of contractors awarded with individual or multiple disciplines.

B. SUMMARY SCOPE OF WORK

Capitan Municipal Schools (CMS) is soliciting proposals from multiple qualified businesses for multi award on-call construction services contracts to establish a new group of on-call contractors to respond to project requests of construction work on school building projects. Scopes may consist of one or multiple of the following; roof replacement, mechanical upgrades (HVAC), lighting retrofit, concrete/asphalt replacement, plumbing upgrades, carpentry upgrades, solar upgrades or others.

On-call contractors will be tasked based on evaluation ratings and availability or requested to mini bid projects against other on-call contractors to complete tasks associated with the following categories to ensure CMS is receiving the best value.

- A. Carpentry
- B. Plumbing
- C. Electrical/Solar
- D. Roofing
- E. Concrete
- F. Landscape
- G. Flooring
- H. Painting
- I. HVAC
- J. Fencing
- K. Masonry

The on-call construction services contracts will perform work via a work order (task order) per project with no guarantee of work.

C. SCOPE OF PROCUREMENT

1. Capitan Municipal Schools seeks to establish multiple contracts for on-call construction services contingent upon available funding and mutual agreement between both parties. Contract period will be for one (1) year to begin from the date of the award to June 30, 2020, and to be renewed upon Board of Education approval one (1) year at a time for subsequent fiscal years to include 2020-2021, 2021-2022 and 2022-2023. This procurement may result in a multiple source award.

2. Regardless of the termination date of said contract, any work in place will be carried to completion by the same vendor without unduly prolonging the process. In no case will the agreement(s) including all extensions thereof, exceed a total of four (4) years in duration.
3. Contractors selected to provide on call construction services would be required to enter into Capitan Municipal Schools standard agreement for construction services (Appendix B).
4. When Capitan Municipal Schools issues a Task Order in response to this Request for Proposal, a binding contract is created. It should be noted that the terms and conditions set forth herein represents the contract. Any contract entered into between CMS and the successful Offeror(s) is by no means an exclusive contract for the services described herein. CMS reserves the right to issue additional Requests for Proposals for special or technical projects, which may arise at any time, to better meet the needs of the District.
5. The use of subcontractors is allowed. If utilized, the prime contractor shall be solely responsible for the entire performance of the contract. Additionally, the prime contractor must receive approval, in writing, from the Owner before any subcontractor is used during the term of this agreement. Any Contractor who has been suspended or debarred from bidding on school construction projects shall not be used as a subcontractor during the time such suspension or debarment is in effect.
6. The Offeror's attention is directed to the fact that wages to be paid on any project over \$50,000 shall not be less than the prevailing wage rates as listed by the New Mexico State Office of Labor Commission. It shall be the successful Offeror's responsibility to inform themselves thoroughly of all state, federal, and local laws and statutes pertaining to the employment of labor, the freedom of organization, and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin, or legal political affiliation in the employment of persons qualified by training and experience for work under this contract. State of New Mexico Wage Rates shall apply to all work under the assigned task orders. Wage Rates will be updated by the New Mexico Department of Workforce Solutions in Santa Fe every calendar year for the duration of the contract. Wage Rate interviews may be carried out at any time during the Contract with Contractor's employees.
7. The Owner will not pay for business licenses, professional affiliations and similar costs of doing business which are the Offeror's obligation to secure and maintain. The cost of all bonding will be paid by the Offeror and will not be paid by the Owner. These costs are to be included in Offeror's Bids.
8. **PROPOSAL EVALUATIONS:**

- A. Proposals will be evaluated on the basis of the criteria enumerated within the Request for Proposals. Said committee will recommend Offerors receiving the highest score under the evaluation to the School Board for award. The Owner reserves the right to assign Task Orders to any qualified Contractor awarded under this RFP, regardless of the ranking of position. For the purpose of conducting discussions, proposals may initially be classified as:
- 1) Acceptable,
 - 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or
 - 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).
- B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror, which do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).
- C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror; a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in writing immediately.

D. CHIEF PROCUREMENT OFFICER

CMS has designated a Chief Procurement Officer who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement should be submitted to the Chief Procurement Officer in writing. Offerors may contact ONLY the Chief Procurement Officer regarding the procurement. Other School District Employees do not have the authority to respond on behalf of CMS.

Kimberly N. Stone
Chief Procurement Officer

<u>Delivery Address (Including proposal delivery):</u> 519 Smokey Bear Blvd – Capitan, NM 88316	<u>Mailing Address:</u> PO Box 278 – Capitan, NM 88316
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Phone: (575) 354-8512
E-mail: kimberly.stone@capitantigers.org

NOTE: All deliveries via express carrier (INCLUDING PROPOSAL DELIVERY) should be addressed to Kimberly N Stones' Delivery Address, above.

E. DEFINITION OF TERMINOLOGY

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

"Close of Business" means 4:30 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

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

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

"Determination" means the written documentation of a decision of the Chief Procurement Officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"Desirable" refers to the terms "may", "can", "should", "preferably" or "prefers" which identify a desirable or discretionary item or factor. (As opposed to a "mandatory" item or factor.)

"Evaluation Committee" means a body appointed by the Chief Finance Officer to perform the evaluation of Offeror proposals.

"Evaluation Committee Report" means a report prepared by the Chief Procurement Officer and the Evaluation Committee for submission to appropriate approval authorities for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

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

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

"Local public body" means every political subdivision of the State of New Mexico and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities.

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

"Chief Procurement Officer" means the person or designee authorized by the School District to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Procuring agency of the District" means the department or other subdivision of Capitan Municipal Schools that is requesting the procurement of services or items of tangible personal property.

"Purchase Order" or "PO" means the document which directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.

"Purchasing" means the Capitan Municipal Schools Purchasing Office or the School District Purchasing Agent.

"Purchasing Agent" or "PA" means the Purchasing Agent for Capitan Municipal Schools.

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

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished required information and data to prove that their 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 called for in this proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which 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 and delivery requirements.

"School Board" means the elected board in whom all powers of the School District are vested and who are responsible for the proper and efficient administration of School District affairs.

"Statement of Compliance" and "Statement of Concurrence" mean an express statement, by the Offeror in their proposal, that they agree with and agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE Company] agrees to comply with this requirement." and "The [NAME HERE Company] concurs with this requirement."

F. RESIDENT/VETERAN BUSINESS PREFERENCE

1. Resident Business Preference

The New Mexico Procurement Code provides for preference for resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those Offerors that have provided a valid resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a resident business, that Bidder must submit a copy of their resident business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

2. Resident Veterans Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. [Please see Section V.C.4 for more information and especially note Appendix F.] In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

G. PROCUREMENT LIBRARY

The Procurement Library consists of the following documents which may be accessed by their associated Internet links:

- New Mexico Procurement Code

<https://law.justia.com/codes/new-mexico/2013/chapter-13/>

- Capitan Municipal Schools Procurement Policy

<https://z2.ctspublish.com/nmsba/Z2Browser2.html?showset=capitan>

END SECTION I-INTRODUCTION

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

ACTION	RESPONSIBILITY	DATE
1. Issue RFP	Chief Procurement Officer (CPO)	09/23/19 (Monday)
3. Mandatory Pre-Proposal Conference	Potential Offerors (PO)	10/09/19 (Wednesday) 10:00AM Local Time
4. Deadline to Submit Written Questions	PO	10/11/19 (Friday) 4:30 PM Local Time
5. Response to Written Questions/ RFP Amendments	CPO	10/15/19 (Tuesday)
6. Submission of Proposal	Offerors	10/24/2019 (Wednesday) 2:30 PM Local time
7. Proposal Evaluation	Evaluation Committee (EC)	TBD
8. Notification of Finalists (If desired)	EC	TBD
9. Best & Final Offer (If requested)	Offerors	TBD
10. Contract Negotiations (If needed)	Tentative winners/District	TBD
11. Contract Award*	Board of Education*	10/31/19 (Thursday)
12. Protest Deadline	Offerors	11/18/19 (Monday)

*Contract award is subject to approval of the Capitan School Board of Education.

B. EXPLANATION OF EVENTS

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

1. Issue RFP

This RFP is being issued by the Capitan Municipal Schools Purchasing Agent on behalf of the School District and the Capitan School Board of Education.

2. Return of “Acknowledgment of Receipt” Form for Distribution List

Potential Offerors should hand deliver or return by facsimile or e-mail or registered or certified mail the “Acknowledgement of Receipt” form that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by the close of business on the date indicated in Section II.A (Sequence of Events), above.

The procurement distribution list will be used to notify those that submitted the form of any written responses to questions and any RFP amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Pre-Proposal Conference

A Pre-Proposal Conference will be held to discuss potential projects and logistics.

4. Deadline to submit additional written questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until 4:30 PM Local Time on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Chief Procurement Officer (See Section I, Paragraph D.)

5. Response to written questions/RFP Amendments

Written responses to written questions and any RFP amendments will be e-mailed to all potential Offerors that have returned the “Acknowledgement of Receipt” Form found at Appendix A. A new “Acknowledgement of Receipt” Form will accompany the e-mailed distribution package. The form should be signed by the Offeror's representative, dated, and hand-delivered or returned by e-mail or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process.

6. Submission of Proposal

OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE **NO LATER THAN 2:30 PM LOCAL TIME ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. **PROPOSALS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.****

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Chief Procurement Officer at the delivery address listed in Section I, Paragraph D. Proposals must be sealed and should be labeled on the outside of the package to clearly indicate that they are in response to the “Construction Services for

Capitan Municipal Schools”, should reference “RFP #2019-002-BS” and should indicate the deadline for receipt (due date and time.) Proposals submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED.**

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

7. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by Chief Finance Officer. This process will take place during the time period indicated in Section II.A (Sequence of Events), above. During this time, the Chief Procurement Officer may at her option initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Notification of Finalists

The Evaluation Committee may select and the Chief Procurement Officer may notify finalist Offerors on the date indicated in Section II.A (Sequence of Events), above. Only finalists will be invited to participate in the subsequent steps of the procurement. The Evaluation Committee reserves the right not to utilize the finalist process if they deem it in the best interest of the District.

9. Best and Final Offers

Finalists may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers on the date indicated in Section II.A (Sequence of Events), above.

10. Contract Negotiations

If necessary, contract negotiations shall commence with the most advantageous Offeror(s) no later than the date indicated in Section II.A (Sequence of Events), above. In the event that mutually agreeable terms cannot be reached within the time specified, the District reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

11. Contract Award

After review of the Evaluation Committee Report and the tentative contract, the Purchasing Agent anticipates the School Board will award the contract on the date indicated in Section II.A (Sequence of Events), above. This date is subject to change at the discretion of the Chief Procurement Officer or the School Board.

Any contract awarded shall be awarded to the Offeror(s) whose proposal is most advantageous to the District, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points.

12. Protest Deadline

Any protest by an Offeror must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978. The fifteen (15) day protest period for timely Offerors shall begin on the day following contract award and will end at 2:30 PM Local Time on the date indicated in Section II.A (Sequence of Events), above. Protests must be written and 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, and it must specify the ruling requested from the Purchasing Agent. The protest must be delivered to the Chief Procurement Officer.

Capitan Municipal Schools
Attn: Kimberly N. Stone, Chief Procurement Officer
P.O. Box 278
519 Smokey Bear Blvd
Capitan, New Mexico 88316

NOTE: Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978).

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix D). 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 or negotiation associated with their response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

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

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal and each must be identified by name. The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the District Purchasing Office.

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. District 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 Chief Procurement Officer. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Disclosure of Proposal Contents

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

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

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Purchasing Agent 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 continued prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates Capitan Municipal Schools or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Purchasing Agent and other required approval authorities.

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 District determines such action to be in the best interest of the District.

11. Sufficient Appropriation

Any contract awarded as a result of this 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 District's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The District 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 Chief Procurement Officer.

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 District in writing through the Chief Procurement Officer 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 District and the contractor will follow the format specified by the District and contain the terms and conditions set forth in Appendix B, Professional Services Contract. However, the District 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 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 District's terms and conditions, as contained in this Section or in Appendix B, that Offeror must propose specific alternative language in their RFP. The District may or may not accept the alternative language, at the District's sole discretion. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the District and could lead to disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording in order for the proposed alternate wording to be considered.

16. Offeror's Terms and Conditions

Offeror's must submit with their proposal a complete set of any additional terms and conditions which they request be included in a contract negotiated with the District. The District may or may not accept the additional language, at the District's sole discretion.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the District 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 is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements 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 District reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the District, meeting its needs adequately.

21. Notice

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

22. District Rights

The District reserves the right to accept all or a portion of an Offeror's proposal.

23. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the District. However, any technical or user documentation submitted with the proposals of non-selected Offerors may be returned after the expiration of the protest period, by request, at the expense of the Offeror.

24. Ambiguity, Inconsistency or Errors in RFP

Offerors shall promptly notify the Chief Procurement Officer, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the RFP.

25. Competition

By submitting a proposal, Offeror certifies that they have not, either directly or indirectly, entered into any action in restraint of full competition in connection with the proposal submitted to the District.

26. Use by Other Government Entities

By submitting a proposal, Offeror indicates that they understand and agree that other government entities within the State of New Mexico, or as otherwise allowed by their governing directives, may contract for the goods or services included in this procurement document with the awarded contractor(s). Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity with no obligation or liability incurred by Capitan Schools.

27. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of any agreement 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 Capitan Schools.

28. 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.

29. 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 District, the version maintained by the District shall govern.

END SECTION II-CONDITIONS GOVERNING THE PROCUREMENT

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offeror's may submit only one (1) response to this RFP.

B. NUMBER OF COPIES

Offerors shall deliver five (5) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals. (Identical copies are defined as the original plus the number of additional copies needed to fulfill the requirement. For example, a requirement for five (5) identical copies would be fulfilled by submitting the original and four (4) copies of the original.) The original copy should be clearly marked "ORIGINAL" on the front cover and shall contain original signatures. (An exception to this requirement is made for the "Cost Proposal Form" and the "Campaign Contribution Disclosure Form". See Section III.C.1, immediately below.)

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.

1. Proposal Organization

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

- a. Letter of Transmittal Form (See Appendix D)
- b. Valid In-State Resident or Veteran Preference Certificate (Optional at Offeror's discretion. See Section I.F.)
- c. Table of Contents
- d. Cost Proposal Form* (See Appendix C) in a sealed and labeled envelope
- e. Campaign Contribution Disclosure Form* (See Appendix E) in a sealed and labeled envelope
- f. NM Licenses
- g. Response to Specifications
- h. Other Supporting Material (Optional. See Section III.C.3., below)

*Only the single original needs to be provided and must be secured in the binder marked “Original” in the required sealed and labeled envelope.

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Unless otherwise specified in this RFP, all discussion of proposed costs, rates or expenses must occur only on the Cost Proposal Form, Appendix C.

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

A proposal summary 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 Form

The Letter of Transmittal Form at Appendix D **must** be completed, signed and included with the Offeror's proposal.

3. Other Supporting Materials

Offerors may attach other materials which they feel may improve the quality of their responses. However, these materials may not be reviewed by members of the Evaluation Committee and **will not** be scored.

END SECTION III-RESPONSE FORMAT AND ORGANIZATION

IV. SPECIFICATIONS

A. INFORMATION

1. In-State Resident or Veteran Preference

A valid In-State Resident or Veteran Preference Certificate issued by the New Mexico Taxation and Revenue Department **must** be included with the proposal if the Offeror wishes to receive the additional points available as a qualifying resident or veteran business. See Section I.F, above, for more information.

2. Response to Requirements

Each mandatory requirement in sections IV.B.1 through IV.B.10, below, requires a vendor response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the Offeror's proposal.

B. MANDATORY REQUIREMENTS

1. Letter of Transmittal Form (0 Points)

Offeror must complete and submit the “Letter of Transmittal Form”, found at Appendix D, with their proposal. The form must be signed and dated by an individual authorized to contractually bind the Contractor.

2. Campaign Contribution Disclosure Form (0 Points)

Offeror must complete and sign the Appendix E, 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. Note that there are two (2) different signature sections within the form. (For purposes of this requirement, the applicable elected public officials for Capitan Municipal Schools are: Daryl Lindsay, President – Gary Tregembo, Vice-President – Dennis Rich, Secretary – Troy Stone, Member – Ben Hazen, Member.

3. Insurance (0 Points)

Offeror must provide proof of professional liability and automobile insurance and who is covered under what circumstances.

4. Capability and Agreement to Perform (0 Points)

Offeror certifies that they are capable and qualified to provide the products or services required by this RFP and agrees to perform the Scope of Work as specified in the Contract at Appendix B. A statement of concurrence is required.

5. Professional Qualifications (0 Points)

Offerors must maintain a current commercial New Mexico License in the proposed fields.

6. Experience (50 Total Points Possible)

Offerors must have a minimum of three (3) years of experience in the respective fields.

7. References (50 Points)

Offerors shall provide names and current contact information for the customers to which services have been provided.

8. Accessibility (50 Points)

Twenty-four hour a day, seven days a week (“24/7”) access to emergency services. If awarded the Contract, Offeror must be available whenever needed, and easily accessible. Offeror must explain, in narrative format, how they will meet this requirement with a focus on their accessibility.

9. Cost (0 Points)

Offeror must complete and submit the Cost Proposal Form, at Appendix C, providing proposed contract cost for accomplishing the scope of work. State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Retainer fees will be considered.

END SECTION IV-SPECIFICATIONS

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point value assigned to each or a Pass/Fail evaluation. These, along with the general requirements, will be used in the evaluation of individual Offeror proposals.

REF.	REQUIREMENT	POINTS AVAIL.
IV.B.1	Letter of Transmittal Form	0*
IV.B.2	Campaign Contribution Disclosure Form	0*
IV.B.3	Insurance	0*
IV.B.4	Capability and Agreement to Perform	0*
IV.B.5	Professional Qualifications	0*
IV.B.6	Experience	50
IV.B.7	References	50
IV.B.8	Accessibility	50
IV.B.9	Cost	0*
TOTAL		150

*Pass/Fail only.

Points will be awarded based on the evaluation factors found in V.B.1 through V.B.8, below, as indicated.

B. EVALUATION FACTORS: MANDATORY REQUIREMENTS

1. Letter of Transmittal Form (0 Points)

Pass/Fail only.

2. Campaign Contribution Disclosure Form (0 Points)

Pass/Fail only.

3. Insurance (0 Points)

Pass/Fail only.

4. Capability and Agreement to Perform (0 Points)

Pass/Fail only.

5. Professional Qualifications (0 Points)

Pass/Fail only.

6. Experience (50 Total Points Possible)

Points will be awarded based on the depth and breadth of the overall experience of the Offeror. The Evaluation Committee will pay particular attention to the similarity between described experience and the work required to be performed under this RFP as well as the complexity and difficulty of work described in the Offeror's response. Offeror responses will also be compared to submittals from other Offerors under this RFP.

7. References (50 Points)

Offerors shall provide names and current contact information for the customers to which services have been provided. The Evaluation Committee will pay particular attention to the similarity between described experience and the references provided in the Offeror's response. Offeror responses will also be compared to submittals from other Offerors under this RFP.

8. Accessibility (50 Points)

Points will be awarded based on the Offeror's response to the requirement to be available 24/7 as well as the indicated ease of reaching the Offeror whenever needed, the number of optional methods available to reach the Offeror and the explanation of how they will be easily accessible. The Offeror's explanation of how they will be easily accessible will be the most heavily weighted portion of this evaluation factor.

9. Cost (Pass/Fail)

Pass will result from filling out a cost sheet with every discipline that the offeror propose on. Cost Proposal Form (Appendix C) will only be compared when selecting a contractor for a task. It will not be used when mini bidding a project.

C. EVALUATION PROCESS

1. Initial Review

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

2. Clarifications

The Chief Procurement Officer may contact the Offeror for clarification of the response as specified in Section II, Paragraph B.7.

3. Other Information Sources

The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.

4. Resident Business/Contractor Preference

13-1-21 NMSA 1978 provides for preference for resident businesses and contractors under certain conditions. If applicable, the preference will be provided to those Offerors that have provided a valid resident business preference certificate or a valid resident contractor certificate with their proposal, as required by 13-1-22 NMSA 1978.

5. Scoring and Contract Award Recommendation

Responsive proposals will be evaluated and assigned a point value based on the factors in Section V. Finalist Offerors who are asked and choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible Offeror whose proposal is most advantageous to the District, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the Purchasing Agent, and any other required approving authorities, as specified in Section II, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

END SECTION V-EVALUATION

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

Request for Proposals

**On-Call Construction Services
Capitan Municipal Schools
RFP #2019-002-BS**

In acknowledgment of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix E.

The acknowledgment of receipt should be signed and returned at the end of the Mandatory Pre-Proposal Meeting. Wednesday, October 9, 2019 at the Capitan Schools.

The contractor listed below does/does not (circle one) intend to respond to this Request for Proposals.

CONTRACTOR: _____

REPRESENTED BY: _____ TITLE: _____

E-MAIL ADDRESS: _____

PHONE NO.: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Please return to:

Kimberly N. Stone
Chief Procurement Officer
Capitan Municipal Schools
P.O. Box 278
519 Smokey Bear Blvd.
Capitan, NM 87031
Phone: (575) 354-8512
E-mail: kimberly.stone@capitantigers.org

APPENDIX B

ON-CALL CONSTRUCTION SERVICES CONTRACT

Capitan Municipal Schools

CONTRACT #2019-002-BS

THIS AGREEMENT is made and entered into by and between the Board of Education, Capitan Schools, hereinafter referred to as "CMS" 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 by the Purchasing Agent and the Capitan Board of Education.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

On-call contractors will be tasked, based on evaluation ratings, cost and availability, or for larger projects, requested to mini bid projects against other on-call contractors, to complete tasks associated with the following categories to ensure CMS is receiving the best value.

- A. Carpentry
- B. Plumbing
- C. Electrical/Solar
- D. Roofing
- E. Concrete
- F. Landscape
- G. Flooring
- H. Painting
- I. HVAC
- J. Fencing
- K. Masonry

The on-call construction services contracts will perform work via a work order (task order) per project with no guarantee of work.

2. Compensation.

A. CMS shall pay the Contractor for services rendered within the fiscal year. Services will be paid based on the satisfactory completion of the Scope of Work as directed. Contractor shall secure all licenses, permits, fees, etc., as required for the performance of this work.

B. No per diem will be paid to Contractors for work performed in Capitan. Clerical or secretarial help will not be reimbursed. Fee for services includes all of the contractors general and administrative overhead costs.

C. CMS shall not reimburse the Contractor for any professional fees

D. Payment will be made upon receipt of a detailed invoice which shall include the Contractor's company name, address, telephone and fax number, invoice number and date, description of and date of service, number of hours worked and hourly rate, subtotal, gross receipts tax and total amount owed. Invoice must have approval of the CMS delegated representative. Invoices may be submitted once per month. Approved invoices will be sent to CMS Accounts Payable department for processing. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. Payment terms are net 30 days. CMS shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

F. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. Term.

This Agreement is for from the date of approval by the Capitan School Board to June 30, 2020. This Contract(s) may be renewed upon Board of Education approval, for up to three (3) additional one (1) year terms unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

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 District'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 District is the terminating party, or the Contractor's sending of the notice of termination, or 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 District 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 government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE DISTRICT'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 District 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 District; 2) comply with all directives issued by the District in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the District shall direct for the protection, preservation, retention or transfer of all property titled to

the District 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 District upon termination and shall be submitted to the District as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Capitan School Board for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Capitan School Board, this Agreement shall terminate immediately upon written notice being given by the District to the Contractor. The District's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the District 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 District and are not employees of CMS. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of District vehicles, or any other benefits afforded to employees of CMS 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 CMS 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 that may become due under this Agreement without the prior written approval of CMS.

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 District. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the District. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the District, its officers and employees, and CMS 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 District.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of CMS and shall be delivered to CMS 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.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any District employee while such employee was or is employed by the District and participating directly or indirectly in the District's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the District; (ii) the Contractor is not a member of the family of a public officer or employee of the District; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the District, a member of the family of a public officer or employee of the District, or a business in which a public officer or employee of the District or the family of a public officer or employee of the District has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the District within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the District whose official act, while in District employment, directly resulted in the District's making of this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the District.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the District relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the District if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the District and notwithstanding anything in the Agreement to the contrary, the District may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

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 1978, 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, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, 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.

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Thirteenth Judicial

District Court in Valencia County. 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 District.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered. These records shall be subject to inspection by CMS officials and/or the CMS Auditor. CMS shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of CMS to recover excessive or illegal payments.

20. Disclaimer and Hold Harmless.

CMS shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold CMS harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by CMS in connection with the performance by Contractor of Contractor's duties according to this Agreement.

21. Indemnification.

The Contractor shall defend, indemnify and hold harmless CMS 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 CMS by certified mail.

22. 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.

23. 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.

24. Authority.

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.

25. Approval of Contractor Personnel.

Personnel proposed in the Contractor's written proposal to the District are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the District. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the District shall retain the right to request the removal of any of the Contractor's personnel at any time.

26. Survival.

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

27. Succession.

This agreement shall extend to and be binding upon the successors and assigns of the parties.

28. Force Majeure.

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

29. Mediation.

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Public Schools Insurance Authority and the parties shall utilize a striking process until a mediator is agreed upon.

31. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon the District until it is executed by the Capitan School Board after voting on the contract at a public meeting. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

32. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

33. Cooperation.

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

34. Incorporation and Order of Precedence.

Request for Proposals No. 2019-002-BS and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the contractor's proposal; then
6. the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

35. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The contractor shall defend, at its own expense, CMS against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against CMS based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse CMS for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, CMS shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the District the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the District to the extent such modification is the cause of the claim.

36. Professional Liability Insurance.

The contractor shall procure, pay for and maintain in full force and effect during the terms of this Agreement insurance as required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. The contractor shall furnish CMS copies of certificates of required insurance in a form satisfactory to CMS. All certificates of insurance (or policies) shall provide that thirty (30) days written notice be given to CMS before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies.

- A. Bonding Capability:** The Offeror will provide, with the proposal, a notarized declaration from a bonding company licensed to do business in the State of New Mexico confirming the Offeror's ability to obtain Performance; Labor, and Materials Payment Bond for projects which range from \$20,000.00 to \$500,000.00 if they are to be considered for the larger projects.
- B. Comprehensive General Liability:** The contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$100,000.00 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for all operations performed for CMS by the contractor, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work. Contractual liability coverage shall specifically insure the indemnity and hold harmless provisions of this Agreement.
- C. Workers' Compensation Insurance:** The contractor shall provide for its employees' workers compensation insurance as applicable under the New Mexico Workers' Compensation Act
- D. Increased Limits:** If, during the term of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978., CMS may require the contractor to increase the maximum limits of any insurance required herein.

E. Proof of Insurance: Proof of such insurance shall be provided in the form of a certificate of insurance or a copy of the insurance policy and such proof of insurance shall be delivered prior to the execution of a contract.

37. Notices.

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 District: Patti Nesbitt/ Superintendent /P.O. Box 278/519 Smokey Bear Blvd/ Capitan, NM 88316

To the Contractor: [insert name and address].

38. Fingerprints and Background Checks:

New Mexico Statute Section 22-10-3.3 NMSA 1978 (being Laws, 1997, Chapter 238, Section 1) and State Board of Education Rules require that all applicants who have been offered employment, contractors and contractor's employees **with unsupervised access to students** be fingerprinted in order to establish positive identification for a state and federal criminal background check. CMS will also require said applicants or prospective contractors to pay for the cost of obtaining the fingerprints and background checks. Employment or contract may be denied under the Criminal Offender Employment Act if the background check reveals a history of convictions of felonies or misdemeanors, or other information (supported by independent evidence) that could establish unfitness for working in proximity to children and youth. Records and any related information shall be privileged and shall not be disclosed to a person who is not directly involved in the employment decision regarding the applicant or contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____
Patti Nesbitt Superintendent Date
Capitan Schools - PO Box 278 -Capitan, NM 88316
Phone: 575-354-8511

By: _____
Authorized Representative Title Date

Fed Tax ID # or SS #

Mailing Address

Phone/Fax/Email

APPENDIX C

COST PROPOSAL FORM

Capitan Municipal Schools RFP #2019-002-BS On Call Construction Services for Capitan Municipal Schools

State gross receipts shall not be included in the Total Proposed Cost.

OFFEROR NAME: _____

This “Summary of Proposed Rates” is to be executed and returned with your proposal. **Cost Proposal MUST be sealed in an envelope marked “PRICE PROPOSAL” and must be submitted with the original written proposal.** Profit, overhead, consumables, printing, travel, per diem, etc shall be incorporated into the hourly rates. Other costs not mentioned in this RFP will be usual and customary or otherwise negotiated by CMS Procurement Department and the contractor. **All projects requiring more than basic trade tools will be mini-bid.**

Reimbursable Items and Overtime - Any costs associated with gross receipts taxes, reimbursable items, and the like will appear as separate line items on the Offeror’s proposal and on quotes/proposals for projects.

Limitation for Mileage/Overtime – If travel time is required due to the immediate requirement of repair parts or overtime is required to meet the project district’s timelines, the additional costs must be clearly identified in the quotes.

Separate Line Items to be Shown - Reimbursable charges shall be identified separately from hourly and overtime rates. Offerors are encouraged to demonstrate cost savings, identify reimbursable items, and any other costs that are not covered in the detailed Evaluation Criteria. Other costs not mentioned in the RFP or Agreement will be usual and customary or otherwise negotiated between CMS and the Contractor.

Discipline	Hourly Rate	Overtime Rate	Emergency Rate	Materials Markup
Carpentry	\$	\$	\$	%
Plumbing	\$	\$	\$	%
Electrical/Solar	\$	\$	\$	%
Roofing Repair	\$	\$	\$	%
Concrete	\$	\$	\$	%
Landscape	\$	\$	\$	%
Flooring	\$	\$	\$	%
Painting	\$	\$	\$	%
HVAC	\$	\$	\$	%
Fencing	\$	\$	\$	%
Masonry	\$	\$	\$	%

I/We certify that our proposal addresses all criteria required in the Request for Proposals and that I/We have read and understand the Scope of Work as presented in the Request for Proposal Attachment 1 and Section IV.

SIGNATURE AND TITLE OF OWNER OR AUTHORIZED AGENT:

(Print Name and Title)

Date

END APPENDIX C-COST PROPOSAL FORM

APPENDIX D

LETTER OF TRANSMITTAL FORM

Items #1 to 4 MUST EACH BE RESPONDED TO. Failure to respond to all four items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. Identity (Name) and Mailing Address of the submitting organization:

2. For the person authorized by the organization to contractually obligate the organization:

Name	
Title	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-Mail Address	
Telephone Number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-Mail Address	
Telephone Number	

5. Declarations:

- I certify that I am authorized to contractually bind my company.
- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.
- I acknowledge receipt of any and all amendments to this RFP.
- I certify that my company/entity/organization commits to comply and act in accordance with (1) Federal Executive Orders and New Mexico State Statutes relating to the enforcement of civil rights, (2) Federal Code 5 USCA 7201 et. seq., Anti-Discrimination in Employment; (3) Executive Order No. 11246, Equal Opportunity in Federal Employment; (4) Title 6, Civil Rights Act of 1964; and (5) Requirements of the American with Disabilities Act of 1990 for work performed as a result of this RFP.

_____, 2019

Authorized Signature and Date (**Must be signed by the person identified in item #2, above.**)

APPENDIX E

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

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

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

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

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

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

Names of Applicable Public Officials on the District Board of Education:

Daryl Lindsay, President
Gary Tregembo, Vice President
Dennis Rich, Secretary
Troy Stone, Member
Ben Hazen, Member

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s)

Purpose of Contribution(s)

(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)