REQUEST FOR PROPOSALS
#10-667-00-00003
NEW MEXICO ENVIRONMENT DEPARTMENT
ATTORNEY SERVICES

The State of New Mexico's New Mexico Environment Department is requesting proposals for attorney services. The purpose of this Request For Proposals (RFP) is to select an offeror(s) for attorney services for the following projects:
1) Hearing officer services; and 2) consultation and representation of the Department in matters related to Corrective Action Fund cost recovery. All proposals submitted shall be valid for ninety (90) days subject to all action by the Environment Department. Proposals shall only be accepted from qualified offerors or Law Firms submitting proposals in relation to the Scope of Work as identified within the RFP. The Environment Department reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed box or envelope indicating the proposal title and number along with the offeror name and address clearly marked on the outside of the box or envelope. **All proposals shall be received by 4:00 p.m., Mountain Daylight Time, October 19, 2009, at the Office of the Procurement Manager, 1190 St. Francis Drive, Room N-4050, Santa Fe, New Mexico 87501.** Offerors should submit one original and two copies of each response. By submitting a proposal for the requested materials and/or services, each offeror is certifying that their proposal is in compliance with regulations and requirements stated within the RFP.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified offerors will receive consideration of contract(s) without regard to race, color, religion, sex, sexual preference or national origin.

RFP will be available by contacting Karen Thomas, karen.thomas1@state.nm.us, Procurement Manager, Administrative Services Division, New Mexico Environment Department at (505) 827-2990 or by mail at P.O. Box 5469, Santa Fe, NM 87502-5469. RFPs may also be obtained through NMED's website at http://www.nmenv.state.nm.us/NMED/asd.html.

ANY PROPOSALS RECEIVED BY THE OFFICE OF THE PROCUREMENT MANAGER AFTER THE TIME AND DATE SPECIFIED SHALL NOT BE CONSIDERED.

Administrative Services Division
New Mexico Environment Department
Publish September 25, 2009

PROFESSIONAL ATTORNEY SERVICES

STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT

REQUEST FOR PROPOSALS

RFP: 10-667-00-00003

ATTORNEY SERVICES

September 25, 2009

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico's Environment Department ("Department") is requesting proposals for attorney services. The purpose of this Request For Proposals (RFP) is to select an offeror(s) for attorney services for the following projects:

1. Hearing officer services for administrative hearings;
2. Consultation and representation of the Department in matters related to cost recovery action for the Corrective Action Fund.

Offerors may submit proposals on all or select projects. The Department may select multiple offerors.

B. SUMMARY SCOPE OF WORK

1. The scope of work shall consist of attorney services as a hearing officer to assist the Secretary of the Department, the Water Quality Control Commission ("WQCC"), the Environmental Improvement Board ("EIB") or the Occupational Health and Safety Review Commission ("OHSRC"). These services may include, but are not limited to the following:

- assuring that proper notice is given to the parties and the public;
- assuring that a proper record is made;
- taking testimony at a hearing or in writing;
- ensuring that hearings are conducted in an orderly and fair manner consistent with applicable laws and regulations;
- making rulings on evidence, procedural issues and other motions;
- writing a hearings officer's report that may include findings of fact, conclusions of law, a recommended decision, or if properly delegated, a final decision;
- assuring notice of the decision is given to all the parties;
- meeting with, consulting with and advising the Secretary of the Department, WQCC or EIB as requested;
- defending the final action in the District Court, Court of Appeals or Supreme Court as requested, including consultation, brief writing and oral argument; and
- other duties as assigned consistent with the role of a hearing officer or administrative law judge.

2. The scope of work shall consist of attorney services for matters relating to cost recovery action for the Corrective Action Fund. The services may include, but are not limited to the following:

- meeting with the bureau client;
- asserting and defending the Department's authority to cost recover the expenditure of Corrective Action Fund money;

- consultation and representation on petroleum storage tank issues;
- negotiating settlements;
- filing and pursuing lawsuits;
- filing and responding to motions;
- taking a claim to trial and final resolution;
- obtaining a final order;
- other duties as assigned by the General Counsel.

C. TERM OF PROCUREMENT

The contract(s) shall begin on approximately October 30, 2009 or as soon as possible thereafter, and shall be for a period of one year. The Department reserves the option of renewing the initial contract(s) on an annual basis for three (3) additional years or any portion thereof for the purpose of fulfilling the requirements of the contract. In no case will the contract(s), including all renewals thereof, exceed a total of four years in duration.

D. PROCUREMENT MANAGER

The Department has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number are listed below.

Karen Thomas
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469
505-827-2990
505-827-1628
karen.thomas1@state.nm.us

All hand deliveries or deliveries via express carrier should be addressed as follows:

Karen Thomas
New Mexico Environment Department
1190 St. Francis Drive, Suite 4050
Santa Fe, NM 87501

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

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

"Agency" or “Department” means the New Mexico Environment Department.

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

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

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

"Determination" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

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

"Evaluation Committee" means a body appointed by the Department management to perform the evaluation of offeror proposals.

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

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

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

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

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

"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, when required, information and data to prove that his or her 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.

"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.

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

F. BACKGROUND INFORMATION

The Department's mission is to provide the highest quality of life throughout the State by promoting a safe, clean, and productive environment. We, as custodians of our environment will:

a. Take a holistic approach to the protection of human health and the environment;

b. Protect the environmental resources of New Mexico and the health and safety of its citizens and visitors;

c. Establish environmental baselines for communities across the state;

d. Revamp and restructure the pollution prevention program in a way that truly prevents and reduces pollution throughout New Mexico;

e. Value diversity to improve our ability as a Department to communicate across racial, linguistic and socio-economic lines, public participation and the quality of our decisions will improve;

f. Seek out that diversity in every corner of the state and listen to it;

g. Harness the energy of our best employees in order to achieve results that matter to the mission of the Department and to the health and environment of New Mexico;

h. Reward high performance and conversely provide sanctions for workers that aren't accomplishing what is required.

The New Mexico Environment Department was established under the provisions set forth in the Department of the Environment Act by the 40th. Legislature, enacted July 1, 1991 (Laws of 1991, Chapter 25) NMSA 1978, Sections 9-7A-1 thru 14. The New Mexico Environment Department Secretary's Office is located in the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM.

G. PROCUREMENT LIBRARY

The Procurement Manager has established a Procurement Library. Offerors are encouraged

to review the material contained in the Procurement Library by contacting the Procurement Manager or her designee and scheduling an appointment. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library.

As a service to the potential offerors, the Procurement Manager's staff will make copies at a cost of $0.25 per page. Payment in the form of a check must be made at the time of copying. Checks must be made out to New Mexico Environment Department.

The library contains information listed below:

- State of New Mexico Procurement Regulations, 1.4.1 NMAC located at the following web site address: www.state.nm.us/spd
- 20.1.2 NMAC found at http://www.nmcpr.state.nm.us/nmac/_title20/T20C001.htm
- 20.1.3 NMAC found at http://www.nmcpr.state.nm.us/nmac/_title20/T20C001.htm
- 20.1.4 NMAC found at http://www.nmcpr.state.nm.us/nmac/_title20/T20C001.htm
- 20.1.5 NMAC found at http://www.nmcpr.state.nm.us/nmac/_title20/T20C001.htm
- 20.5. NMAC found at http://www.nmcpr.state.nm.us/nmac/_title20/T20C005.htm

II. 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. Issuance of RFP	Department	09/25/09
2. Acknowledgement Receipt Form	Potential Offeror	10/02/09
3. Deadline to Submit Questions	Potential Offeror	10/06/09
4. Response to Written Questions/RFP Amendments	Department	10/09/09
5. Submission of Proposal	Offeror	10/19/09
6. Proposal Evaluation and Selection of Finalists	Evaluation Committee	10/20/09 - 10/23/09
7. Best and Final Offers from Finalists	Offeror	10/26/09
8. Finalize Contract	Department, Offeror	10/26/09 - 10/30/09

9. Contract Award	Department	approximately 10/30/09
10. Protest Deadline:	Offeror	To be determined

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP: This RFP is being issued by the Department of Environment on September 25, 2009. Copies may be obtained by contacting the Procurement Manager and the NMED web site.

2. Acknowledgement Receipt Form: Potential offerors should hand-deliver, return by facsimile or by first class mail the "Acknowledgement of Receipt of Request For Proposals Form" (See Appendix A) to be placed on the procurement distribution list. The form should be signed by an authorized representative of the potential offeror, dated and returned by close of business on October 2, 2009.

   The procurement distribution list will consist of potential offerors from whom the Department receives the Acknowledgement Receipt Form. The procurement distribution list will be used for the distribution of 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 name shall not appear on the distribution list.

3. Deadline to Submit Written Questions: Potential offerors may submit written questions as to the intent or clarification of this RFP until close of business on October 6, 2009. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph D).

4. Response to Written Questions/RFP Amendments: Written responses to written questions and any RFP amendments will be distributed on October 9, 2009 to all potential offerors whose name appears on the procurement distribution list. An Acknowledgement of Receipt Form will accompany the distribution package.

5. Submission of Proposal: ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **NO LATER THAN 4:00 PM MOUNTAIN DAYLIGHT TIME ON OCTOBER 19, 2009**. 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 D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Environment Department's Professional Attorney 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 NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

6. Proposal Evaluation and Selection of Finalist: The evaluation of proposals will be performed by an evaluation committee appointed by the Department's management. This process will take place between approximately October 20, 2009 and October 23, 2009. During this time, the Procurement Manager may initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the offerors.

   The Evaluation Committee will select and the Procurement Manager will notify the finalist on approximately October 23, 2009. Only finalists will be invited to participate in the subsequent steps of the procurement.

7. Best and Final Offers From Finalists: Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by October 26, 2009.

8. Finalize Contract: The contract will be finalized between October 26, 2009 and October 30, 2009. In the event that mutually agreeable terms cannot be reached within the time specified, the Department reserves the right to finalize a contract with another offeror whose proposal is the next most advantageous to the Department without undertaking a new procurement process.

9. Contract Award: After review of the Evaluation Committee Report, the Department will award the contract on approximately October 30, 2009. This date is subject to change at the discretion of the Department.

   The contract shall be awarded to the offeror or offerors whose proposal is most advantageous to the Department, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate State approvals.

10. Protest Deadline: Any protest by an offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. The fifteen (15) day protest period for responsive offerors shall begin on the day following the notification of contract award. 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 State Purchasing Agent. The protest must be delivered to the Department's Purchasing Agent.

Randy Herrera
Runnels State Building, Room 4050
1190 St. Francis Drive
Santa Fe, New Mexico 87505
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State Purchasing Agent'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.

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 Department. The Department will make contract payments to only the prime contractor.

4. Subcontractors: Use of subcontractors must be clearly explained in the proposal, and 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 Department personnel will not merge, collate, or assemble proposal materials.

6. Offerors' 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 ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final 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. 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 from the proposal in order to facilitate eventual public inspection of the non-confidential portion 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, NMSA 1978, §§ 57-3A-1 to 57-3A-7. 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 Department’s 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 prohibition on the disclosure of confidential information or data.

9. No Obligation: This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate 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 Department 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 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 Department's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review: The Department 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 Department 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 Department and a contractor will follow the format specified by the Department and contain the terms and conditions set forth in Appendix B, "Contract Terms and Conditions". However, the Department 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 Department's terms and conditions, as contained in this Section or in Appendix B, that offeror must propose specific alternative language. The Department reserves the right to reject any or all of offer's proposed alternative language. In submitting an offer, Offeror agrees to accept Appendix B unamended. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Department 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 change followed by the specific proposed alternate wording.

    All contracts for professional services are subject to the review and approval of DFA pursuant to NMSA 1978, §13-1-118 and DFA Rule 2.40.2 NMAC, and Procurement Rule 1.4.1 NMAC.

16. Contract Deviations: Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Department and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.

17. 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 NMSA 1978, Sections 13-1-83 and 13-1-85.

18. 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 mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

19. Change in Contractor Representatives: The Department reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Department, meeting its needs adequately.

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

21. Department Rights: The Department reserves the right to accept all or a portion of an offeror's proposal.

22. Right to Publish: Throughout the duration of this procurement process and contract term, contractors must secure from the Department 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.

23. Ownership of Proposals: All documents submitted in response to this Request for Proposals shall become the property of the Department and the State of New Mexico. However, any technical or user documentation submitted with the proposals of non-selected offerors shall be returned after the expiration of the protest period.

24. Use of Electronic Versions of this RFP: This RFP is being made available by electronic means. If accepted electronically, 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 Department, the version maintained by the Department shall govern.

25. Malpractice Insurance: All selected offerors must provide professional liability insurance during the term of any contract awarded in the amount of $500,000 per claim and $1,000,000 aggregate. Contractor shall provide proof that such insurance is in full force and effect at the time of contracting and at any other time at the request of the Department.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal, but must indicate in the transmittal letter which of the following services offeror is bidding.

1. Hearing officer services for administrative hearings.
2. Consultation and representation of the Department in matters related to cost recovery action for the Corrective Action Fund.

B. NUMBER OF COPIES

Offerors shall deliver two (2) 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.

C. PROPOSAL FORMAT

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

1. Proposal Organization: The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

   a) Letter of Transmittal
   b) Response to Mandatory Specifications
   c) Completed Cost Response Form
   d) Acceptance of Departments Terms and Conditions
   e) Other Supporting Material

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. All discussion of proposed costs, rates or expenses must be submitted with the cost response form in a separate envelope. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

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

   a) identify the submitting attorney name and law firm if applicable;
   b) identify the name and title of the person authorized by the offeror to contractually obligate the offeror;
   c) identify the name, title and telephone number of the persons proposed to perform work under any contract that may result from the offer;
   d) indicate which attorney services are being bid from the list in Section III.A, be specific and clear;

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 offeror;
g) acknowledge receipt of any and all amendments to this RFP.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with any supporting materials will be evaluated and awarded points accordingly. No Department resources will be provided under any contract. Offeror must provide office space, clerical support, desk, telephone, computer workstation, printer and other technical support resources.

A. **Mandatory Specifications:** The failure of an offeror to meet a mandatory specification will result in disqualification of the proposal.

1. Attorney Experience

Offerors must explain relevant and related legal experience for the attorneys and staff performing work under a contract. The documentation must thoroughly describe how the offeror has provided similar service and work for each of the areas bid. Offeror does not need to bid on all the requested services, but may select those services it would provide. Each service area bid shall be thoroughly described in a separate paragraph indicated and labeled as 1(a) or 1(b), etc. The possible areas for bid are:

a. Hearing officer services for administrative hearings;
b. Consultation and representation of the Department in matters related to cost recovery action for the Corrective Action Fund;

Experience narratives shall describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. All proposed professional staff members who will be performing services under the contract shall be included. Offerors should include in their proposals samples of work performed for previous clients.

Please provide a separate paragraph for experience on each area of service proposed. Each of the service areas bid must be broken out into a separate paragraph, even if some of the experience is related. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as certifications or other professional credentials. The attorneys performing work under this contract must have a minimum of 5 years of experience as an attorney.

2. References

Proposals must include two (2) external client references from clients who received similar services by the named attorneys and two (2) attorneys, not including attorneys with offeror's law firm or partnership, with whom offeror has worked. The following information about each reference must be provided:

a. Name of individual or company services were provided
b. Address of individual or company
c. Name of contact person
d. Telephone number of contact person
e. Type of services provided and dates services were provided

3. Conflicts

Offerors must include a statement that it has no conflicts of interest in performing the work under a contract and must identify any potential conflicts of interest. Offerors must also include a list and explanation of matters in which it is involved against other state agencies.

4. Cost

Offerors must propose one firm, fixed, fully-loaded hourly rate per attorney and staff person proposed to provide services under a contract. The firm, fixed, fully-loaded hourly rate does not include travel or other costs as required to perform the work. New Mexico gross receipts taxes are excluded from the proposed hourly rates. They shall be shown separately on the invoice. Provide the cost proposal of Attachment D to this RFP.

B. Campaign Contribution Disclosure Form and Anti-Collusion Statement

A proposal will be deemed non-responsive and will be dropped from further evaluation if it does not include a completed "Disclosure of Campaign Contributions" form (please see Appendix B for more information).

Pursuant to the requirements of 20.5.17.301.C.2 NMAC, each proposal submitted in response to this RFP must contain a notarized affidavit signed by the bidding firm, certifying under oath that the bidder has participated and will continue to participate in the competitive contractor selection process as described in 20.5.17 NMAC and NMSA 1978, Section 74-6B-7C without misrepresentation and without collusion with other contractors during the entire solicitation, evaluation and selection process. **Only one copy of the Campaign Contribution Disclosure Form and the Anti-Collusion Statement should be presented with your proposal.**

V. EVALUATION

A. Evaluation Point Summary

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

FACTOR	POINTS AVAILABLE
1. Attorney Experience	500
2. References	100
3. Conflicts	100
4. Cost	300
TOTAL	1,000

B. Evaluation Factors

Points will be awarded on the basis of the following evaluation factors:

1. Attorney Experience (500 points)

The attorney experience of the offeror will be evaluated based upon documented experience on similar projects and engagements and upon an evaluation of each staff member's experience as it relates to their role and the needs of this contract. Each paragraph will be scored separately then added together with each of the other evaluation factors.

2. References (100 points)

Points for client and attorney references will be awarded based upon an evaluation of the offeror's work for previous clients receiving similar services to those proposed by the offeror for this contract.

3. Conflicts (100 points)

Points for conflicts will be awarded based on there being no direct conflicts with the Department and few, if any conflicts with the State of New Mexico.

4. Cost (300 points)

The evaluation of each offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Average Hourly Rate}}{\text{Average Hourly Rate}} \times 300 = \text{Award Points}$$

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, Paragraph B.6.

3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.17.

4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations will be added to the previously assigned points to attain final scores. The responsible offeror whose proposal is most advantageous to the Department, taking into consideration the evaluation factors in Section V, will be recommended for contract award as specified in Section II, Paragraph B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

Acknowledgement of Receipt Form
REQUESTS FOR PROPOSALS
Environment Department Attorney Services

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **October 2, 2009**. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Department's written responses to those questions as well as RFP amendments, if any are issued.

NAME: _____

FIRM (if applicable): _____

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.

Firm/Offeror does/does not (**circle one**) intend to respond to this Request for Proposals.

Karen Thomas
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469
505-827-2990
505-827-1628
karen.thomas1@state.nm.us

APPENDIX B

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 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.

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Name(s) of Applicable Public Official(s) if any:_____

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)

APPENDIX C
STATE OF NEW MEXICO
DEPARTMENT OF ENVIRONMENT
PROFESSIONAL SERVICES CONTRACT **#_____**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Environment Department, hereinafter referred to as the "Agency" and [insert name] **CONTRACTOR**, hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES*:*

1. Scope of Work. The scope of work shall consist of the following attorney services:

A. Attorney services as a hearing officer to assist the Secretary of the Department, the Water Quality Control Commission ("WQCC"), the Environmental Improvement Board ("EIB") or the Occupational Health and Safety Review Commission ("OHSRC"). These services may include, but are not limited to the following:

- assuring that proper notice is given to the parties and the public;
- assuring that a proper record is made;
- taking testimony at a hearing or in writing;
- ensuring that hearings are conducted in an orderly and fair manner consistent with applicable laws and regulations;
- making rulings on evidence, procedural issues and other motions;
- writing a hearings officer's report that may include findings of fact, conclusions of law, a recommended decision, or if properly delegated, a final decision;
- assuring notice of the decision is given to all the parties;
- meeting with, consulting with and advising the Secretary of the Department, WQCC or EIB as requested;
- defending the final action in the District Court, Court of Appeals or Supreme Court as requested, including consultation, brief writing and oral argument; and
- other duties as assigned consistent with the role of a hearing officer or administrative law judge.

B. Attorney services for matters relating to cost recovery action for the Corrective Action Fund. The services may include, but are not limited to the following:

- meeting with the bureau client;
- asserting and defending the Department's authority to cost recover the expenditure of Corrective Action Fund money;
- consultation and representation on petroleum storage tank issues;
- negotiating settlements;
- filing and pursuing lawsuits;
- filing and responding to motions;
- taking a claim to trial and final resolution;
- obtaining a final order;

- other duties as assigned by the General Counsel.

Performance Measures, default by Contractor – Contractor shall substantially perform the Performance Measures set forth in **Attachment 1**. In the event the Contractor fails to obtain the results described in **Attachment 1**, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its right pursuant to Paragraph 4 below.

2. Compensation.

A. Rates - The Department shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the following rate(s) of per hour.

Service Category	Rate Per Hour
1.	
2.	

Such compensation shall 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 Contractor to be performed 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 to approval by the DFA. 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 DFA. This Agreement shall terminate on October 30, 2010 unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with NMSA 1978, Section 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

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 of 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 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

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

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 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 1978. 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 Audit.

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, the Department of Finance and Administration 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. <u>Indemnification</u>.

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 and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. <u>New Mexico Employees Health Coverage.</u>

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:

(1) 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;

(2) 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;

(3) 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/.

D. 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); Contractor agrees 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, depending on the dollar value threshold in effect at that time.

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. 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 Agency: New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502

To the Contractor:

25. Malpractice Insurance. All selected offerors must provide professional liability insurance during the term of any contract awarded in the amount of $500,000 per claim and $1,000,000 aggregate. Contractor shall provide proof that such insurance is in full force and effect at the time of contracting and at any other time at the request of the Department.

26. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date:_____
Agency

By: _____ Date:_____
Agency's Legal Counsel –Certifying legal sufficiency

By: _____ Date: _____
Contractor

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.

ID Number:_____

By: _____ Date:_____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date:_____
DFA Contracts Review Bureau

Attachment One to Professional Services Contract

Scope of Work

Performance Measures

Attach a copy of a page or portion from the Department's Strategic Plan that connects the professional services contract to the Department's Strategic Plan's goals, objectives, activities, outputs and outcomes.

Performance Measures in Scope of Work shall contain measurable goals and objective that are linked to the performance measures of the Department's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].[1]

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.[2]

Activities:

[Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

Documentation Required for all Professional Service Contracts

The following documents are required for CRB approval:

- contract brief;
- original contract and two copies;
- sole source determination form (if applicable);
- retroactive approval request explanation form (if applicable);
- purchase document and/or purchase document modification with transmittal sheet; and,
- memo stating that the Governor's Guidelines for Contract Review and Re-evaluation have been followed.

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[1] A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

[2] An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

APPENDIX D
COST PROPOSAL FORM

SUMMARY OF PROPOSED RATES

The Offeror listed below submits the following firm, fixed hourly rates to complete the requirements as outlined in this RFP for the State of New Mexico.

SERVICES PROPOSED _____

ATTORNEY	MAXIMUM HOURLY RATE
1. _____	_____
2. _____	_____
3. _____	_____

Offeror Name:_____