

**STATE OF NEW MEXICO**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**

**REQUEST FOR PROPOSALS**

**RFP No. 90-667-00-00001**

**PROFESSIONAL SERVICES FOR PERMIT  
TECHNICAL AND REGULATORY SUPPORT**

**September 17, 2008**

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## **I. INTRODUCTION**

### **I.A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The New Mexico Environment Department (NMED) is requesting proposals for professional services for permit technical and regulatory support for Resource Conservation and Recovery Act (RCRA) Subtitle C activities within the State of New Mexico. The Agency is the permitting and regulatory authority for RCRA activities at several New Mexico RCRA-regulated facilities.

The Agency seeks proposals from firms with expertise in regulatory and technical review and, if necessary, the development of documents supporting applications for a RCRA Subtitle C permits and other technical documents. The review must compare the applicant's Part B submittals to regulatory requirements and technical standards in the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC); 40 Code of Federal Regulations (CFR) Subpart IX, Section 270 and Subpart V Section 264; and other applicable RCRA Subtitle C regulations and guidance.

The purpose of this Request for Proposal (RFP) is to select one or more qualified contractors to provide the Agency with such professional services for the defined scope of work under a time-and-materials contract. The Agency will assign individual projects/tasks under this contract on an as-needed basis. The contractor(s) will be compensated for approved costs.

This RFP must be responded to as a unit; no part can be responded to individually.

### **I.B. SUMMARY SCOPE OF WORK**

The scope of work shall consist of (1) technical reviews and/or development of permit applications, (2) reviews of permit modification requests to existing RCRA Subtitle C permits, (3) provide administrative and technical guidance, (4) attendance at public meetings, (5) expert testimony at public hearings, (6) evaluation of human health and ecological risk assessments and preparation of risk-related guidance documents, and (7) evaluation of other RCRA Subtitle C-related technical documents or activities (such as statistical analyses, engineering assessments or design drawings and hydrologic evaluations). The review(s) must compare the contents of any permit application or permit modification request to the permitting requirements and technical standards in the New Mexico Hazardous Waste Management Regulations. The other technical documents will be reviewed for regulatory and technical requirements to conform to Hazardous Waste Regulations, requirements in the permit issued to applicants, or other applicable state, federal, or local statutory or regulatory requirements and guidance.

### **I.C. SCOPE OF PROCUREMENT**

The contract shall begin on approximately February 27, 2009 or as soon as possible thereafter and continue for four (4) years from the date of the contract award. In no case will the contract(s), including all renewals thereof, exceed a total of four (4) years in duration.

Proposals should include the qualifications of all personnel to be used in permit application/modification review and associated activities, technical document review, audit activities, and should define what the role of each person will be in satisfying the scope of work of the proposed contract.

### **I.D. PROCUREMENT MANAGER**

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

Cathy Herrera  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Phone: (505) 476-6019  
Fax: (505) 476-6030  
E-mail: cathy.herrera1@state.nm.us

All deliveries via express carrier should be addressed as follows:

Cathy Herrera  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

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 Agency.

### **I.E. DEFINITION OF TERMINOLOGY**

This section contains definitions and/or abbreviations that are used throughout this procurement document. The definitions are intended solely for use in this RFP and do not necessarily reflect regulatory definitions.

“Agency” means the New Mexico Environment Department (NMED).

“CFR” means the Code of Federal Regulations.

“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.

“Corrective Action” means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment.

“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.

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

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

“Evaluation Committee” means a body appointed by the Agency 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.

“HSWA” means the Hazardous and Solid Waste Amendment of 1984 to the Resource Conservation and Recovery Act.

“HWB” means the Hazardous Waste Bureau of the Environment Department or Agency.

“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.

“NMAC” means the New Mexico Administrative Code.

“NMED” means the Environment Department of the State of New Mexico.

“Notice of Deficiency” means a request to a facility owner or operator requesting additional information before a preliminary decision on a permit application or corrective action document can be made.

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

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

“Project Manager” means the individual assigned by the Procuring Agency to manage the project and administer this Agreement.

“Resource Conservation and Recovery Act” or “RCRA” was enacted in 1976 to address the management of solid and hazardous waste generated nationwide. EPA’s Office of Solid Waste (OSW) administers the RCRA national program. The State of New Mexico is authorized by EPA to administer RCRA in New Mexico.

“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/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.

“Work Plan” means a document prepared by the contractor and approved by the Agency that includes the project-specific scope of work defining the work to be performed. All work under this procurement shall be performed in accordance with approved work plans.

## **I.F. BACKGROUND INFORMATION**

The Agency is mandated by statute to regulate facilities and other entities that may in the course of their operations or activities impact the environment or the general public in an adverse manner. One of the areas of responsibility under statute and through authorization by the U.S. Environmental Protection Agency (USEPA) is the regulation of

hazardous waste generation, treatment, storage or disposal. The Agency implements the New Mexico Hazardous Waste Act and those authorized portions of the Resource Conservation Recovery Act (RCRA) of the United States through its Hazardous Waste Bureau (HWB), located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. The HWB issues permits, conducts inspections, and enforces statutory and regulatory requirements related to hazardous wastes.

The Agency seeks proposals from firms with RCRA Subtitle C permitting, technical, and regulatory expertise to assist in the review and/or development of documents that support permit application/modification requests or are submitted to meet regulatory requirements of RCRA Subtitle C. The scope of work shall consist of (1) reviews of permit applications and (2) reviews of permit modification requests to existing RCRA Subtitle C permits, (3) provide administrative and technical guidance, (4) attendance at public meetings, (5) expert testimony at public hearings, (6) evaluation of human health and ecological risk-related documents and (7) evaluation of other RCRA Subtitle C-related technical documents or activities (such as corrective action documents, including, but not limited to, statistical analyses and engineering evaluations). The review(s) must compare the contents of any permit application, permit modification request, or corrective action document to the relevant permitting requirements, enforceable document and technical standards in the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC (incorporating 40 CFR §§260 through 279); other applicable RCRA requirements and guidance; and other applicable standards and guidance. Other technical documents will be reviewed for regulatory and technical requirements to conform to Hazardous Waste Regulations, requirements in the RCRA permit issued to applicants, or other applicable state, federal, or local statutory or regulatory requirements. Technical documents submitted for review could include, but would not be limited to: hydrogeological reports; hazardous waste determinations; waste packaging and placement criteria; waste characterization/confirmation analytical results; waste management procedures and compliance with waste acceptance criteria; waste treatment explosiveness, gas production and emergency response reports; radiation standards and protections; sampling, analysis and statistical programs; environmental monitoring reports (air, soil, groundwater, etc.); corrective action documents; engineering designs and reports; long-term impact on public health, safety and the environment.

## **I.G. PROCUREMENT LIBRARY**

The Procurement Manager has established a procurement library that contains the following information:

Procurement Regulations 1.4.1 NMAC  
New Mexico Hazardous Waste Act 74-4-1 through 14  
New Mexico Hazardous Waste Management Regulations 20.4.1 NMAC  
New Mexico Hazardous Waste Fee Regulations 20.4.2 NMAC  
New Mexico Hazardous Waste Regulations 20.4.3 NMAC  
40 Code of Federal Regulations Parts 270 through 279  
Other documents that may be relevant to the scope of this RFP.

Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager or designee and scheduling an appointment. The Procurement Library is located at the Hazardous Waste Bureau located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. 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 the following rates:

- (1) 8-1/2" x 11" (1 to 99 copies) - \$0.25 per page
- (2) 8-1/2" x 11" (100 to 499 copies) - \$0.40 per page in excess of 99
- (3) 8-1/2" x 11" (500 or more copies) - \$0.55 per page in excess of 499
- (4) 8-1/2" x 14" (1 to 99 copies) - \$0.30 per page
- (5) 8-1/2" x 14" (100 to 499 copies) - \$0.45 per page in excess of 99
- (6) 8-1/2" x 14" (500 or more copies) - \$0.60 per page in excess of 499
- (7) 11" x 17" (1 to 99 copies) - \$0.35 per page
- (8) 11" x 17" (100 to 499 copies) - \$0.50 per page in excess of 99
- (9) 11" x 17" (500 or more copies) - \$0.65 per page in excess of 499

Payment in the form of a check must be made at the time of copying. Checks must be made payable to the New Mexico Environment Department. Alternately, potential offerors may check out a set of the library documents for review or reproduction for period not to exceed four (4) hours.

The following web site addresses contain links to State of New Mexico statutes and regulations that are relevant to this procurement:

<http://www.state.nm.us/>  
[http://www.nmenv.state.nm.us/common/regs\\_idx.html](http://www.nmenv.state.nm.us/common/regs_idx.html)  
<http://www.state.nm.us/spd/pregulations.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the planned schedule for the procurement, describes the major procurement events and the conditions governing the procurement. These dates are subject to change solely at the discretion of the Secretary of the Agency.

### II.A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1	Issuance of RFP	Agency	9/17/2008
2	Acknowledgement of Receipt of RFP (Deadline by 5:00 p.m. MDT)	Potential Offerors	10/1/2008
3	Pre-Proposal Conference	Agency & Potential Offerors	10/1/2008
4	Distribution List Response	Potential Offerors	10/1/2008
5	Deadline to Submit Written Questions	Potential Offerors	10/15/2008
6	Response to Written Questions / RFP Amendments	Agency	10/29/2008
7	Deadline to Submit Proposal (Must be received by Agency by 5:00 p.m. MST)	Offerors	1/9/2009
8	Proposal Evaluation	Evaluation Committee	1/12/2009
9	Selection of Finalists	Evaluation Committee	1/26/2009
10	Deadline for Best & Final Offers	Finalists	1/30/2009
11	Select Contractor(s) and Finalize Contract(s)	Agency & Finalists	Approximately 2/13/2009
12	Award Contract(s)	Agency & Finalists	Approximately 2/27/2009
13	Protest Deadline	Offerors	Approximately 3/13/2009

The following paragraphs describe the activities listed in the sequence of events shown in Section II.A page 11 of this RFP.

### **II.B.1. Issuance of RFP**

The Agency will issue this RFP by making it available on the World Wide Web through the Agency's Home Page, ([www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)), and as hard copy located in the Procurement Manager's office (see Section I.D page 6). Hard copies may also be provided to potential offerors who express interest to the Agency.

### **II.B.2. Acknowledgement of Receipt**

Potential offerors should had deliver or return by facsimile or by registered or certified mail this RFP's "Acknowledgement of Receipt Form" that appears in Appendix A pages 31-32 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 close of business day on October 1, 2008. FAILURE TO RETURN THIS FORM SHALL CONSTITUTE A PRESUMPTION OF RECEIPT AND REJECTION OF THE RFP, AND THE POTENTIAL OFFEROR'S ORGANIZATIN NAME SHALL NOT APPEAR ON THE DISTRIBUTION LIST.

### **II.B.3. Pre-Proposal Conference**

A pre-proposal conference will be held on October 1, 2008 at 9:00 a.m. Mountain Daylight Time at the offices of the HWB, located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. Potential offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager. The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential offerors that attended the pre-proposal conference.

Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

### **II.B.4. Distribution List Response**

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

### **II.B.5. Deadline to Submit Written Questions**

Potential offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on October 15, 2008. All written questions must be addressed to the Procurement Manager. Questions may be submitted to the Procurement

Manager via electronic mail (see Section II.C.26 page 19 of this RFP). Questions received after this date will not be addressed.

#### **II.B.6. RFP Amendments and Response to Written Questions**

The Agency will make any RFP amendments and responses to written questions available on the World Wide Web through the Agency's Home Page ([www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)) and as hard copy located in the Procurement Manager's office (see Section I.D page 6). Responses to written questions will be available within five (5) working days after the question submittal deadline.

The Procurement Manager must receive additional written requests for clarification of distributed answers and/or amendments no later than seven (7) calendar days after the answers and/or amendments were issued.

#### **II.B.7. Deadline for Proposal Submission**

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM MOUNTAIN STANDARD TIME ON JANUARY 9, 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. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "*Professional Services for Permit Technical and Regulatory Support*" RFP. 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 Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

#### **II.B.8. Proposal Evaluation**

The Evaluation Committee will identify responsive offers and evaluate responsive proposals in accordance with Section V pages 28-30 of the RFP and procedures approved by the Procurement Manager. 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.

#### **II.B.9. Selection of Finalists**

The Evaluation Committee will select and Procurement Manager will notify the finalist(s) within approximately fifteen (15) calendar days after the proposal submittal

deadline. Only finalists will be invited to participate in the subsequent steps of the procurement.

#### **II.B.10. Deadline for Best and Final Offers From Finalists**

The Agency may ask finalist(s) to submit revisions to their proposals for the purpose of obtaining best and final offers. Finalists must submit best and final offers in writing five (5) business days after notification by the Agency.

#### **II.B.11. Select Contractor(s) and Finalize Contract(s)**

The Evaluation Committee will select the winning contractor(s) within approximately two (2) weeks after the submission of best and final offers. The Procurement Manager will notify the winning contractor(s) shortly thereafter.

The contract(s) will be finalized with the most advantageous offeror(s) as soon as possible after selection of winning contractor(s). In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous finalist without undertaking a new procurement process or to cancel the procurement as the Agency may deem in the best interest of the State.

#### **II.B.12. Award Contract(s)**

After review of the Evaluation Committee Report, the recommendation of the Procurement Manager and the signed contract(s), the Agency Secretary will award the contract(s).

The award(s) is subject to completion of contract negotiations and appropriate State approvals. The contract(s) may be awarded to the offeror(s) whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors set forth in the RFP. The proposal(s) selected may or may not have received the most points.

A performance bond may be required for the total amount of the contract to be furnished within 24 hours of the date of notification of award. Each proposal shall identify the contractor's bonding capacity and its bond carrier.

#### **II.B.13. Protest Deadline**

Any protest by an offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period for responsible offerors shall begin on the day following the contract award and will end as of close of business fifteen (15) days thereafter. Protests must be written and must include the name and address of the protestor and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the

ruling requested from the NMED Purchasing Agent. The protest must be delivered to the NMED Purchasing Agent at the following address:

Margaret Trujillo, NMED Purchasing Agent  
Puchasing Bureau - New Mexico Environment Department  
P.O. Box 26110, 1190 St. Francis Drive  
Santa Fe, New Mexico 87502-6110

*NOTE: PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.*

## **II.C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the State Purchasing Agent's procurement regulations (1 NMAC 5.2).

### **II.C.1. Acceptance of Conditions Governing the Procurement**

Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement in Section II pages 11-20 of this RFP and the Evaluation Factors contained in Section V pages 28-30 of this RFP.

### **II.C.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.

### **II.C.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 Agency. The Agency will make contract payments to only the prime contractor.

The enclosed conflict of interest form, Appendix D pages 43-44, must be completed and signed. An indication of "NA" is not sufficient. Proposals not including a completed and signed conflict of interest form will not be considered.

### **II.C.4. Subcontractors**

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used. If the offeror proposes to use subcontractors to perform part of all of the work, the proposal shall demonstrate and document the subcontractors' qualifications and compliance with conflict of interest requirements, Appendix D pages 43-44.

### **II.C.5. Amended Proposals**

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

### **II.C.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. To exercise this right, 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.

### **II.C.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.

### **II.C.8. Disclosure of Proposal Contents**

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

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential 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, 57-3A-1 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 Agency shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

### **II.C.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 Department of Finance and Administration (DFA) and other appropriate authorities.

### **II.C.10. Termination**

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

### **II.C.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 Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

### **II.C.12. Bound by General Requirements**

The Agency requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

### **II.C.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.

### **II.C.14. Basis for Proposal**

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

### **II.C.15. Insurance**

The contractor shall provide Workers' Compensation insurance for its employees as required by New Mexico law.

The contractor shall immediately notify the Agency upon the cancellation of any insurance policy required by this article. Such cancellation may affect the term of any contract that results from this RFP.

### **II.C.16. Contract Terms and Conditions**

The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in Appendix B pages 33-40, "Contract Terms and Conditions". However, the Agency reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, amendments thereto and any best and final offer as revised and/or supplemented, and the successful offeror's proposal will be incorporated into and become part of the contract.

Should an offeror object to any of the Agency's terms and conditions that offeror must propose specific alternative language. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. The Agency reserves the right to reject any or all of offer's proposed alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the offeror's proposal.

### **II.C.17. Offeror's Terms and Conditions**

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

### **II.C.18. Contract Deviations**

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

### **II.C.19. 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 responsive offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

### **II.C.20. 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 and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

### **II.C.21. Change in Contractor Representatives**

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

### **II.C.22. Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, 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.

### **II.C.23. Agency Rights**

The Agency reserves the right to accept or reject all proposals in whole or part when it is in the best interest of the State of New Mexico.

The Agency reserves the right to require approval of the offeror's quality system documentation prior to awarding the contract.

The Agency also reserves the right to contract with more than one (1) offeror. The Agency shall award the contract(s) to the offeror(s) whose proposal(s) is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal(s) may or may not have received the most points.

### **II.C.24. Right to Publish**

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

### **II.C.25. Ownership of Proposals**

All documents submitted in response to this Request for Proposals shall become the property of the Agency 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.

### **II.C.26. Electronic Mail Address Required**

A part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Each offeror must have a valid e-mail address to send and receive correspondence.

E-mail, including attached electronic files, sent to the Procurement Manager will only be considered a written response if the Procurement Manager verifies receipt via return e-mail indicating that the offeror's e-mail message and any attachments were readable.

**II.C.27. 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 Agency, the version maintained by the Agency shall govern.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **III.A. NUMBER OF RESPONSES**

Offerors shall submit only one proposal for final consideration.

#### **III.B. NUMBER OF COPIES**

Offerors shall deliver five (5) identical copies of their proposal (Binder 1), two (2) copies of the cost proposal (Binder 2), and one (1) copy of supporting technical documentation (Binder 3) to the location specified in Section I.D page 6 on or before the closing date and time for receipt of proposals.

#### **III.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 binders with tabs delineating each section. Electronic versions of proposals will be considered nonresponsive and rejected on that basis.

##### **III.C.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 (Binder 1)
- b) Table of Contents (Binder 1)
- c) Proposal Summary (optional) (Binder 1)
- d) Response to Mandatory Specifications (Binder 1)
- e) Completed Cost Response Form (Binder 2)
- f) Response to Agency Terms and Conditions (Binder 2)
- g) Offeror's Additional Terms and Conditions (Binder 2)
- h) Other Supporting Material (Binder 3)

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 occur only in Binder 2 along with the Cost Response Form and Fee Schedule. Any proposal that does not adhere to these requirements may be deemed nonresponsive and rejected on that basis.

##### **III.C.2. Letter of Transmittal**

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;

- c) identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II.C.1 page 15;
- f) be signed by the person authorized to contractually obligate the organization; and
- g) acknowledge receipt of any and all amendments to this RFP.

### **III.C.3. Table of Contents**

The table of contents should be all items listed in Section III.C.1 page 21 and must include page numbers.

### **III.C.4. Proposal Summary**

The offeror may include a proposal summary 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.

### **III.C.5. Response to Mandatory Specifications**

Any proposal that does not adequately address these requirements may be deemed nonresponsive and rejected on that basis. A copy of the Time and Materials Fee Schedule with costs blanked out shall be included in this section of the proposal.

### **III.C.6. Cost Response**

The offeror's cost calculations submitted on the completed Cost Response Form shall be in a separate binder from the technical portion of the proposal. A copy of the offeror's Time and Materials Fee Schedule showing costs shall also be included in the cost portion of the proposal.

### **III.C.7. Offeror's Terms and Conditions**

If an offeror wishes to respond to any of the terms or conditions (see Sections II.C.16 to II.C.18 page 18) or wishes to list additional terms and conditions, please do so in this section of the proposal, which shall be included in cost proposal binder.

### **III.C.8. Financial History**

Offerors must include in their proposals, if they exist, copies of the most recent year's independently audited financial statements, as well as those for the preceding three (3) years. These should include the audit opinion, the balance sheet, statements of income, retained earnings, and cash flows, and the notes to the financial statements. If

independently audited financial statements do not exist for the offeror's firm, the offeror shall state the reason and instead submit sufficient information to enable the Evaluation Committee to determine the financial stability of the offeror. The financial history shall be included in the cost proposal binder.

**III.C.9. Other Supporting Material**

Offerors may attach other materials that they feel may improve the quality of their responses. This material shall be included in a separate binder from the rest of the proposal and only one copy of this material needs to be submitted.

## **IV. SPECIFICATIONS**

At a minimum, offeror's proposals should demonstrate their understanding of the scope of work and address each mandatory specification listed below.

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly. As previously stated in Section I page 5, the scope of work shall consist of (1) reviews of permit applications, (2) reviews of permit modification requests to existing RCRA permits, (3) produce administrative and technical guidance, (4) attendance at public meetings, (5) expert testimony at public hearings, and (6) evaluation of other RCRA-related technical documents or activities (such as corrective action documents, including, but not limited to, human health and ecological risk assessments). The review(s) must compare the contents of any permit application, permit modification request, or corrective action document to the relevant permitting requirements and technical standards in the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC (incorporating 40 CFR §§260 through 279); other applicable RCRA requirements; and other applicable standards and guidance. The other technical documents will be reviewed for regulatory and technical requirements to conform to Hazardous Waste Regulations, requirements in the RCRA permit issued to applicants, or other applicable state, federal, or local statutory or regulatory requirements. Technical documents submitted for review could include, but would not be limited to: statistical analyses, engineering and hydrogeological reports; hazardous waste determinations; toxicity assessments; waste characterization/confirmation analytical results; sampling, analysis and statistical programs; environmental monitoring (air, soil, groundwater, etc.) reports; corrective action documents; engineering designs and reports; long-term impact on public health, safety and the environment.

### **IV.A. INFORMATION**

#### **IV.A.1. Agency Resources**

The Agency will provide the use of conference rooms as needed to meet with contractor personnel and Agency technical and regulatory and policy representatives. Upon adequate notification to the Agency, the following resources will be provided to contractor personnel for use on this contract:

Minimal clerical support and use of desk, telephone, computer workstation, printers and minimal access will be available to copiers and fax machines.

#### **IV.A.2. Work Location and Facilities**

For the purpose of preparing proposals, offerors are to assume that all on-site work will be performed at the following location using contractor-supplied equipment. Other supporting work such as data analysis and report generation will be performed at the

contractor's facilities. Any meetings that may be necessary with the Agency are assumed to be at the following location:

Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

#### **IV.A.3. Level of Effort and Deliverables**

The contractor(s) will work on an as-needed basis, therefore, trips to the on-site locations must be negotiated and approved by the Agency prior to such trips being taken. The contractor(s) will be reimbursed for time and materials based on approved work plans and fee schedule. For the purpose of preparing proposals, offerors are to assume that the work required in the first year of the contract may be equivalent to \$500,000. This is not a guarantee, and the actual work required may ultimately yield more or less than this amount. Due to the State of New Mexico budgeting process, there can be no pre-determination concerning work required for subsequent years.

The contract deliverables will be determined by the Agency on a case-by-case basis. At the Project Manager's discretion, periodic status reports may also be required. These status reports will include as a minimum a discussion of project progress, problems encountered and recommended solutions, identification of policy or management questions, and requested work plan adjustments.

#### **IV.A.4. Time Frame**

The contract is scheduled to begin on approximately February 27, 2009. The contract deliverables will be determined by the Agency.

### **IV.B. MANDATORY SPECIFICATIONS**

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

#### **IV.B.1. Corporate Experience**

Each offeror must submit a statement of relevant corporate experience, including experience of subcontractors, as it relates to the scope and specifications of this RFP. The documentation must thoroughly describe how the offeror has supplied expertise for similar contracts and work related to RCRA Subtitle C permitting (permit applications/modifications) and other RCRA Subtitle C- related technical and regulatory issues. If a teaming arrangement is proposed, the proposal should also discuss the prime contractor's experience managing other contractors under such arrangements. Offerors should include in their proposals documentation describing the extent of their experience

and expertise as a technical and regulatory expert in RCRA Subtitle C and associated documents and activities.

Offerors should include in their proposals documentation of the extent of their knowledge regarding the following (programs/technology):

- a) RCRA Subtitle C regulations and guidance (permitting and corrective action);
- b) Risk Assessment;
- c) Engineering;
- d) Analytical Chemistry;
- e) Hydrology;
- f) Waste Characterization; and
- g) Contamination assessments and remediation.

Offerors should include in their proposal copies of appropriate professional certifications and samples of work performed from previous clients.

#### **IV.B.2. Corporate References**

Each proposal must include five (5) corporate references from external clients who received similar services. In addition, three (3) references must be submitted for each proposed subcontractor. The minimum information that must be provided about each reference is:

- a) Name and address of individual company for which services were provided;
- b) Name and telephone number of contact person; and
- c) Summary of services provided and dates services were provided.

#### **IV.B.3. Staff Experience**

Each offerors must submit resumes of all proposed key professional staff members who are proposed to perform services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. 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 that clearly shows how they meet and/or exceed the Agency's minimum experience requirements as follows:

Key staff members must have a minimum of 5 years of experience with RCRA Subtitle C regulations and related technical areas.

Proposed staff members must have the RCRA Subtitle C technical and regulatory expertise to address permit applications and permit modification activities.

Proposed staff member in the RFP response will be bound by the contract. Any changes to proposed staff must be approved by the Agency.

#### **IV.B.4. Staff References**

One external client reference for each proposed staff member must be provided. The following minimum information that must be provided about each reference:

- a) Names and address of individual or company for which services were provided;
- b) Name and telephone number of contact person; and
- c) Summary of services provided and dates services were provided.

#### **IV.B.5. Sample Project Work Plans**

Offerors must submit a thorough project plan as part of the proposal. At a minimum, the project plan must include a milestone chart clearly indicating the interim regulatory and technical steps to be performed, the time frame and proposed staff member designated for the completion of each task, to get to a final action. The sample project work plan should include pertinent information demonstrating a logical progression towards project completion. Separate sample project work plans should be submitted for each of the following:

- a) Ecological Risk Assessment;
- b) Human Health Risk Assessment; and
- c) Soil Background Study.

#### **IV.B.6. Cost**

Offerors must propose one fixed hourly rate per service category on the Cost Response Form in Appendix C. The cost responses shall be based on the offeror's attached fee schedules. The fixed cost shall include all fringe benefits, overhead, travel, per diem, as well as subcontractor personnel, if appropriate. New Mexico gross receipts taxes are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice.

Offerors must include a complete Time and Materials Fee Schedule for all activities listed in the sample project work plan. The offerors must include any other elements of cost that are appropriate for this procurement. Two copies of the Time and Materials Fee Schedule, one with costs, to be included in Binder 2, and one without costs, to be included in Binder 1, shall be submitted (see Section III.C page 21).

The service categories are as follows:

- a) Technical
- b) Regulatory
- c) Clerical

## V. EVALUATION

V.B.4. Staff References Points for staff references will be awarded based upon an evaluation of the individual's work performed for previous clients receiving similar services to those proposed for the staff member for this contract as per Section IV.B.4 page 27.

Proposals consisting of solely marketing materials will be deemed nonresponsive and will be rejected on that basis.

### V.A. EVALUATION POINT TABLE/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 proposals.

	FACTOR	POINTS AVAILABLE
1.	Corporate Experience	50
2.	Corporate References	50
3.	Staff Experience	300
4.	Staff References	100
5.	Sample Project Work Plans	200
6.	Cost	300
	TOTAL	1000

### V.B. EVALUATION FACTORS

The Evaluation Committee will award points to each proposal using the following evaluation factors based on the Mandatory Specifications in RFP Section IV.B page 25.

#### V.B.1. Corporate Experience

The corporate experience of the offeror including all subcontractors will be evaluated based upon documented experience on similar projects and engagements as per Section IV.B.1 page 25.

#### V.B.2. Corporate References

The corporate references of the offeror will be evaluated based upon the offeror's work for previous clients receiving similar services to those proposed by the offeror for this contract as per Section IV.B.2 page 26.

### V.B.3. Staff Experience

Points for staff experience will be awarded based upon an evaluation of each staff member's experience as it relates to their role and the needs of this contract as per Section IV.B.3 page 26.

### V.B.4. Staff References

Points for staff references will be awarded based upon an evaluation of the individual's work performed for previous clients receiving similar services to those proposed for the staff member for this contract as per Section IV.B.4 page 27.

### V.B.5 Sample Project Work Plans

Points will be awarded for this evaluation factor based upon the quality and thoroughness of the project plan as per Section IV.B.5 page 27.

### V.B.6. Cost

The evaluation of each offeror's Cost Response Form will be conducted using the following formula:

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

## **V.C. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II.B.7 page 13.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II.C.19 page 18.
4. Responsive proposals will be evaluated on the factors in Section V pages 28-30 that have been assigned a point value. The responsive 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.

5. The responsible offeror(s) whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V pages 28-30, will be recommended for contract award as specified in Section II.B.11 page 14. 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**

**Professional Services for Permit Technical and Regulatory Support**

**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 D.

**The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on October 1, 2008.** 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 Agency's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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

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

Cathy Herrera  
New Mexico Environment Department - Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Phone: (505) 476-6019  
Fax: (505) 476-6030

**APPENDIX B**  
**CONTRACT TERMS AND CONDITIONS**

**SAMPLE**

**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, Department of Environment, 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 Contractor shall perform the work outlined in the Scope of Work as follows:  
[insert scope of work language here or reference an attachment]

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. A. CHOICE - SINGLE YEAR - The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work (CHOICE - Attachment 1) rendered at the rate of \$00.00 per hour, such compensation not to exceed \$.00, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$00.00, shall be paid by the Agency to the Contractor. The total amount of the monies payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed \$00.00.

CHOICE – MULTI-YEAR – The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work a total amount not to exceed \$00.00 in fiscal year \_\_\_\_\_. The New Mexico gross receipts tax levied on the amounts payable under this Agreement in fiscal year \_\_\_\_ totaling \$00.00 shall be paid by the Agency to the Contractor. The total amount of the monies payable to the Contractor in the following multi-fiscal years [insert which fiscal years this agreement covers], including gross receipts tax, shall not exceed

\$00.00. Payment in subsequent fiscal years 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 Department of Finance and Administration (DFA).

- B. **CHOICES** – Payments shall only be made as outlined in the budget which is hereby made part of this Agreement as Attachment 2 (on the basis of deliverables) (on the basis of costs incurred and allowable under cost categories)

**OR** The Agency shall pay the Contractor upon receipt of a detailed statement of accounting for services performed and expenses incurred hereunder.

- C. Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5% per month.

[**CHOICE** - For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the Contractor within five working days of receipt of funds from that funding agency.]

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION. This Agreement shall terminate on \_\_\_\_\_, unless terminated pursuant to paragraph 4, infra, or paragraph

4 in accordance with Section 13-1-150 NMSA 1978, no contract term, 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 ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. 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 [client records generated under this Agreement] and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

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 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 personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax [**CHOICE** – unless the contract is between two public entities].

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.

The Contractor's acceptance of final payment of the amount 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. 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.

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.

**CHOICE:** [If the contract is between two public entities add: Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations.]

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 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.

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.

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 agrees to assure 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, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, 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.

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. [CHOICE - If, pursuant to this Agreement, the Contractor receives federal funds subject to the Single Audit Act, the Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.]

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable

but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**[CHOICE, ONLY IF A CONTRACT BETWEEN TWO PUBLIC ENTITIES:**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.]

21. 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: [insert name, address and email].

To the Contractor: [insert name, address and email].

IN WITNESS WHEREOF, 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: 00-000000-00-0

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation and Revenue Department

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DFA Contracts Review Bureau

**APPENDIX C**  
**COST RESPONSE 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.

	SERVICE CLASSIFICATION	MAXIMUM HOURLY RATE
1	_____	_____
2	_____	_____
3	_____	_____

Offeror Name: \_\_\_\_\_

**APPENDIX D**  
**CONFLICT OF INTEREST FORM**

**CONFLICT OF INTEREST  
PERSONS OR RETAINER ON CONTRACT**

The offeror (including subsidiaries and affiliates) shall disclose the number and type of all contracts with the Department of Energy or Department of Defense.

The Offeror shall provide the names of current subcontractors. Of current subcontractors identify those who hold current contracts with the Department of Energy or Department of Defense.

The offeror shall list its contracts and its subcontractors' contracts with the Federal Government for the past 10 years listed by agency including the date of the contract, contract amount, and a brief scope of work performed.

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Last Name	First Name	Middle Initial
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Title

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Company/Firm Name

Company Address:

Address: \_\_\_\_\_

P.O. Box/Drawer: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code+4: \_\_\_\_\_ - \_\_\_\_\_

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Signature

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Date