

**STATE PURCHASING DIVISION  
OF THE  
GENERAL SERVICES DEPARTMENT  
AND  
NEW MEXICO ENVIRONMENT DEPARTMENT**

**REQUEST FOR PROPOSALS (RFP)**

**LEGAL SERVICES- ATTORNEY**



**RFP#**

15-667-00-0002

Issue Date June 18, 2014

Submission Date July 7, 2014

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## **I. INTRODUCTION**

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

The purpose of this Request for Proposal (RFP) is to solicit competitive sealed proposals for evaluation in order to establish a contract for the procurement of an active licensed attorney in good standing with the New Mexico Supreme Court and the New Mexico State Bar, who will represent the New Mexico Environment Department in a legal action(s) to be brought in the First Judicial District of New Mexico. The Contractor shall have significant experience in the following areas: Contracts; Collections; and Litigation.

The award will be a one (1) year (FY)15 contract with the option to extend for three (3) successive one (1) year terms for a total not to exceed four (4) years under the same terms and conditions as stated in the original contract.

### **B. BACKGROUND INFORMATION**

The New Mexico Environment Department (NMED) handles many legal matters in diverse areas of law. At times, NMED requires the services of outside attorneys who practice in specific specialized areas of law. NMED currently is seeking the assistance of a New Mexico-licensed attorney with significant experience in contracts, collections, and litigation to represent NMED in a matter to be filed in the First Judicial District Court in Santa Fe, New Mexico. The chosen attorney will be required to handle all aspects of the litigation in this matter.

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

1. Research, draft and file a Complaint in the First Judicial District Court on behalf of the New Mexico Environment Department;
2. Advise and counsel the Secretary of Environment in regards to the legal action;
3. Interact, both verbally and in writing, with NMED staff, opposing counsel, and court staff regarding the legal action;
4. Take and defend depositions associated with the legal action;
5. Serve and respond to discovery, including but not limited to, interrogatories, requests for production, and requests for admissions;
6. Review and analyze discovery responses and file any necessary motions related to such discovery responses;
7. Research and draft Motions, Responses and Replies related to the legal action;
8. Represent the New Mexico Environment Department at court appearances regarding the legal action, including, but not limited to, Hearings, Status Conferences, Scheduling Conferences, and Trials;
9. If necessary, negotiate settlement agreements on behalf of the New Mexico Environment Department in relation to the legal action; and,

10. Represent the New Mexico Environment Department in appellate proceedings related to the legal action.

### **TECHNICAL SPECIFICATIONS**

11. J.D. from an accredited law school;
12. Currently Licensed to practice law in New Mexico; In Good Standing with the New Mexico Supreme Court;
13. Active attorney for at least five (5) years, and
14. Significant experience in civil litigation, contract disputes, and collections preferred.

### **D. PROCUREMENT MANAGER**

1. NMED has assigned a Procurement Manager who is responsible for the conduct of this procurement and whose name, address, telephone number and e-mail address are listed below:

**Name:** Andrew Romero, Procurement Manager  
New Mexico Environment Department  
**Address:** 1190 St. Francis Drive, Room S-4110  
Santa Fe, New Mexico 87505

**Telephone:**(505) 476-3720

**Fax:**(505) 827-2413

**Email:** Andrew.Romero@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

**Name:** Andrew Romero, Procurement Manager  
New Mexico Environment Department  
Administrative Services Division  
**Address:** 1190 St. Francis Dr. Room S-4110  
Santa Fe, New Mexico 87505

**Telephone:**(505) 476-3720

**Fax:**(505) 827-2413

**Email:** Andrew.Romero@state.nm.us

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the Department. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY**

protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered.

## **E. DEFINITION OF TERMINOLOGY**

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“Agency” means the State Purchasing Division of the General Services Department or the New Mexico Environment Department.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Contract” means any agreement for the procurement of items of tangible personal property, services or construction.

“Contractor” means any business having a contract with a state agency or local public body.

“Department” For purposes of administrating the RFP and associated proposals, “Department means the New Mexico Environment Department.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Finalist” means 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.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“Juris Doctor” means a professional graduate degree in law.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

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

“Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Procurement Manager” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Agency" means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Request for Proposals (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 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 means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

“Secretary” means the Secretary of Environment.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“State (the State)” means the State of New Mexico.

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

**Abbreviations include the following:**

(ASD) NMED - Administrative Services Division

(ASD-FSB) Administrative Services Division - Financial Services Bureau

(ASD-PAP) Administrative Services Division - Purchasing and Accounts Payable Unit

(CWSRF) Clean Water State Revolving Loan Fund

(CWAF) Clean Water Administrative Fund

(DFA) New Mexico Department of Finance and Administration

(EPA) United States Environmental Protection Agency

(GASB 34) Governmental Accounting Standards Board Statement No. 34

(GASB 49) Governmental Accounting Standards Board Statement No. 49

(MT) Mountain Time

(NMAC) New Mexico Administrative Code

(NMED) New Mexico Environment Department

(OSA) Office of the State Auditor of New Mexico

(RFP) Request for Proposals

(J.D.) Juris Doctor

## **F. BACKGROUND INFORMATION**

1. NMED's Mission Statement: To protect and restore the environment, and to foster a health and prosperous New Mexico for present and future generations.
2. 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.
3. Fund Structure:  
The Agency maintains a general fund, fiduciary funds, special revenue funds, agency fund, enterprise funds and a capital projects fund.
4. Budgetary Basis of Accounting:  
In accordance with the budget guidelines established for all state agencies by the Department of Finance and Administration, the Agency does prepare its budget on a basis consistent with generally accepted accounting principles. The Agency's budget is appropriated to its programs and is administered through the use of expenditures and encumbrances.

## **G. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

[http://www.nmenv.state.nm.us/NMED/RFP/Leagal\\_Services-Attorney](http://www.nmenv.state.nm.us/NMED/RFP/Leagal_Services-Attorney).

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule, description and conditions governing the procurement.

### **A. SEQUENCE OF EVENTS**

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

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates Sample Time Frames</b>
1. Issue RFP	Agency	June 18, 2014 (Wednesday)
2. Distribution List	Potential Offerors	June 23, 2014 (Monday)
4. Deadline to submit Questions	Potential Offerors	June 27, 2014 (Friday)
5. Response to Written Questions	Procurement Manager	July 2, 2014 (Wednesday)
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>July 7, 2014 (Monday) 3pm</b>
7. Proposal Evaluation	Evaluation Committee	July 9, 2014 (Wednesday)
8. Selection of Finalists	Evaluation Committee	July 10, 2014 (Thursday)
11. Finalize Contractual Agreements	Agency/Finalist	July 17, 2014 (Thursday)
12. Contract Awards	Agency	July 30, 2014 (Wednesday)
13. Protest Deadline	Offerors	August 15, 2014 (Friday)

## **B. EXPLANATION OF EVENTS**

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

### **1. Issuance of RFP**

This RFP is being issued on behalf of the New Mexico State, NM Environment Department on June 18, 2014.

### **2. Distribution List Response Due**

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST or MDT on June 23, 2014.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

### **3. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until July 2, 2014 Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

#### **4. Response to Written Questions**

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to:

[http://www.nmenv.state.nm.us/NMED/RFP/Legal Services Attorney](http://www.nmenv.state.nm.us/NMED/RFP/Legal_Services_Attorney).

#### **5. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHTTIME ON July 7, 2014. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Legal Services-Attorney RFP # 15-667-00-0002 .

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 proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

#### **6. Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. 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. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

#### **7. Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A., Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

## **8. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **9. Contract Awards**

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and The New Mexico Environment Department taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

## **10. Protest Deadline**

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Jennifer L. Hower  
Protest Manager  
NMED Office of General Counsel  
1190 St. Francis Drive  
Santa Fe, NM 87505

Mailing Address:  
New Mexico Environment Department  
PO Box 5469  
Santa Fe, NM 87502-5469

Protests received after the deadline will not be accepted.

## **C. GENERAL REQUIREMENTS**

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

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

### **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state agency which may derive from this RFP. The state agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. 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.

### **5. Offeror's Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

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

## **6. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

## **7. Disclosure of Proposal Contents**

- a. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- b. 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.
- c. Confidential data is restricted to:
  - i. confidential financial information concerning the Offeror's organization;
  - ii. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
  - iii. PLEASE NOTE: 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 State Purchasing Division or 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.

## **8. No Obligation**

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

## **9. 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.

## **10. Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations 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.

## **11. Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **12. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

## **13. Basis for Proposal**

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

## **14. Contract Terms and Conditions**

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

#### **15. 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.

#### **16. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the Offeror selected 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 potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

#### **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 same mandatory requirements and the failure to do 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 Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

#### **20. Notice of Penalties**

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

## **21. Invoices**

All invoices must be addressed to, and approved by the New Mexico Environment Department Office of General Counsel (no exceptions).

## **22. Agency Rights**

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

## **23. Right to Publish**

Throughout the duration of this procurement process and contract term, 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 and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

## **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico.

## **25. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

## **26. Electronic mail address required**

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

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: [http://www.nmenv.state.nm.us/NMED/RFP/Legal Services Attorney](http://www.nmenv.state.nm.us/NMED/RFP/Legal%20Services%20Attorney).

## **28. New Mexico Employees Health Coverage**

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://www.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); 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.

## **29. Campaign Contribution Disclosure Form**

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

## **30. Pay Equity Reporting Requirements**

- a. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no

employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.

- b. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- c. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- d. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

### **31. Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional

information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

**32. Conflict of Interest: Governmental Conduct Act.**

The Offeror 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 Offeror certifies 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.

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

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

Offerors shall submit only one proposal in response to this RFP.

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

Offerors should deliver:

- One (1) ORIGINAL and five (5) HARD COPIES of Binder 1 (Technical Proposal); ORIGINAL and COPY shall be in separate labeled binders; all confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal.
- One (1) ORIGINAL and five (5) HARD COPIES of Binder 2 (Cost Proposal); ORIGINAL and COPY of Cost Proposal shall be in separate labeled binders from Binder 1.

Any proposal that does not adhere to the requirements of Section III.B, Response Format and Organization, may be deemed non-responsive and rejected on that basis.

#### **C. PROPOSAL FORMAT**

All proposals must be submitted as follows:

Typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

##### **1. Proposal Content and Organization**

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Technical Proposal (Binder 1):

- a) Signed Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary (Optional)
- d) Response to Specifications (except cost information which shall be included in Cost Proposal/Binder 2 only)**
- e) Response to Contract Terms and Conditions
- f) Offeror's Additional Terms and Conditions
- g) Signed Campaign Contribution Form
- h) Signed Employee Health Coverage Form
- i) Resident Vendor or Resident Veteran Certificate (If applicable)
- j) Resident Veterans Preference Certification (If applicable)
- k) Other Supporting Material (Optional)

Cost Proposal (Binder 2):

- a) Completed Cost Response Form

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this 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 on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

## **2. Letter of Transmittal**

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX F which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
  - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
  - b. Acceptance of Section V of this RFP; and
  - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in paragraph 2 above.

## IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

### A. SCOPE OF WORK SPECIFICATIONS- Please describe any significant relevant experience in governmental or private sectors related to each of the components of the Scope of Work:

1. Research, draft and file a Complaint in the First Judicial District Court on behalf of the New Mexico Environment Department.
2. Advise and counsel the Secretary of Environment in regards to the legal action;
3. Interact, both verbally and in writing, with NMED staff, opposing counsel, and court staff regarding the legal action;
4. Take and defend depositions associated with the legal action;
5. Serve and respond to discovery, including but not limited to, interrogatories, requests for production, and requests for admissions;
6. Review and analyze discovery responses and file any necessary motions related to such discovery responses;
7. Research and draft Motions, Responses and Replies related to the legal action;
8. Represent the New Mexico Environment Department at court appearances regarding the legal action, including, but not limited to, Hearings, Status Conferences, Scheduling Conferences, and Trials;
9. If necessary, negotiate settlement agreements on behalf of the New Mexico Environment Department in relation to the legal action; and,
10. Represent the New Mexico Environment Department in appellate proceedings related to the legal action.

**TECHNICAL SPECIFICATIONS:** *For numbers 11 through 13, please confirm and provide supporting documentation that the following specifications have been met. If there is*

*relevant experience related to number 14, please confirm and provide supporting documentation.*

11. J.D. from an accredited law school;
12. Currently Licensed to practice law in New Mexico; In Good Standing with the New Mexico Supreme Court;
13. Active attorney for at least five (5) years; and
14. Significant experience in civil litigation, contract disputes, and collections preferred.

#### **ADDITIONAL RELEVANT SPECIFICATIONS:**

##### **Offerors must:**

15. Provide a description of relevant legal experience with state government or within the private sector. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts or client relationships and must include the extent of their experience, expertise and knowledge as a provider of legal services.
16. Indicate how many cases you have had related to contracts and/or collections, and the outcome of those cases;
17. Describe at least two successes and failures you've had during litigation. Include how each experience improved the Offeror's skill set.

#### **B. ORGANIZATIONAL REFERENCES**

Offerors shall provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX G, Organization Reference Questionnaire, to the business references they list. The references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received on or before July 9, 2014 for inclusion in the evaluation process.

References that are not received, or are not complete, may adversely affect the vendor's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference

information required herein), in its evaluation of Offeror responsibility per Section II, Paragraph C.18.

Offerors shall submit the following Reference information as part of Offer:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff (if any) assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

## **C. BUSINESS SPECIFICATIONS**

### **1. Cost**

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by amount compared to other Offeror proposals, services to be provided and a comparison of costs for similar hearing services for other adjudicatory bodies. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

### **2. Resident Business or Resident Veterans Preference**

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX H) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

### **3. Financial Stability**

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

#### **4. Letter of Transmittal Form**

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX F. The form **must** be completed and must be signed by the person authorized to obligate the company.

#### **5. Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

#### **6. Employee Health Coverage Form**

The Offeror must agree with the terms as indicated in APPENDIX E. The unaltered form must be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal.

#### **7. Pay Equity Reporting**

The Offeror must agree with the requirements of reporting as defined in Section II.C.30. Report is due at the time of contract award. A statement of concurrence with this requirement must be included in Offeror's submitted proposal. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor. However, such out-of-state Offerors must still submit a statement of concurrence which reads as follows: **"Offeror concurs with the Pay Equity Reporting as defined in Section II.C.30. Offeror would come under the definition of out-of-state Contractor if Offeror should be successful."**

### **V. EVALUATION**

#### **A. EVALUATION POINT SUMMARY**

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

#### **Table 1: Evaluation Point Summary**

<b>Factors – correspond to IV.A through IV C</b>	<b>Points Available</b>
<b>A. Scope of Work Specifications</b>	
A. 1. Role of Legal Service Attorney	25
A. 2. Advise Counsel	25
A. 3. Interact With NMENV Staff	25
A. 4. Take and Defend Depositions	25
A. 5. Respond to Discoveries	25
A. 6. Review and Analyze Discoveries	25
A. 7. Research and Draft Motions	25
A. 8. Job Duties	25
A. 9. Legal Negotiations	25
A. 10. Representation	25
<b>A. Technical Specifications</b>	
A. 11. J.D.	100
A. 12. Licensed and In Good Standing	75
A. 13. Practice of Law for at Least 5 Years	75
A. 14. Significant Experience	75
<b>A. Additional Relevant Specifications</b>	
A. 15. Relevant Legal Experience	25
A. 16. Hearings or Trials	25
A. 17. Successes and Failures	25
<b>B. Organizational References</b>	100
<b>C. Business Specifications</b>	
C. 1. Cost	200
C.2. Resident Business or Resident Veteran’s Preference	5
C.3. Financial Stability	10
C.4. Letter of Transmittal	10
C.5. Campaign Contribution Disclosure	10
C.6. Employee Health Coverage	10
C. 7. Pay Equity	5
<b>TOTAL</b>	<b>1,000 points</b>
Preference Points per Section IV C. 2	

**B. EVALUATION FACTORS**

**Scope of Work Specifications**

**1. A.1 Role Legal Service Attorney (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**2. A.2 Advise Counsel (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**3. A.3 Interact With NMED Staff (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**4. A.4 Take and Defend Depositions (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**5. A.5 Respond to Discoveries (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**6. A.6 Review and Analyze Discovery (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**7. A.7 Research and Draft Motions (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**8. A.8 Job Duties (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**9. A.9 Legal Negotiations (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**10. A.10 Representation (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**Technical Specifications**

**11. A.11 J.D. (See Table 1)**

Points will be awarded based upon the evidence provided supporting this requirement and the perceived validity of the response.

**12. A.12 Licensed and In Good Standing (See Table 1)**

Points will be awarded based upon the evidence provided supporting this requirement and the perceived validity of the response.

**13. A.13 Practice of Law for at Least 5 years (See Table 1)**

Points will be awarded based upon the evidence provided supporting this requirement and the perceived validity of the response.

**14. A.14 Significant Experience (See Table 1)**

Points will be awarded based upon the evidence provided supporting this preferential experience and the perceived validity of the response.

**Additional Relevant Specifications**

**15. A.15 Relevant Legal Experience (See Table 1)**

Points will be awarded based upon the evidence provided supporting this requirement and the perceived validity of the response.

**16. A.16 Hearings or Trials (See Table 1)**

Points will be awarded based upon the evidence provided supporting this requirement and the perceived validity of the response.

**17. A.17 Successes and Failures (See Table 1)**

Points will be awarded based upon the evidence provided supporting this preferential experience and the perceived validity of the response.

**Organizational References**

**18. B.1 Organizational References (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**Business Specifications**

**19. C.1 Cost (See Table 1)**

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

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror's Bid}} \times 200 = \text{Available Award Points}$$

**20. C.2 Resident Business or Resident Veteran's Preference (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the examples cited, the level of experience associated with this provision and the perceived validity of the response.

**21. C.3 Financial Stability (See Table 1)**

Points will be awarded based properly following directions in regards to the submittal of the required information.

**22. C.4 Letter of Transmittal Form (See Table 1)**

Points will be awarded based properly following directions in regards to the submittal of the required information.

**23. C.5 Campaign Contribution Disclosure Form (See Table 1)**

Points will be awarded based properly following directions in regards to the submittal of the required information.

**24. C.6 Employee Health Coverage Form (See Table 1)**

Points will be awarded based properly following directions in regards to the submittal of the required information.

**25. C.7 Pay Equity (See Table 1)**

Points will be awarded based properly following directions in regards to the submittal of the required information.

**C. EVALUATION PROCESS**

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). 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**

## APPENDIX A

### REQUEST FOR PROPOSAL

*LEGAL SERVICES- ATTORNEY  
15-667-00-0002*

### ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than June 16, 2014 at 3pm. 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 written responses to those questions as well as RFP amendments, if any are issued.

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

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

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

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

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

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

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

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

Andrew Romero, Procurement Manager NMED  
RFP Legal Services- Attorney #15-667-00-0002  
New Mexico Environment Department  
1190 St. Francis Dr. Room S4110  
Santa Fe, NM 87505  
Phone: (505)-476-3720  
Fax: (505)-827-2765  
E-mail: Andrew.romero@state.nm.us

**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## **Campaign Contribution Disclosure Form**

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

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

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

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_

Title (position)

—OR—

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

## **APPENDIX C**

Department of Finance and Administration Professional Services Contract Agreement

Copy can also be located at:

[http://www.nmdfa.state.nm.us/Contracts\\_Review\\_Bureau.aspx](http://www.nmdfa.state.nm.us/Contracts_Review_Bureau.aspx)

STATE OF NEW MEXICO

(NAME OF AGENCY)

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as the “Agency,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

**2. Compensation.**

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

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and 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.

(—OR—)

**(CHOICE – MULTI-YEAR)**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2,

ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and 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 **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 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, § 13-1-150.

### **4. Termination.**

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

#### **B. Notice; Agency Opportunity to Cure.**

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice

period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. 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. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring 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.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

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

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

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

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

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

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

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

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

**13. Amendment.**

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**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, NMSA 1978 §§ 13-1-28 through 13-1-199, 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 NMSA 1978, § 38-3-1 (G). 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. 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.

**21. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees 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://insurenwemexico.state.nm.us/>.

**22. Employee Pay Equity Reporting.**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must

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

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

**23. Invalid Term or Condition.**

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

**24. Enforcement of Agreement.**

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

**25. 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].

**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: \_\_\_\_\_  
Ryan Flynn, Cabinet Secretary  
NM Environment Department

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jeffrey Kendall, Legal Counsel – Certifying legal sufficiency  
NM Environment Department

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marlene Cordova, Chief Financial Officer  
NM Environment Department

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: \_\_\_\_\_  
DFA Contracts Review Bureau

Date: \_\_\_\_\_

## APPENDIX D

### COST RESPONSE FORM

#### Cost Per Hour

<b>Task</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>
Fully Litigate Matter in State District Court on Behalf of NMED	\$	\$	\$	\$

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

Offeror Signature: \_\_\_\_\_

Date: \_\_\_\_\_

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section I, para C, (as amended by any current RFP amendments for the period specified above)

**APPENDIX E**

**NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM**

## *New Mexico Employees Health Coverage Form*

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
  
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
  
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://www.insurenemexico.state.nm.us/>.
  
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

By signing below, Offeror agrees to be bound by the terms stated in this form:

Signature of Offeror: \_\_\_\_\_ Date\_\_\_\_\_

**APPENDIX F**

**LETTER OF TRANSMITTAL FORM**

**APPENDIX F**  
**Letter of Transmittal Form**

RFP#: 15-667-00-0002

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

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

5. Use of Sub-Contractors (Select one)

No sub-contractors will be used in the performance of any resultant contract OR

The following sub-contractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

\_\_\_\_\_  
(Attach extra sheets, as needed)

7.  On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

\_\_\_\_\_, 2014  
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

## **APPENDIX G**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to:

Andrew Romero, Procurement Manager  
New Mexico Environment Department  
Administrative Services Division  
1190 St. Francis Dr. Room S-4110  
Santa Fe, New Mexico 87505

Phone: (505) 476-3720  
Fax: (505) 827-2413  
Email: Andrew.Romero@state.nm.us

by July 7, 2014 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

**RFP # 15-667-00-0002**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, Environment Department;

**Name:** Andrew Romero. Procurement Manager  
**Address:** 1190 St. Francis Dr. Room S-4110  
Santa Fe, New Mexico 87505

**Telephone:**(505) 476-3720  
**Fax:** (505) 827-2413  
**Email:** Andrew.Romero@state.nm.us

no later than July 7, 2014 by 3:00pm with submission of proposals and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	
<b>Project description;</b>	
<b>Project dates (starting and ending);</b>	
<b>Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);</b>	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?  
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)  
COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?  
COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?  
COMMENTS:

10. Would you recommend this vendor's services to your organization again?  
COMMENTS:

**APPENDIX H**  
**RESIDENT VETERANS CERTIFICATION**

## Resident Veterans Preference Certification

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*      \_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.