

STATE OF NEW MEXICO

Office of Natural Resources Trustee

REQUEST FOR PROPOSALS  
Mountain View Restoration Project  
Nitrate Contamination  
**RFP: # 10-668-00-00001**

February 23, 2010

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## I. ADVERTISEMENT

### REQUEST FOR PROPOSALS RFP: # 10-668-00-00001

SITE REMEDIATION SERVICES FOR MOUNTAIN VIEW RESTORATION PROJECT,  
LOCATED IN ALBUQUERQUE'S SOUTH VALLEY NEAR TIJERAS ARROYO AND  
BROADWAY BOULEVARD, ALBUQUERQUE, NEW MEXICO

The New Mexico Office of Natural Resources Trustee (ONRT) is requesting proposals from qualified firms for the purpose of performing remediation services for the Mountain View Nitrate Contamination Restoration Project (Restoration Project). The ONRT is funding remediation activities, and the New Mexico Environment Department (NMED), under agreement with ONRT, will provide the technical management and remediation contractor oversight. For the purpose of this request for proposals (RFP), the Procurement Manager will be provided by NMED.

The Restoration Project addresses nitrate contamination in the subsurface in the area of concern approximately bounded by 2<sup>nd</sup> Street to the west, Murray Street to the north, Desert Road to the south, and I-25 to the east in Albuquerque's South Valley, New Mexico. All proposals submitted shall be valid for ninety (90) days, subject to all action by NMED/ONRT. Proposals shall only be submitted by qualified firms submitting proposals in relation to the Scope of Work as identified within this RFP. The ONRT reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed box or envelope indicating the proposal title and RFP number along with the Offeror's name and address clearly marked on the outside of the box or envelope. **All proposals shall be received by 3:00 p.m. Mountain Daylight Savings Time on April 27, 2010 at the office of the New Mexico Environment Department at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.** By submitting a proposal for the requested materials and/or services each Offeror is certifying that their proposal is in compliance with regulations and requirements stated within the Request for Proposals.

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

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

The RFP can be requested by contacting Bart Faris, Procurement Manager, Ground Water Quality Bureau (GWQB), NMED at (505) 222-9521 or by mail at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109. RFPs will be available on ONRT's website at <http://www.onrt.state.nm.us> and at NMED's website at <http://www.nmenv.state.nm.us/NMED/rfp>.

Office of Natural Resources Trustee  
Published: February 23, 2010

## II. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The ONRT is soliciting proposals from qualified Offerors to provide remediation services for the Restoration Project located in Albuquerque's South Valley, New Mexico. The goals of the Restoration Project are: 1) to reduce concentrations of groundwater contaminants (nitrate-nitrogen [nitrate] and total dissolved solids [TDS]) to levels at or below the New Mexico Water Quality Control Commission's (WQCC) standards or background; and 2) remediate nitrate contamination in soils and/or demonstrate that the vadose zone shall not be capable of contaminating groundwater. Proposals must include an active remediation portion to be achieved within 4 years of project award. Proposals must show how WQCC standards will be achieved. This may occur either during the active remediation period or the foreseeable future following active remediation. If standards are not achieved during the active remediation period, the proposals must provide a component showing how and when the standards will be achieved. The Restoration Project contract budget shall not exceed 4 million dollars. Proposals shall not exceed this amount.

The purpose of this RFP is to select a contractor who can implement, operate, and maintain a remediation system to address nitrate and TDS contamination in the soil and groundwater at the Restoration Project site. The contract shall be awarded and managed by ONRT and the work shall be performed at the direction of the Restoration Project Manager, Bart Faris, NMED. The contractor shall be compensated by ONRT for approved deliverables. The ONRT reserves the right to cancel the procurement and award no contract if it is deemed in the best interests of the State.

A responsive proposal will include (1) documentation of the Offeror's capabilities and experience relative to remediation of soil and groundwater contaminated with nitrate and TDS; (2) examples of successful subsurface remediation projects, including nitrate remediation in soil and groundwater; (3) a demonstration of familiarity with subsurface contaminant remediation; (4) presentation of remediation options and justification of preferred active remediation method; (5) remediation methodology to achieve standards; and (6) competitive pricing.

The Restoration Project will be deemed complete when: 1) when WQCC groundwater standards for nitrate and TDS are met; 2) nitrate contamination in soils is remediated and/or demonstrated that the vadose zone shall not be capable of contaminating groundwater.

### B. SUMMARY SCOPE OF WORK

#### 1. Summary of Site History and Assessment

The Restoration Project was identified as a natural resource damage restoration project in the *Natural Resources Restoration Plan for the South Valley Superfund Site* which can be viewed on the ONRT website at <http://onrt.state.nm.us>.

The Restoration Project entails the remediation of a nitrate and TDS groundwater contaminant plume and its sources. It is suspected that a former vegetable farm located primarily northwest of Broadway Avenue and Tijeras Arroyo in Albuquerque over-fertilized the land causing the contamination. The Mountain View groundwater nitrate plume was first discovered in 1961.

The plume occupies a volume of approximately 1 square mile and 30 feet deep in the uppermost saturated Rio Grande valley-fill sediment. Current maximum concentrations of nitrate in groundwater are in excess of 200 milligrams per liter (mg/l). TDS maximum current concentration has been detected to be 2,230 mg/l. The State groundwater standard and drinking water standard for nitrate and TDS is 10 mg/l and 1,000 mg/l, respectively. The plume impacted a supply well for the Mountain View Elementary School in the 1960s and numerous domestic wells following that period. A Mountain View infant was hospitalized with methemoglobinemia (blue baby syndrome) after ingesting contaminated well water in 1984 at concentrations around 500 mg/l. City water service was provided in 1985 to the residential area hardest hit by the contamination through cooperation between the state, county and city.

NMED/ONRT have recently completed characterization of this site and the report is included as Appendix A. Figure 1 shows the project location. Figure 2 shows the current monitoring well locations and nitrate concentrations in groundwater, while Figure 3 shows the groundwater potentiometric map.

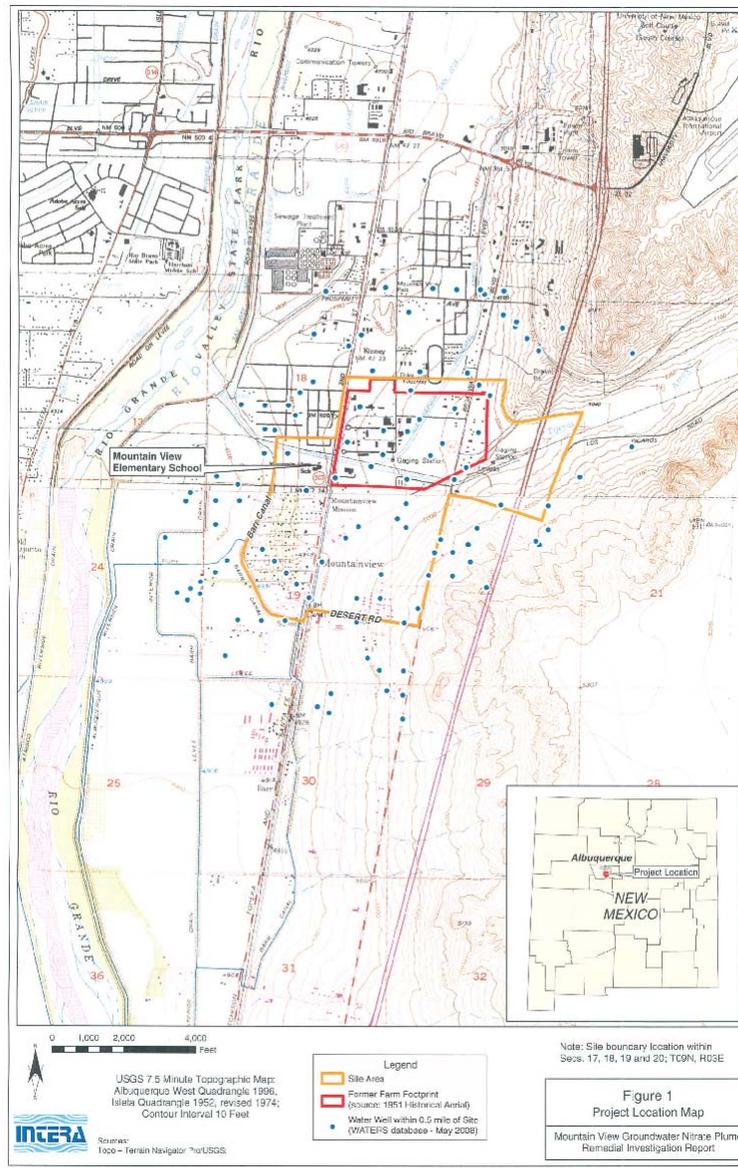


Figure 1 – ONRT Mountain View Restoration Project Area

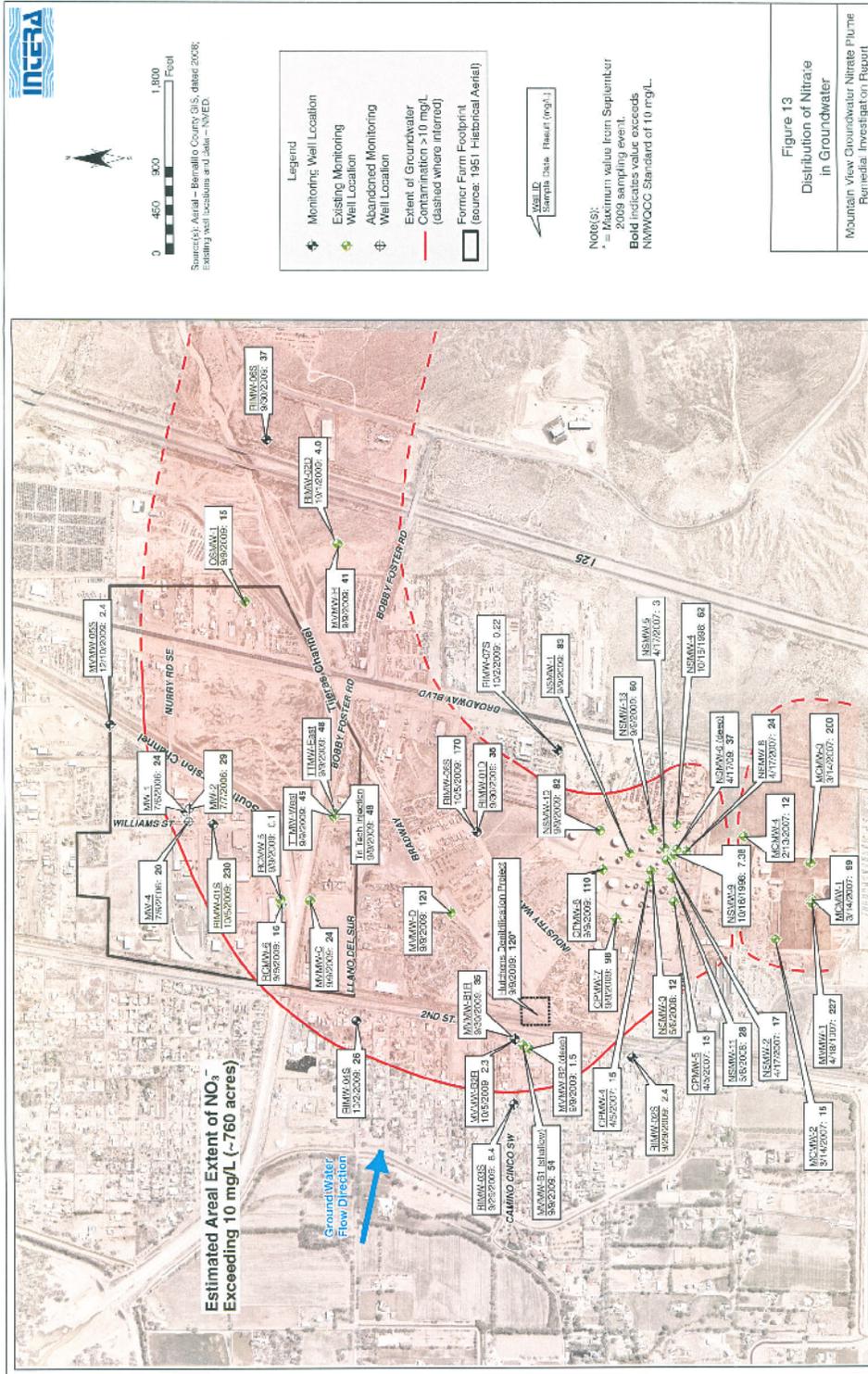


Figure 2 – Monitoring Well Locations and Nitrate Concentrations in Groundwater.

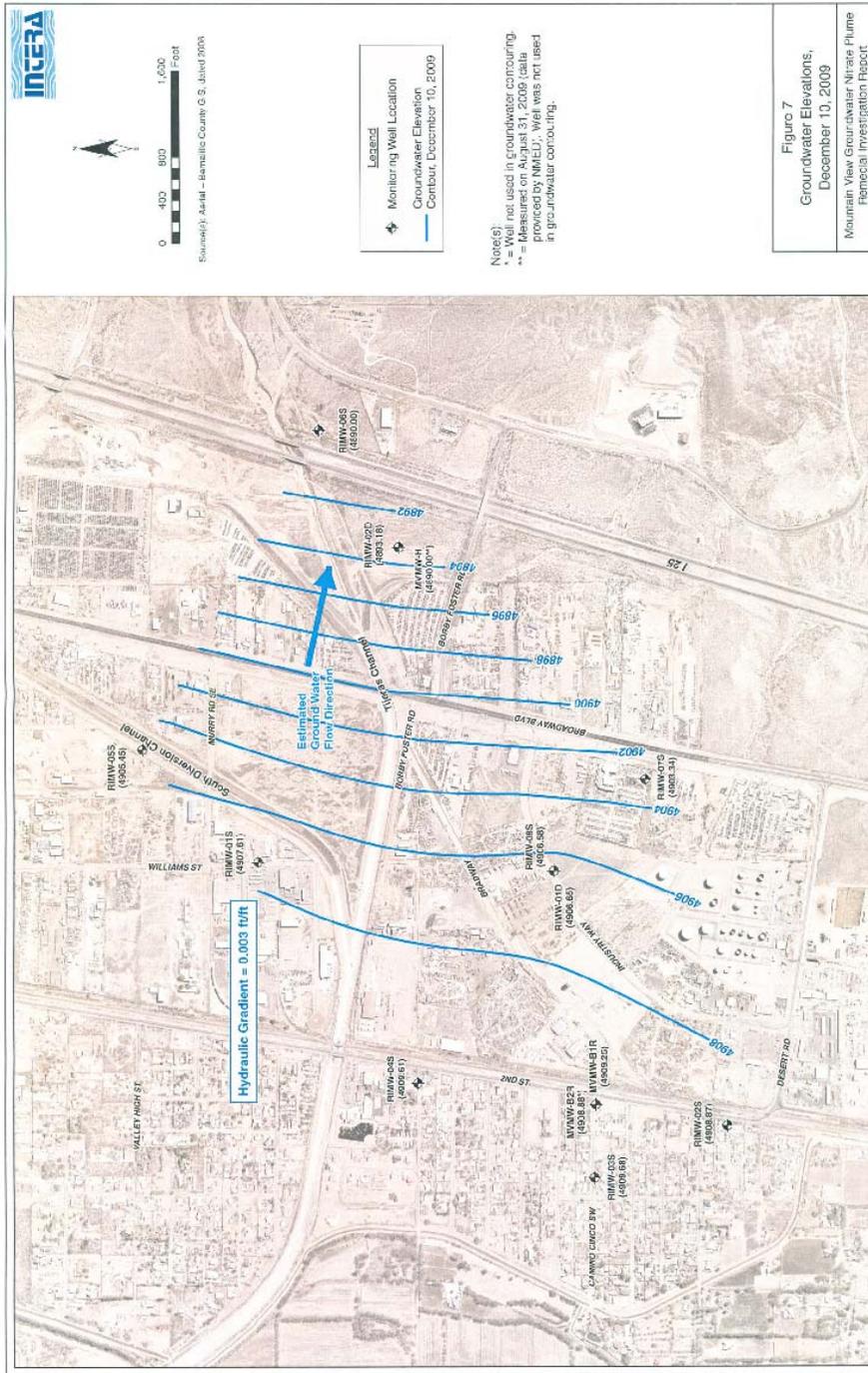


Figure 3 – Groundwater Potentiometric Map

NMED through cooperation with the University of New Mexico (UNM) performed 4 in-situ biodenitrification field pilot test within the plume. Results showed that contaminated groundwater could be denitrified below WQCC standards.

2. Summary of Services to be Provided

The scope of work for this procurement includes the following services:

In order to manage the water resources of the State of New Mexico, to protect human health and the environment, and to meet the goals of the NMED and ONRT, the ONRT requests that qualified firms submit a proposal that provides remediation services for the Restoration Project to eliminate sources and to restore groundwater to levels described in Section II.A. above. The Restoration Project location is approximately bounded by 2<sup>nd</sup> Street to the west, Murray Street to the north, Desert Road to the south, and I-25 to the east in Albuquerque's South Valley, New Mexico.

The selected Offeror will review the *Mountain View Groundwater Nitrate Plume Remedial Investigation Report* (Intera, February 2010) (see Appendix A <ftp://ftp.nmenv.state.nm.us/www/gwb/mountainview/>) prior to submittal of their restoration proposal.

The selected Offeror will implement an active remediation system per NMED/ONRT concurrence and accepted design, conduct remediation system operation and maintenance, and appropriate groundwater monitoring for relevant contaminants of concern during the active remediation. If standards are not achieved during the active remediation period, the proposals must provide a component showing how and when the standards will be achieved.

Additional site assessment activities may be required at some point during the life of the contract. Details of those potential activities are not currently known and therefore cannot be outlined in this scope of work.

All work shall be performed in accordance with the requirements of the New Mexico WQCC Regulations 20.6.2 NMAC and specifically 20.6.2.4106.E NMAC.

The RFP proposals shall respond to all specifications listed in Section V of this RFP. The selected Offeror will provide the following as part of their contract award:

- Prepare and submit an active remediation plan for NMED/ONRT review and approval that:
  1. provide an assessment of remediation options,
  2. provides a description, justification, and design of the preferred remediation approach,
  3. provides specific design plans for the active remediation system,
  4. provides a monitoring program,
  5. provides for maintenance activities,
  6. provides a schedule of remediation activities,
  7. provides quarterly summary progress reports to NMED/ONRT,
  8. If standards are not achieved during the active remediation period, provide a plan showing how and when the standards will be achieved.
- Provide public notice of the Project.
- Acquire all access agreements as necessary.
- Prepare, submit, and finalize any permits required for the preferred remediation option.
- Prepare, submit, and implement a site specific Quality Assurance Project Plan (QAPP) and Health and Safety Plan (HASP) for the preferred restoration option.
- Implement the approved active remediation plan.
- Prepare any applicable updates to the plan that satisfies RFP goals if the active remediation system does not achieve WQCC standards.

- Prepare, submit, and implement a Closure Plan at the completion of the Restoration Project.
  - Provide cost estimates to accomplish the activities described above.
3. Phased Scope of Work
- a. Phase 1 - Planning, Development of Remediation Options
    - i. Meet as necessary with NMED Project Manager, and ONRT, as appropriate to review Restoration Project progress.
    - ii. Complete site visit with NMED Restoration Project Manager.
    - iii. Provide NMED Restoration Project Manager a remediation options report that justifies the preferred remediation option for review and approval.
    - iv. Prepare the active remediation plan in accordance to WQCC Regulations 20.6.2.4106.E NMAC that shall also include a site-specific QAPP and HASP.
  - b. Phase 2 - Restoration Project – Public Notification
    - i. Prepare and issue public notification of the Project in cooperation with NMED and ONRT.
    - ii. Follow and implement the public notification process as describe in WQCC Regulation 20.6.2.4108.B NMAC.
  - c. Phase 3 - Implementation, Operations, Maintenance of Preferred Remediation Option
    - i. Acquire all access agreements necessary for the preferred restoration option.
    - ii. Acquire all applicable necessary permits (i.e., Office of State Engineers water rights, NMED discharge plan, Bernalillo County well permit, etc.) for the preferred restoration option.
    - iii. Acquire all applicable agreements between parties for operation of the preferred remediation option following the cessation of the offeror’s remediation project (if necessary)
    - iv. Implement, operate, maintain, and monitor the preferred remediation option per approved plan
    - v. Provide NMED/ONRT a remediation implementation report (i.e as built), and quarterly summary progress reports.
  - d. Phase 4 - Implementation of Closure Plan
    - i. Provide NMED/ONRT a Closure Plan proposal for review and approval prior to completion of the Project. This plan shall include methods on how and when the standards will be achieved, if the standards have not been met during the active remediation.
    - ii. Implement the approved Closure Plan.
    - iii. Provide NMED/ONRT a Completion Report that provides a summary of the Project, results of the Restoration Plan, current site conditions, and actions taken to implement the Closure Plan.

The selected Offeror shall provide a budget for each phase. The selected Offeror shall provide the above mentioned written quarterly activity and monitoring reports along with invoices. The selected Offeror will be responsible for maintaining schedules and providing detailed invoices and update reports that details work completed, any problems, and conformance to schedule to NMED Restoration Project Manager. The selected Offeror shall also be responsible for record keeping, reporting and ensuring that day-to-day operations of the Restoration Project are successfully undertaken and sustained at this site until site completion. All work shall be performed in accordance with the applicable requirements of the WQCC Regulations.

In addition to the NMED, the ONRT, as the funding source of this Project, will review and comment, as appropriate, on documents, reports, deliverables, or budget associated with this Restoration Project.

**C. SCOPE OF PROCUREMENT**

The purpose of this RFP is to put into place a contract for the services as described in the Summary Scope of Work, Section II.B. It is anticipated that the contract will begin in July 2010 or as soon as possible for a term not to exceed four (4) years. In no case will the contract exceed \$4 million.

ONRT will be fully responsible for the execution of the terms of the contract. No changes to the terms and conditions shall be effective unless agreed by written amendment in accordance with Appendix F of this RFP, Sample Professional Services Contract.

**D. PROCUREMENT MANAGER**

ONRT have designated a Procurement Manager who is responsible for conducting this procurement and whose name, address, telephone number, facsimile number, and e-mail address follows.

Bart Faris, Environmental Scientist and Specialist  
New Mexico Environment Department  
Ground Water Quality Bureau  
Remediation Oversight Section  
5500 San Antonio Dr. NE  
Albuquerque, NM 87109  
Telephone (505) 222-9521  
FAX (505) 222-9510  
e-mail: bart.faris@state.nm.us

Any inquiries or requests regarding this procurement must be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding this procurement. Other state employees do not have the authority to respond to inquiries and requests regarding this procurement. All responses to inquiries will be available for review on ONRT's home page, <http://www.onrt.state.nm.us>, and on NMED's home page at <http://www.nmenv.state.nm.us/nmed/rfp> or by requesting a copy from the Procurement Manager.

**E. DEFINITION OF TERMINOLOGY**

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

**“Addendum”** means a written or graphic instrument issued prior to the opening of the Proposals, which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.

"**Contract**" means an agreement for the procurement of items of tangible personal property or services.

"**Contractor**" shall mean successful Offeror who enters into a binding written contract.

"**Desirable**" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

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

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

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

"**Evaluation Committee Report**" means a report that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of such a report for submission to the State Purchasing Agent for contract award.

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

"**HASP**" means a site specific Health and Safety Plan.

"**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 proposal.

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

"**Person**" means an individual or any other entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents, or employees.

"**Prefers**" The terms "may", "can", "should", "preferably", or "desirable" identify a preferable or discretionary item or factor.

"**Procurement Code**" means Chapter 13, Sections 13-1-28 to 13-1-199 NMSA 1978.

"**Procurement Code Regulations**" means General Services Department (GSD) Rule 1.4.1 NMAC.

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

**"Purchase Order"** means the document which directs a contractor to deliver services pursuant to an existing contract.

**"QAPP"** means a Quality Assurance Project Plan

**"Remediation"** is the process of reducing the concentration of contaminants in air, soil and/or groundwater to a level that poses an acceptable risk to public health, safety, and welfare and the environment. For the purpose of this RFP, restoration will mean meeting the following goals for this Restoration Project: 1) WQCC groundwater standards for nitrate and TDS are met; 2) nitrate contamination in soils is remediated and/or demonstrated that the vadose zone shall not be capable of contaminating groundwater.

**"Remediation Equipment"** means any transportable unit or system which has been acquired specifically for remediation.

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

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

**"Responsive Offer"** or **"Responsive Proposal"** means an offer or proposal 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.

**"Restoration Project"** means remediation specific to this Mt. View Nitrate Contamination Project whose goals are defined under remediation.

**"Site"** means the place where nitrate and TDS contamination is present in the vadose zone and/or groundwater associated with the Mountain View Restoration Project.

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

Abbreviations include the following:

(ASD) New Mexico Environment Department Administrative Services Division

(DFA) New Mexico Department of Finance and Administration

(FRP) Final Remediation Plan

(GWQB) Ground Water Quality Bureau

(GSD) New Mexico General Services Department

(MDT) Mountain Daylight Savings Time  
(MST) Mountain Standard Time  
(NMAC) New Mexico Administrative Code  
(NMED) New Mexico Environment Department  
(nitrate) Nitrate-nitrogen  
(OFB) Office of Finance & Budget  
(ONRT) Office of Natural Resources Trustee  
(PE) Professional Engineer  
(RFP) Request for Proposal  
(ROS) Remediation Oversight Section  
(TDS) Total Dissolved Solids  
(UNM) University of New Mexico  
(WQCC) Water Quality Control Commission

**F. BACKGROUND INFORMATION**

**1. THE NEW MEXICO OFFICE OF NATURAL RESOURCES TRUSTEE'S MISSION, GOALS AND OBJECTIVES**

The ONRT implements the Natural Resource Damage Assessment and Restoration Program for the State of New Mexico. The ONRT's mission is to assess injury to natural resources caused by the release of hazardous substances or oil, and then seek compensation from the responsible parties for restoration of those injured resources. Compensation is used to restore, replace or acquire the equivalent of injured, destroyed or lost natural resources and the services they provide.

Under Section 107(f) of the CERCLA, 42 USC § 9607(f), Section 311 of the Clean Water Act (CWA), 33 USC § 1321, and other applicable law, including Subpart G of the National Contingency Plan (NCP), 40 CFR §§ 300.600-300.615, the governor of each state appoints a Trustee for natural resources. The New Mexico Natural Resources Trustee, acting through the New Mexico Office of Natural Resources Trustee (collectively, "ONRT"), is the designated natural resource Trustee for the State of New Mexico. ONRT derives additional authority from the New Mexico Natural Resources Trustee Act, NMSA 1978, §§ 75-7-1 to- 45 (1993).

**2. THE NEW MEXICO ENVIRONMENT DEPARTMENT'S MISSION, GOALS AND OBJECTIVE**

The NMED's mission is to provide the highest quality of life throughout the state by promoting a safe, clean, and productive environment.

In meeting the goals of the Mission, NMED is committed to:

- Providing clear articulation of our goals, standards, and expectations in a professional manner so that employees and the public can make informed decisions and be actively involved in setting priorities;
- Promoting environmental awareness through the practice of open and direct

communication and sound decision-making by carrying out the mandates and initiatives of the department in a fair and consistent manner.

The NMED 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 NMED Secretary's Office is located in the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM.

Due to NMED's knowledge of the Mountain View nitrate plume and its surroundings, ONRT entered into an agreement with NMED in June 2008 to manage the Restoration Project.

**G. PROCUREMENT LIBRARY**

The Procurement Manager has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager and scheduling an appointment. The Procurement Library will be located in the Ground Water Quality Bureau office at the address given in Section II.D of this proposal. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library. Other than Offeror-reproduced copies, materials cannot be removed from the library. Copies requested by the Offerors may be made by NMED for a fee of \$.25 per copy.

The library contains the information listed below:

- State of New Mexico Procurement Regulations, 1.4.1 NMAC.
- New Mexico Water Quality Control Commission Regulations, 20.6.2 NMAC.
- ONRT's *Natural Resources Restoration Plan for the South Valley Superfund Site*, October 2007.
- *Mountain View Groundwater Nitrate Plume Remedial Investigation Report* (Intera, February 2010) (see Appendix A <ftp://ftp.nmenv.state.nm.us/www/gwb/mountainview/>).
- NMED's Superfund Oversight Section's *Site Investigation Follow Up for Mountainview Subdivision*, May 1989.
- MSE Technology Application Inc's. *Biofilm Barrier for In Situ Groundwater Denitrification*, November 2004.

**III. CONDITIONS GOVERNING THE PROCUREMENT**

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

**A. SEQUENCE OF EVENTS**

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issue RFP	NMED/ONRT	February 23, 2010
Pre-Proposal Conference	NMED/ONRT/Potential Offerors	March 16, 2010

Distribution List Response	Potential Offerors	March 16, 2010
Deadline for Receipt of Written Questions	Potential Offerors	March 23, 2010
Response to Written Questions/ RFP Amendments	NMED/ONRT	March 30, 2010
<b>Deadline for Proposal Submission</b>	<b>Offerors</b>	<b>April 27, 2010</b>
Proposal Evaluation	Evaluation Committee	May 20, 2010
Notification to Finalist(s)	Procurement Manager	May 24, 2010
Best and Final Offers	Offeror	June 7, 2010
Oral Presentation by Finalists	Offerors and Evaluation Committee	June 9, 2010
Selection of Contractor	Evaluation Committee	June 9, 2010
Finalize Contract	ONRT, Offeror	July 13, 2010
Contract Award	ONRT	July 27, 2010
Protest Deadline	Offeror	August 10, 2010

**B. EXPLANATION OF EVENTS**

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

1. Issue RFP

This RFP is being issued by ONRT on February 23, 2010. NMED and ONRT will advertise its release in the Albuquerque Journal. An advertisement will also be placed on the ONRT and NMED websites and available at the following addresses, respectively: <http://www.onrt.state.nm.us> and <http://www.nmenv.state.nm.us/NMED/RFP/>. Copies of the RFP and associated document are available for download at the above websites.

2. Pre-Proposal Conference

A pre-proposal conference will be held on March 16, 2010 at 10:00 MDST in the Sandia Conference Room at the NMED District I Office, 5500 San Antonio Drive NE in Albuquerque, New Mexico. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (as identified in Section II.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential Offerors that attended the pre-proposal conference. Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

3. Distribution List Response

Potential Offerors should hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt of Request For Proposals Form" that accompanies this document (See Appendix B) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business March 16, 2010. The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

4. Deadline for Receipt of Written Questions

Potential Offerors may submit written questions (via email, letter, or fax) as to the intent or clarity of this RFP until 5:00 P.M., MDT March 23, 2010. All written questions must be addressed to the Procurement Manager (as identified in Section II.D). Questions received after this date will not be addressed.

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed March 30, 2010 to each potential Offerors whose organization appears on the procurement distribution list. This information will also be posted on the ONRT and NMED websites. The Procurement Manager must receive additional written requests for clarification of distributed answers, and/or amendments, no later than five (5) days after the answers and/or amendments were issued.

6. Deadline for Proposal Submission

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR HIS DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT SAVINGS TIME APRIL 27, 2010.** 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 only at the address listed in Section II, Paragraph D. **Proposals submitted by facsimile or electronic form will not be accepted.** A public log will be kept of the names of all Offeror organizations, which submitted proposals. Pursuant to Section 13-1-116, NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award (see Section III.C.8.). A completed cost schedule, present in Appendix D of this RFP, shall be submitted with the proposal in a separate sealed envelope. This separate envelope shall be labeled to clearly indicate that it contains the completed cost table for this RFP with your firm's name clearly printed.

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee designated by NMED/ONRT. The evaluation process is anticipated to be completed no later than May 20, 2010. During this time, the Procurement Manager may at his option initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Notification of Finalist(s)

The evaluation committee will select finalists and the Procurement Manager will notify the finalists no later than May 24, 2010. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for oral presentations, if required, will be determined at this time.

9. Best and Final Offers

Finalists may submit revisions to their proposals for the purpose of obtaining best and final offers no later than June 7, 2010. Best and final offers shall be submitted to the Procurement Manager at the address provided in Section II.D. and shall be completed using the cost table that is contained in this RFP document as Appendix D.

10. Oral Presentation by Finalists

The Evaluation Committee may require the finalists to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each finalist presentation. All finalist presentations will be held in the Sandia Conference Room in the NMED District I Office in Albuquerque, New Mexico, on June 9, 2010. Each presentation will be limited to a maximum of 30 minutes duration with a question and answer session to follow. ONRT and NMED shall not be responsible for any costs or expenses incurred by an Offeror to make an oral presentation.

11. Selection of Contractor

The Evaluation Committee will select the winning contractor by June 9, 2010.

12. Finalize Contract

A contract will be finalized with the most advantageous offer. In the event that mutually agreeable terms cannot be reached within the time specified, the ONRT reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or to cancel the procurement as the ONRT may deem in the best interests of the State.

### 13. Contract Award

The contract shall be awarded to the Offeror whose proposal is most advantageous to the State, taking into consideration the evaluation factors set forth in the RFP. The proposal selected may or may not be the proposal with the lowest cost. The award is subject to appropriate State approvals. ONRT reserves the right to award multiple contracts or no contract at all if it is in the best interest of the State.

After review of the Evaluation Committee Report, and the signed contract, ONRT will award the contract July 27, 2010. This date is subject to change at the discretion of ONRT. The contract award may be subject to the completion of contract negotiations and appropriate state approvals.

### 14. Protest Deadline

Any protest by an Offeror must be timely and conform to NMSA 1978, Section 13-1-172 and other applicable procurement regulations. Pursuant to NMSA 1978, Section 13-1-172, the protest period for responsive Offerors shall begin on the day following the date upon which the contract is fully executed (awarded) and will end at 5:00 pm MDT fifteen calendar days from this date. All Offerors will be notified of this date. Protests must be written and must include the name and address of the protester and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the Protest Manager at the address below:

Mr. Randy Herrera  
Protest Manager  
Purchasing Bureau, NMED  
1190 St. Francis Drive  
Santa Fe, New Mexico 87505

Mailing Address:  
New Mexico Environment Department  
P.O. Drawer 26110  
Santa Fe, New Mexico 87502-0110

**Protests received after the deadline will not be accepted.**

## C. GENERAL REQUIREMENTS

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

### 1. Acceptance of Conditions Governing the Procurement

Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and the Evaluation Factors contained in Sections III and VI of this RFP.

2. Incurring Cost

Any cost incurred by the 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 sub-contract that may result from this RFP shall specify that the contractor is solely responsible for fulfillment of the contract with ONRT. ONRT will make contract payments to only the prime contractor. It is the responsibility of the prime contractor to assure that all drilling subcontractors are properly licensed, pursuant to the requirements of 19.27.4 NMAC.

4. Subcontractors

With the prior approval of ONRT, the subcontracting of services is permissible. Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

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

6. Offerors' Rights to Withdraw Proposal

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded by the ONRT and the New Mexico Department of Finance and Administration (DFA). At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that the Offeror has clearly identified as proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 to 57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the State Purchasing Agent and the NMED/ONRT legal council shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, hire, etc., of any equipment, land, buildings, software, services or professional services offered unless and until a valid written contract is approved by the ONRT, and the DFA.

10. Cancellation

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

11. Sufficient Appropriation

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

12. Legal Review

ONRT requires that all Offerors agree to be bound by the General Requirements contained in this RFP and the sample contract attached as Appendix F. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any contract with Offerors shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Liability Insurance

- A. A successful Offeror who is awarded a contract shall furnish general comprehensive liability insurance for property damage in the amount of \$2,000,000.00 for each occurrence (annual), as well as \$1,000,000.00 for bodily injury, each person, to a maximum of \$2,000,000.00 each occurrence (annual).
- B. A successful Offeror who is awarded a contract shall furnish evidence that all equipment to be used pursuant to this Contract is covered by public liability and property damage insurance with a good and reputable insurance company, authorized to do business in New Mexico. The Contractor shall furnish evidence that each motor vehicle to be used by the Contractor pursuant to this Contract is covered in the minimum amount of \$500,000.00 for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person. In addition, a limit of \$1,000,000.00 for bodily injury to, or destruction of property of others in any one accident must be provided.
- C. The insurance company issuing the Contractor's general comprehensive liability insurance coverage shall furnish ONRT with a certificate of such insurance with the provision that the policies are not subject to cancellation during the term of the Contract except upon thirty (30) days written notice to ONRT. The above requirements shall become an integral part of this Contract.
- D. The Contractor shall furnish evidence that operators, employed by the Contractor to operate equipment needed to meet the requirements of this Contract, are covered by Worker's Compensation Insurance as provided by the New Mexico Worker's Compensation Act.
- E. If ONRT does not ask to see or to receive the aforementioned policies, such failure to act shall not operate as a waiver of the Contract term.

- F. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary or to authorize any one a party to the Contract to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to persons, damages to property(ies) or any other claim whatsoever pursuant to the provisions of this Contract.

16. Executive Order 2007-049 State of New Mexico Health Coverage Requirement

“This requirement applies to all Invitation to Bid (ITB) and Request for Proposal (RFP) based procurements conducted by Executive Branch Agencies ... for which the ITB and RFP is made available to the general public (“solicited”), through any means, after January 1, 2008.”

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:
  - 1. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars, or;
  - 2. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between the Contractor and the State exceed \$500,000 dollars, or;
  - 3. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between the 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>

17. Contract Terms and Conditions

The contract between ONRT and a Contractor will follow the format specified in Appendix F. ONRT reserves the right to negotiate with a successful Offeror provisions in addition to those contained in Appendix F of this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into the contract.

Should an Offeror object to any of ONRT's terms and conditions, that Offeror must propose specific alternative language within their proposal. ONRT reserves the right to reject any or all of an Offeror's proposed alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to ONRT and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and effect of each proposed change followed by the specific proposed alternate wording.

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

18. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between ONRT, and NMED if appropriate, and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal. Any additional terms and conditions that ONRT may, at ONRT's sole discretion, accept will be incorporated into any final contract.

19. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsive Offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

20. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

21. Change in Contractor Representatives

ONRT reserves the right to require the Offeror to change its representatives if the assigned representatives are not, in the opinion of ONRT, meeting its needs adequately.

22. Notice

The Procurement Code, NMSA 1978, Sections 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 bribes, gratuities and kick-backs.

23. ONRT Rights

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

24. Right to Publish

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

25. Ownership of Proposals

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

26. Use of Electronic Versions of this RFP

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

27. Electronic Mail Address Required

A large part of the communication regarding this RFP process will be conducted by electronic mail. In order to receive this correspondence, the Offeror must have a valid e-mail address. An e-mail address should be provided in the appropriate place on the Acknowledgement of Receipt Form (Appendix B).

28. Access

It is the Contractor's sole responsibility to determine whether or not legal access is available to the site before beginning work on the site. If no legal access is available to the site, the Contractor will not begin any work on the site until legal access has been acquired.

29. General Liability

As between ONRT and the Contractor, each party shall be responsible for liability arising from personal injury or damage to persons or property occasioned by its own agents or employees in the performance of this Contract, subject in all instances to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, and any amendments thereto.

#### **IV. RESPONSE FORMAT AND ORGANIZATION**

A. NUMBER OF RESPONSES

Only one proposal shall be submitted for consideration by each Offeror.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original and five (5) identical copies of each proposal to the person and location specified in Section II.D on or before the closing date and time for receipt of proposals. Please label which of your submitted proposals is the original copy.

C. NUMBER OF PAGES IN THE PROPOSAL

The proposal shall be limited to twenty five (25) pages in length, exclusive of any figures, diagrams, spreadsheets, or charts asked for as enclosures in the RFP. Documentation regarding required attachments, the letter of transmittal, the table of contents, a proposal summary, maps, your corporate HASP and QAPP examples, and information regarding project staff experience, are exempt from this page limitation requirement. In addition, required documentation relating to your firm's professional license(s) and certifications, including professional engineers, geologists, hydrologists, and surveyors, operators, and site operations manager; and your firm's disclosure of campaign contributions form (see Appendix E) are also exempt from this page limitation.

D. PROPOSAL FORMAT

Responses consisting solely of marketing material, or electronic versions of proposals, will be deemed non-responsive and will be rejected on that basis. All proposals must be typewritten with a font equal to or larger than 11, on standard 8 ½" x 11" paper. Larger paper is permissible for charts, maps, spreadsheets, etc., but in no instance shall the paper size exceed 11" x 17". All materials must be placed within a binder with tabs delineating each section. The appropriate supporting forms provided to the Offeror in the Appendices to this RFP must be completed. Completeness, clarity and brevity should be emphasized.

E. PROPOSAL ORGANIZATION

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

INDEX TAB	CONTENTS
a)	Letter of Transmittal
b)	Table of Contents
c)	Summary of Background and Team History, Group and Subcontractors, as Necessary
d)	Qualifications as Demonstrated by Experience
e)	Past Record of Applicable Experience
f)	Project Team Specifics
g)	Remediation Goals
h)	Proposal Summary, Technical Approach for Scope of Work
i)	Summary of Nitrate and TDS Remediation Experience
j)	Quality Assurance Project Plan and Health and Safety Plan
k)	Campaign Contribution Disclosure Form
l)	Cost Effectiveness
m)	Offeror's Additional Terms and Conditions (if any)
n)	Other Supporting Material (if any)

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

The Offeror shall include a proposal summary (section “c” above) with a one page maximum length to provide the Evaluation Committee with an overview of the technical and business features of the proposal. The proposal summary will not count toward the proposal page length limitations described in Section IV.C. above.

F. LETTER OF TRANSMITTAL

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

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

G. MANDATORY SPECIFICATIONS

Please see Section V of this RFP for the information to be included in this section of your proposal.

**V. SPECIFICATIONS**

Offerors should respond in the form of a narrative to each specification. The narrative along with the required supporting material will be evaluated and awarded points according to the Evaluation Factors presented in Section VI below.

A. SUMMARY OF BACKGROUND AND TEAM HISTORY, GROUP AND SUBCONTRACTORS AS NECESSARY

If the respondent is a firm or group, provide specific number of employees, and include an organizational chart. Provide a brief summary of any distinguishing qualities, capabilities, or experience that uniquely qualifies the respondent for this Restoration Project. Define the types of services that you feel set your team apart, or that are outstanding, or that deserve special mention. Provide a copy of State of New Mexico or other state CRS Tax Identification Number.

B. QUALIFICATIONS AS DEMONSTRATED BY EXPERIENCE

The successful team or group shall demonstrate that the Offeror has the ability to provide staff, subcontractors or project partners with a good working knowledge of soil and groundwater remediation projects with an emphasis on nitrate and TDS contamination. Responsive proposals shall contain a detailed description of their team's theoretical and practical understanding of the restoration strategy for the term of the contract. Documentation demonstrating the team's or project team's availability and details regarding the Offeror's available technical staff, expertise, equipment and services necessary to complete the Scope of Work. Include a narrative that clearly identifies the number of years of experience of your team's personnel or other project partners have providing similar services. Document relevant expertise, qualifications, and experience via short descriptions of at least three (3) similar completed or on-going projects by engineers, geologists, hydrogeologists, certified operators, and/or other project partner(s) or subcontractor(s) that would be assigned to this Restoration Project. These summaries must include enough information to establish relevant experience, expertise, and competence. Include the name of a facility, site location, length of time services have been or were provided, type of services, contact person and telephone number.

C. PAST RECORD OF APPLICABLE EXPERIENCE

Offerors must provide a narrative, table and/or list that addresses your team's, and project partner's performance record, if applicable. Include a list of soil and groundwater restoration projects that your team or project team members have been involved with to assist with rating your proposal for this requirement. Provide three (3) client references. Include contact names and titles, current telephone numbers, and e-mail addresses (if available). References will be checked. NMED/ONRT and its Procurement Manager will

not attempt to obtain correct contact numbers if they are found to be incorrect during our check.

D. PROJECT TEAM SPECIFICS

Offerors must include, in the proposal, credentials and relevant experience of the key personnel responsible for the successful completion of the specific scope of work. These credentials must include but are not limited to the following: academic degrees, licensure, and other pertinent certification and/or training information. The resumes or short experience narratives of key staff members that would be assigned to provide the services attached thereto should describe the specific experience of each proposed staff member as it relates to knowledge and experience in soil and groundwater restoration projects, permitting, construction oversight, and other relevant restoration experience. List individuals by name and work assignments. At a minimum provide information about those individuals who will have the greatest impact and responsibility for successfully completing the Restoration Project (i.e. the project manager, geologist, operator and/or any others deemed important by the respondent). Provide contact information for the key individuals including e-mail address.

E. REMEDIATION GOALS

The remediation goals for this project are to meet WQCC standards. Offerors must include, in the proposal, justification for the preferred active remediation option. If standards are not achieved during the active remediation period, the offeror must include an analysis of how the standards will be met beyond the conclusion of the active remediation project. This may include, but not be limited to, reduction of nitrate and TDS concentrations in groundwater to levels conducive to natural attenuation that will eventually meet the WQCC standard, nitrate groundwater plume migration control, nitrate groundwater hotspot reduction, receptor protection activities and/or beneficial use of impacted groundwater. If the remediation project proposed requires services other than groundwater and soil remediation, include relevant descriptions relative to sections A, B, C, D and F of this section.

F. PROPOSAL SUMMARY, TECHNICAL APPROACH FOR SCOPE OF WORK

Offerors must include in the response a description of how they will complete the scope of work, as detailed in Section II. Responsive proposals shall contain a detailed description of the approach that your firm will use to restore soil and groundwater contamination as specified in Section II.A. and II.B.2. Provide a timetable or graph, which will not count toward your page limit, outlining the approach.

Offerors will specify methods, partners, potential subcontractor(s), and/or other options that are proposed to be used to complete the scope of work. Provide estimated anticipated cost range for subcontractor tasks (i.e., well drillers, other technical services, equipment rental, equipment operators) which should be included in the cost proposal. Any estimates should be realistic; however, the successful Offeror will be required to obtain quotes for ONRT approval prior to initiation of any work.

The implementation of the proposed remediation strategy may require the purchase of major remediation equipment. Your proposal must contain details of the types of equipment that will need to be purchased as a part of your approach to the implementation of the remediation strategy.

G. SUMMARY OF NITRATE and TDS REMEDIATION EXPERIENCE

Provide a short summary (not to exceed two pages) of a soil and/or groundwater nitrate and TDS contaminated restoration project or situation that the Offeror has encountered during the course of completing consulting services. Include details regarding how you handled or resolved the situation, and why you feel you were successful. The Offeror may refer to example projects listed in Section V.B above.

H. QUALITY ASSURANCE PROJECT PLAN (QAPP) and HEALTH AND SAFETY PLAN (HASP)

The Offeror must include an example copy of a relevant site-specific QAPP and HASP, which will not count toward your twenty five page limit. Please note: it is not necessary to write a QAPP or HASP specifically for this RFP.

I. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

**Only one copy of the Campaign Contribution Disclosure Form should be presented with your proposal. Please place this item in a separate sealed envelope with the name of your firm and the contents of the envelope clearly labeled.**

J. COST EFFECTIVENESS

The Offeror must propose a justified cost estimate, describing in detail the basis for the estimate for **all** of the following items in a separate, sealed envelope. Please provide in the sealed envelop Appendix D, which is a summary cost table of each major work Phases.

All cost estimate information must be provided in a table format in the order requested, and in the order provided in the section. Specify if cost estimate for each specific task is based on an hourly, flat fee rate, or combination and the number of individuals involved. If information is not provided in table form, in the correct order, the proposal may be eliminated for further consideration.

1. Include the following:
  - a. A specific cost estimate for Phase 1, Planning, Development of Remediation Options.
  - b. A specific cost estimate for Phase 2, Restoration Project – Public Notification.

- c. A specific cost estimate for Phase 3, Implementation, Operations, Maintenance of Preferred Remediation Option. Cost estimate ranges may be provided for subcontractors, access agreements, permits, and leasing of equipment; or other associated project costs.
- d. An itemized cost section for written reports/activity reports.
- e. A specific cost estimate for Phase 4, Implementation of Closure Plan. Include names of key individuals involved.
- f. A total cost for each phase of the scope of work.
- g. A total estimated cost of entire Project.

Information must be detailed enough to accurately evaluate the proposal. Include narrative description for any deviations, modifications or additions to the scope of work, as necessary in the table, and clearly identify all items included each cost estimate.

- 2. The applicable New Mexico Gross Receipts Tax will be paid by the Contractor and reimbursed by the ONRT, however for this cost comparison do not include New Mexico Gross Receipts Tax as part of your total; however, it should be taken into consideration in order not to exceed the funding cap of this Restoration Project.

K. OFFEROR’S ADDITIONAL TERMS AND CONDITIONS

If the Offeror fully agrees with the Agency’s terms and conditions, this should be clearly stated in this section. If an Offeror wishes to respond to any of the terms or conditions or wishes to list additional terms and conditions, please do so in this section of the proposal.

L. OTHER SUPPORTING MATERIAL

Offerors may attach other material that they feel may improve the quality of their response under separate cover, clearly labeled “Other Supporting Material”.

**VI. EVALUATION FACTORS**

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual proposals. Points will be awarded on the basis of the following evaluation factors:

1.	<u>PROJECT APPROACH</u> Appropriateness of Remediation Option	<u>Points</u> 125
	Firm’s demonstration of Preferred Remediation Option, which includes: a strong theoretical and practical understanding of the remediation strategy and site specific conditions. Firm’s demonstration of the capability to implement and adhere to the requirements of the Remediation Plan and any associated Plans and Specifications.	225

Appropriateness of the active remediation system operation and maintenance scope of work and scheduling for this site.

If standards are not met during active remediation, then appropriateness meeting WQCC standards following active remediation. 125

Firm's applicability and thoroughness of the submitted example QAPP and HASP. 25

2. QUALIFICATIONS AND EXPERIENCE

Proposed project staff members relevant qualifications and experience; as demonstrated by project team qualifications. 100

Firm's capability to complete work in a timely manner through the evaluation of time-lines and references. 50

Summary of Nitrate Remediation Experience 100

Quality of proposal submission and conformance with RFP 50

3. COST EFFECTIVENESS OF SERVICES PROVIDED.

Completeness and Quality of Cost Tables (per section V.J.1 and Appendix D) 100

Grand Total Cost 100

=====

**Total** 1,000

B. EVALUATION FACTORS AND PROCESS

1. Each Offeror's proposal will be reviewed for compliance with the mandatory requirements as stipulated within the RFP. Please refer to Appendix C for a list of mandatory items that must be contained in your proposal. A proposal will be deemed non-responsive if it does not contain all of the items listed in Appendix C. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Evaluation Committee may use other sources of information to perform their evaluation, as specified in Section III, C.19.
3. Responsive proposals will be evaluated on the factors in Section VI.A that have been assigned a point value. The responsive Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted.
4. Finalist Offerors may be required to present their proposals to the Evaluation Committee. The factors by which the oral presentation will be evaluated are: quality and clarity of the presentation, knowledge and experience of key staff, ability to answer technical questions, and demonstrated understanding of the elements of the scope of work detailed in Section II.B. Within the scoring criteria framework, as detailed in Section VI.A, the evaluation team reserves the right to

adjust any and/or all technical merit scores based on information provided during the oral presentations and clarifications and updates to and refinements of the written proposals as originally submitted.

5. The responsive Offeror whose proposal is most advantageous to ONRT, taking into consideration the evaluation factors in Section VI and the oral presentations, will be recommended for a contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
6. Adherence to the requirements of the RFP documents, will be a consideration in determining the points allocated for all categories.

C. POINT ALLOCATION

The allocation of points will be based on the following:

1. **PROJECT APPROACH** - Up to 500 points will be awarded based upon the submitting firm's proposed remediation goals, theoretical and practical understanding of the restoration strategy, the appropriateness of approach and strategy, appropriateness of the plan for the site after the conclusion of the project, ability to implement all phases of the RFP, and the applicability and thoroughness of the example QAPP and HASP.
2. **QUALIFICATIONS AND EXPERIENCE** – Up to 300 points will be awarded based upon the Offeror's staff experience on similar projects, and comparable relevant history of successful abatement, permitting, construction, operations, maintenance, and monitoring of soil and/or groundwater remediation projects. Potential Offeror's are encouraged to summarize any nitrate-specific remediation experience they may have.
3. **COST EFFECTIVENESS OF SERVICES PROVIDED** – Up to 200 points can be awarded under this classification. Up to 100 points will be awarded based upon the completeness and quality of cost tables per Section V.J.1 and Appendix D. Up to another 100 points will be awarded based on the comparison results of each of the Offeror's Grand Total Costs, which will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Grand Total Costs}}{\text{This Offeror's Grand Total Cost}} \times 100 = \text{Points Award}$$

**Attachment A – Intera’s report**

*Mountain View Groundwater Nitrate Plume Remedial Investigation Report* February 2010

**In CD**

<ftp://ftp.nmenv.state.nm.us/www/gwb/mountainview/>

**APPENDIX B**

Acknowledgment of Receipt Form

REQUEST FOR PROPOSALS

**RFP: # 10-668-00-00001**

SITE REMEDIATION SERVICES FOR MOUNTAIN VIEW RESTORATION PROJECT,  
LOCATED IN ALBUQUERQUE'S SOUTH VALLEY NEAR TIJERAS ARROYO AND  
BROADWAY BOULEVARD, ALBUQUERQUE NEW MEXICO

In acknowledgment of receipt of this Request for Proposal, the undersigned agrees that they have received a complete copy of the RFP including Appendices.

The acknowledgment of receipt should be signed and returned to the Procurement Manager no later than **5:00 p.m. Mountain Daylight Savings Time March 4, 2010** via facsimile, or U.S. mail, or in-person delivery. 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 NMED's written responses to those questions as well as RFP amendments, if any are issued.

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

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

**Phone No.:** \_\_\_\_\_

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

**Fax No.:** \_\_\_\_\_

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

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

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**ZIP CODE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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

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

Bart Faris, Procurement Manager  
Environmental Scientist and Specialist  
New Mexico Environment Department  
Ground Water Quality Bureau  
Remediation Oversight Section  
5500 San Antonio Dr. NE  
Albuquerque, NM 87109  
Telephone (505) 222-9521  
FAX (505) 222-9510  
e-mail: bart.faris@state.nm.us

## APPENDIX C

### Mandatory Requirements Checklist

- \_\_\_\_\_ Signed Letter of Transmittal (Section IV.F)
- \_\_\_\_\_ Copies – one original and five copies (Section IV.B)
- \_\_\_\_\_ Twenty five pages in length (Section IV.C)
- \_\_\_\_\_ Summary of Background and Team History, Group and Subcontractors, as necessary (Section V.A)
- \_\_\_\_\_ Qualifications as Demonstrated by Experience (Section V.B)
- \_\_\_\_\_ Past Record of Applicable Experience (Section V.C)
- \_\_\_\_\_ Project Team Specifics (Section V.D)
- \_\_\_\_\_ Remediation Goals (Section V.E)
- \_\_\_\_\_ Proposal Summary, Technical Approach for Scope of Work (Section V.F)
- \_\_\_\_\_ Summary of Nitrate and TDS Remediation Experience (Section V.G)
- \_\_\_\_\_ QAPP and HASP (a relevant site specific example) (Section V.H)
- \_\_\_\_\_ Disclosure of Campaign Contributions Form (Section V.I and Appendix E)
- \_\_\_\_\_ Cost Tables for Items in Section V.J.1 (Appendix D)

**APPENDIX D**

**Cost Calculation Table**

**Appendix D must be submitted with your proposal in a separate, sealed envelope. The details of what is involved in each of the cost criteria below are contained in Section II.B.3. of the RFP document.**

<b><u>Criteria</u></b>	<b><u>Cost</u></b>
Total Cost for Phase 1: Planning, Development of Remediation Options	
Total Cost of Phase 2: Restoration Project – Public Notification	
Total Cost of Phase 3: Implementation, Operations, Maintenance of Preferred Remediation Option for the potential length of the project. An itemized cost section for written reports/activity reports.	
Total Cost of Phase 4: Implementation of Closure Plan	
<b><u>Grand Total Cost of the Above Criteria</u></b>	

## APPENDIX E

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

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

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law,

daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**APPENDIX F**

**Sample Professional Services Contract**

*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.**

A. The Contractor shall perform the following work: Contractor's proposal in response to RFP # \_\_\_\_\_, is incorporated into this Agreement.

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

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

(or reference an Attachment 1, see below)

**2. Compensation.**

A. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein.**

B. 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) (as set forth in Paragraph A) 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. 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.

**CHOICE – MULTI-YEAR** – 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.).

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, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

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

contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*"

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

**5. Appropriations.**

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

**6. Status of Contractor.**

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

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**13. Amendment.**

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

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

compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the DFA 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. 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.

**22. 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.

**23. 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].

**24. Authority.**

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

**25. 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:

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

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

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

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

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

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public

bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

**26. Contractor's Liability Insurance.**

A. The Contractor shall furnish general comprehensive liability insurance for property damage in the amount of \$2,000,000.00 for each occurrence (annual), as well as, \$1,000,000.00 for bodily injury, each person, to a maximum of \$2,000,000.00 each occurrence (annual).

B. The Contractor shall furnish evidence that all equipment to be used pursuant to this Contract is covered by public liability and property damage insurance with a good and reputable insurance company, authorized to do business in New Mexico. The Contractor shall furnish evidence that each motor vehicle to be used by the Contractor pursuant to this Contract is covered in the minimum amount of \$500,000.00 for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person. In addition, a limit of \$1,000,000.00 for bodily injury to, or death of, two or more persons in any one accident, and to a limit of \$1,000,000.00 for injury to, or destruction of property of others in any one accident must be provided.

C. The insurance company issuing the Contractor's general comprehensive liability insurance coverage shall furnish the Department with a certificate of such insurance with the provision that the policies are not subject to cancellation during the term of the Contract except upon thirty (30) days written notice to the Department. The above requirements shall become an integral part of this Contract.

D. The Contractor shall name the New Mexico Environment Department as an additional insured party on all policies pertaining to this Contract.

E. If the Department does not ask to see or to receive the aforementioned policies, such failure to act shall not operate as a waiver of this Contract term.

F. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary or to authorize any one not a party to the Contract to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to persons, damages to property(ies) or any other claim whatsoever pursuant to the provisions of this Contract.

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

By: \_\_\_\_\_  
Agency

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

By: \_\_\_\_\_  
Agency's Legal Counsel –Certifying legal sufficiency

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

By: \_\_\_\_\_  
Contractor

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

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: \_\_\_\_\_  
Taxation and Revenue Department

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

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

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

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

**ATTACHMENT 1**  
**Scope of Work**

**Performance Measures**

*(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")*

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

**Example:** Goal: Reduce or Increase or Other Service [insert blank].<sup>1</sup>

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

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

**OR:** Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below (*insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties*).

---

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

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