

ISSUED BY

The New Mexico Environment Department



REQUEST FOR PROPOSALS

PROFESSIONAL ATTORNEY SERVICES

HEARING OFFICER- SOLID WASTE BUREAU

RFP No. 11-667-00-00001

**Environmental Protection Division
State Of New Mexico
New Mexico Environment Department
1190 St. Francis Dr.
P. O. Box 5469
Santa Fe, New Mexico 87502
F. David Martin, Secretary**

ISSUE DATE: February 18, 2011

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Environment Department (*the Department*) Environmental Protection Division, Solid Waste Bureau (SWB), requests proposals for attorney services to act in the capacity of a hearing officer at Solid Waste Permit Hearings as required by 20.9.2 -10 NMAC. The purpose of this Request For Proposals (RFP) is to select a qualified offeror for attorney services to act as a Hearing Officer for at least one administrative hearing planned to be held in May or June 2011, and possibly others in calendar year 2011 or during the first half of 2012.

The Department reserves the option to renew the initial contract for two additional fiscal years pursuant to Section 13-1-150 NMSA 1978 and NMAC 2.2.2 Audit Rule 2009. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the State Auditor. In the event that either of the parties to the contract elects not to extend, or the State Auditor disapproves the recommendation for renewal, the Department shall solicit competitive sealed proposals and contract for professional services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); Department of Finance and Administration (DFA) Rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services* and NMAC 2.2.2. Audit Rule

II. SCOPE OF WORK

A. SOLID WASTE PERMITTING INFORMATION

Applicants for solid waste facility permits (landfills, large transfer stations, infectious waste treatment and transformation facilities) may be issued a permit only after adequate public notice, as required in 20.9.3(a) and after a public hearing as required by NMSA 1978, Section 74-9-24 A of the Solid Waste Act, 20.9.3.16, Solid Waste Rules, and 20.1.4 NMAC Permit Procedures Environment Department.

The Solid Waste Bureau is the first bureau in the New Mexico Environment Department to implement Environmental Justice requirements in our Solid Waste Rules. As the first bureau to implement these procedures, our process must involve rigorous public notice and community outreach efforts, be transparent, open, and allow multiple opportunities for the public to express their views, concerns, and issues in a safe, controlled, and unintimidating hearing forum.

Administrative permit hearings are held in the community nearest to the facility either to allow public comment in support of the application or to voice concerns and potential impacts to quality of life, health, and environment in the surrounding area. Solid waste permit hearings may last from one day, with stipulations to introduce pre-filed written

testimony in the administrative record, or if controversial, as long as two weeks with testimony and public comment taken Monday through Saturday from 8:30 am to 10:00 pm with lunch and dinner breaks, or as determined by the hearing officer. At times there may be 100 or more persons present at the hearing during peak evening hours or on a Saturday, with fluctuations of between 30-50 persons in the audience. Respectful crowd control is necessary, and efficient management of the hearing is paramount. The contractor will be required to stay overnight in area hotels, and the NMED will reimburse the contractor for expenses in accordance with the State's Per Diem policy, or as specified in an executed contract.

Many community members or interested parties providing public comment are primarily Spanish speaking. NMED arranges for provision of interpreter services with headsets; however, based on previous experiences, NMED staff has found it extremely beneficial to have a bi-lingual hearing officer in communities with many Hispanic residents.

It is anticipated that hearing officer services will be needed starting in mid May 2011, for a tentatively scheduled landfill permit hearing in southern New Mexico, that potentially could last at least one week or more.

B. MINIMUM PROFESSIONAL QUALIFICATIONS AND REQUIREMENTS

The minimum professional qualifications to complete the Scope of Work and to be the successful offeror for this Request for Proposal (RFP) are:

- a) Be licensed to practice law in New Mexico, unless otherwise approved by the Secretary;
- b) An offeror must have at least 5 years experience as a hearing officer and/or judge;
- c) Must be able to fluently speak Spanish and understand oral public comments provided in Spanish;
- d) Must be able to travel, and stay overnight during the duration of public hearings; and
- e) Preferred experience includes a demonstration of previous experience handling controversial matters and /or environmental permitting or adjudication.
- f) Shall have no conflict of interest.

C. SCOPE OF WORK

A successful offeror will provide professional, timely, high quality legal services to the Agency to facilitate public participation and assist the Secretary of the Department to successfully complete solid waste permit hearings and the permitting process. The successful contractor shall adequately demonstrate the ability to meet or exceed all scope of work tasks specified below.

1. The successful offeror will be required to demonstrate experience and abilities to:
 - a) arrange for and conduct pre-hearing telephone conferences or meetings for involved parties and consideration of motions;
 - b) make rulings on evidence, procedural issues, and other motions;

- c) conduct hearings in or near the potentially affected community;
- d) travel and stay overnight for up to a week or more at a time;
- e) ensure that proper hearing notice is given;
- f) make certain that the hearing is conducted in a orderly, respectful and fair manner consistent with applicable statutes and rules;
- g) take written and oral public comments and testimony at the hearing;
- h) provide rulings on evidence, rules of law, or regulatory procedural issues and consider and rule on other motions;
- i) assure that a proper record is made;
- j) write a high quality hearing officer's report including a summary of the record, recommended findings of fact, conclusions of law, and a recommended decision or if properly delegated, a final decision;
- k) consult with and advise the Secretary of the Environment;
- l) assuring notice of the decision is given to all the parties;
- m) defend the final action in the District Court, Court of Appeals, or Supreme Court as requested, including consultation, brief writing, and oral argument; and
- n) other duties as assigned by the Secretary consistent with the role of a hearing officer.

2. In addition, the Offeror shall respond to all mandatory specifications listed in Section V of this RFP.

D. PROCUREMENT MANAGER

NMED has designated the **Procurement Manager** who is responsible for the conduct of this procurement. The name, address and telephone number of the Procurement Manager is listed below.

Questions about the RFP process and deliveries of Proposals via express carrier (including proposal delivery) should be addressed as follows:

Randy Herrera, Procurement Manager
New Mexico Environment Department
Administrative Services Division, Purchasing & Contracts Bureau
1190 St. Francis Dr., Room S-4051
PO Box 5469
Santa Fe, NM 87505-5469
Email: randy.herrera@state.nm.us

NMED has designated a **Project Manager** who is responsible for writing the specifications for this procurement. The name, address and telephone number of the Project Manager is listed below.

Any technical inquiries or requests for clarification regarding this procurement must be submitted in writing to:

Ms. Auralie Ashley-Marx, Project Manager
New Mexico Environment Department
Solid Waste Bureau - Room S2050
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87502

Tele: (505) 827-2775 Fax: (505) 827-2902
Email: auralie.ashley-marx@state.nm.us

Offerors may contact ONLY the Procurement Manager and Project Manager, specified herein, 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 in writing via email.

Offerors can download copies of the RFP from the Department's website at <http://www.nmenv.state.nm.us/NMED/RFP> or www.nmenv.state.nm.us/SWB/ main page. If a potential offeror is unable to download a copy of the RFP from the websites, they may contact the procurement manager at (505) 827-2615 to arrange to pickup a hard copy or via email at randy.herrera@state.nm.us to receive an electronic copy.

E. DEFINITION OF TERMINOLOGY

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

"Agency" means the New Mexico Environment Department.

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

"Close of Business" means 4:00 PM Mountain Standard Time or Mountain Daylight Savings Time, whichever is in effect on the date given.

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

"Contractor" means a successful offeror who enters into a binding contract. It also means a business (contractor, subcontractor, or supplier) that has not either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and § 13-3-11 through § 13-4-17 NMSA 1978 as amended. Any contractor that has either been debarred or suspended pursuant to § 13-1-177 through § 13-1-180, and § 13-3-11 through § 13-4-17 NMSA 1978 as amended will not be permitted to do business with the NMED and shall not be considered for award of the contract during the period for which it is debarred or suspended.

"Department": For purposes of administering the RFP and associated proposals, "Department" means the New Mexico Environment Department.

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

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

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

"Director" means the Director of the Environmental Protection Division of the New Mexico Environment Department.

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

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

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

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

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

"Permit Procedures" means Permit Procedures Environment Department 20.1.4 NMAC.

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

"Procurement Manager" means the individual or designee authorized by the Agency to manage or administer this procurement to include, interpretation, inquiries in relation to the RFP, and flow-through of information between bidders and the Agency. All questions about the meaning or intent of the RFP or subsequent Contract documents shall be submitted in writing. Replies will be issued by written Addenda and mailed, emailed, or delivered to all parties. Questions received less than ten (10) calendar days prior to the date for opening of bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. All inquiries in relation to the RFP will be directed to the Procurement Manager.

"Project Manager" means the individual or designee authorized by the Agency that will oversee all services and tasks specified in the detailed scope of work of the contract(s) resulting from this solicitation.

"Procurement Coordinator" means the individual or designee authorized by the State Purchasing Agent to manage, administer and coordinate this procurement between the Agency and Offeror. (when applicable).

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

"Purchase Order" means the document which directs a consultant contractor to deliver services pursuant to an existing contract. Work cannot be started until a Purchase Order has been issued and provided to the consultant.

"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 proposal include, but are not limited to, price, quality, quantity, or delivery requirements.

“Secretary”: means the Cabinet Secretary of the New Mexico Environment Department.

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

“Solid Waste Act” means Article 9 §74-9-1 through 41.

“Solid Waste Bureau (SWB)” means the New Mexico Environment Department, Solid Waste Bureau.

“Solid Waste Rules” §20.9.1 through 10 NMAC (2007)

Abbreviations include the following:

Abbreviations include the following:

(ASD) New Mexico Environment Department Administrative Services Division

(DFA) New Mexico Department of Finance and Administration

(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
(OFB) Office of Finance & Budget
(RFP) Request for Proposal
(SWB) Solid Waste Bureau

F. BACKGROUND INFORMATION

1. Mission Statement:

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

2. New Mexico Environment Department's goals and objectives:

- 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.

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

4. Fund Structure:

The Agency maintains a general fund, fiduciary funds, special revenue funds, agency funds, enterprise funds, and a capital projects fund.

5. Budgetary Basis of Accounting:

In accordance with the budget guidelines established for all state agencies by the Department of Finance and Administration, the Agency does prepare its budget on a basis consistent with generally accepted accounting principles. The Agency's budget is appropriated to its divisions and is administered through the use of expenditures and encumbrances.

G. PROCUREMENT LIBRARY

The Procurement Manager has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager or his designee and scheduling an appointment. Offerors are

welcome to take notes in the Procurement Library or to bring a portable copy machine to the library.

The library contains information listed below:

- Procurement Regulations, 1.4.1. NMACA copy may be obtained from the following web site address: <http://www.generalservices.state.nm.us/spd>
- Information regarding Solid Waste Management in New Mexico available at <http://www.nmenv.state.nm.us/swb/>
- All applicable Rules are also available at <http://www.nmenv.state.nm.us/swb/CurrentRules.htm>
- 20.1.4 NMAC found at <http://www.nmcpr.state.nm.us/nmac/title20/T20C001.htm>
- 20.1.5 NMAC found at <http://www.nmcpr.state.nm.us/nmac/title20/T20C001.htm>
- 20.9.2-10 NMAC found at <http://www.nmcpr.state.nm.us/nmac/title20/T20C009.htm>

These documents are also available on the NMED web page at <http://www.nmenv.state.nm.us/nmed/rfp>.

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 to the following schedule:

| | <u>Action</u> | <u>Responsibility</u> | <u>Date</u> |
|----|--|---------------------------|-------------|
| 1. | Issue of RFP | Agency, Purchasing Bureau | 02/18/2011 |
| 2. | Acknowledgement Receipt of Distribution Form | Potential Offerors | 02/23/11 |
| 3. | Deadline to Submit Questions | Potential Offerors | 02/25/11 |
| 4. | Response to Written Questions/RFP Amendments | Agency | 03/01/11 |
| 5. | Submission of Proposal No later than 4:00 PM MST | Offeror | 03/08/11 |
| 6. | Proposal Evaluation | Evaluation Committee | 03/14/11 |
| 7. | Selection of Finalists | Evaluation Committee | 03/15/11 |

| | | | |
|-----|--|-----------------|----------|
| 8. | Best and Final Offers from Finalists (if needed) | Offeror | 03/18/11 |
| 9. | Oral Presentation by Finalists (if needed) | Offeror | 03/21/11 |
| 10. | Negotiate Fees | Agency, Offeror | 03/25/11 |
| 11. | Finalize Contract | Agency, Offeror | 04/01/11 |
| 12. | Contract Award | State Auditor | 04/11/11 |
| 13. | Protest Deadline No later than 4:00 PM MST | Offerors | 04/26/11 |

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by the Agency and the State Purchasing Division of the General Services Department.

2. Acknowledgement Receipt of Distribution Form Due

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 A) to the Procurement Manager 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 on **February 23, 2011**.

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

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on **February 25, 2011**. All written questions

must be submitted via e-mail to the Procurement Manager (See Section II, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on **March 1, 2011** via email to all potential Offerors whose organization name appears on the procurement distribution list. An Acknowledgement of Receipt Form will accompany the distribution package. The form should be signed by the offeror's representative, dated, and hand-delivered or returned by facsimile or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror's organization name shall be deleted from the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than two (2) days after the answers and/or amendments were issued.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 4:00 PM MOUNTAIN STANDARD TIME ON TUESDAY MARCH 8, 2011.

ELECTRONIC OR FACSIMILE SUBMITALS OF PROPOSALS WILL NOT BE ACCEPTED

Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II, Paragraph D, which is as follows:

Randy Herrera, Procurement Manager
New Mexico Environment Department
Administrative Services Division, Purchasing & Contracts Bureau
1190 St. Francis Dr., Room S-4051
PO Box 5469
Santa Fe, NM 87505-5469

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **NEW MEXICO ENVIRONMENT DEPARTMENT, NRAP ENVIRONMENTAL CONSULTING SERVICES** Request for Proposals. Proposals submitted by facsimile or other electronic means will not be accepted.

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

6. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. This process will take place between **March 9, 2011, and March 14, 2011**. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by the Offerors.

The initial evaluations will be based solely on the technical merits of the proposals and firms qualifications. Based on the initial evaluation, Finalist will be selected for further consideration. The evaluation committee shall then select the most responsive proposal based on technical merit and cost effectiveness.

7. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify, finalists and the non-finalists after all proposals have been evaluated. Selection of Finalists will occur no later than **March 15, 2011**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations will be determined at this time.

8. Best and Final Offers From Finalists (if needed)

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by **March 18, 2011**. Best and final offers may be clarified and amended at the finalist offeror's oral presentation.

9. Oral Presentation by Finalists (if needed)

Finalist Offerors may be required to present their proposals to the Evaluation Committee on **March 21, 2011**. The Procurement Manager will schedule the time for each offeror presentation. All offeror presentations will be held in Albuquerque or Santa Fe, New Mexico at a location to be determined. Each presentation will be limited to one (1) hour in duration including questions and answers.

10. Negotiation - Fees for Services

Because this RFP is for a professional attorney, costs of services may not be included in the Request for Proposals. Costs shall be submitted in a separate Sealed Envelope for consideration upon selection of Finalists. The Agency may negotiate the fees (hourly or by flat rate) with the finalist, as necessary. Anticipated completion of negotiations is **March 25, 2011**.

11. Finalize Contract

The contract will be finalized between **March 25, 2011 and April 1, 2011** with the Offeror whose proposal is most advantageous to the Agency and submitted to the Office of the State Auditor. In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

12. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Department and the signed contract, the Agency will award the contract on **April 11, 2011**. The contract award date is subject to change at the discretion of the Agency.

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

13. Protest Deadline

Any protest by an offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award and will end at of close of business on **April 26, 2011**. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the Protest Manager listed below:

Margaret S. Trujillo, Protest Manager
New Mexico Environment Department
Administrative Services Division, Purchasing & Contracts Bureau
1190 St. Francis Dr., Room S-4051
PO Box 5469
Santa Fe, NM 87505-5469

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

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

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section VI of this RFP.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

3. Prime Contractor Responsibility

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

4. Subcontractors

Use of subcontractors will not be authorized for this professional attorney services proposal. The prime contractor shall be wholly responsible for the entire performance.

5. Amended Proposals

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

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 will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after due date for the receipt of a best and final offer if one is solicited.

8. Disclosure of Proposal Contents

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

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the 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, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the State Purchasing Agent shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any 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 use of any proposed professional services until a valid written contract is awarded, a Purchase Order is issued and approval of both by the appropriate authorities.

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

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

Should an offeror object to any of the Agency's terms and conditions, as contained in this Section or in Appendix C, that offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the offeror's proposal.

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

All contracts for professional services are subject to the review and approval of DFA pursuant to 13-1-118 NMSA 1978 and DFA Rule 2 NMAC 40.2.

16. Offeror's Terms and Conditions

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

17. Contract Deviations

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

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice

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

22. Agency Rights

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

23. Right to Publish

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

24. Ownership of Proposals

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

25. Electronic Mail Address Required

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

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 insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the offeror's possession and the version maintained by the SPA, the version maintained by the SPA shall govern.

27. NM Employee Pay Equity Initiative

Effective July 1, 2010, businesses seeking new contracts with any Executive Branch state agency will be required to comply with the requirements of Executive Order 2009-049, to aid in identifying and combating pay inequity and job segregation in the State of New Mexico, as a condition of being awarded a contract. Offerors with less than ten (10) employees are exempt from the reporting requirements and must state this in the proposal unless eight (8) or more individuals are in the same job classification; Offeror must complete and submit Appendix G, PE10-249 Forms. See Implementation Guidance Appendix G, for statement of initiative. If Offeror has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification at any time during the term of the contract period, Offeror must complete and submit Appendix G, PE10-249 form to include: PE10-249 Reporting Form, PE10-249 Worksheet, PE10-249 Pivot Table, and PE10-249 Data Entry Form with the proposal. All successful Offerors will be required to agree to paragraph 22 of the Professional Services Agreement, attached to this RFP as Appendix C. It is suggested that Offerors read paragraph 22 of the Professional Services Agreement prior to submitting a proposal. Offeror must agree to levy the requirement to submit the

PE10-249 forms or PE250 form on any subcontractor(s) performing more than 10% of the dollar value of this contract if the subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Please see http://www.generalservices.state.nm.us/spd/pay_e.html for more information.

IV. RESPONSE FORMAT AND ORGANIZATION

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in the disqualification of the proposal.

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal for professional attorney hearing officer services.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original proposal and four (4) identical copies of their proposal to the location specified in Section II, Paragraph D on or before the closing date and time for receipt of proposals. All proposals shall be signed in blue ink.

C. PROPOSAL FORMAT

All proposals must be typewritten with a font equal to or larger than 12 on standard 8 ½” x 11” paper (larger paper is permissible for charts, spreadsheets, etc., if folded) and placed within a binder with tabs delineating each section.

The certifications and documentation required in Section V, Paragraph A.8 must be completed and included as an attachment to the original copy of the RFP. The proposal should be clear and concise and **may not exceed more than 150 pages** including attachments, and still provide the reviewers with information and attachments that address all the items listed below.

The proposal must be structured to follow, in order, the headings outlined in Section IV. D below.

D. PROPOSAL ORGANIZATION

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

- a) Letter of Transmittal
- b) Table of Contents
- c) Professional Qualifications-Section II, Paragraph B. (a) and (c); and Section V, Paragraph A.1.

- d) Qualifications as Demonstrated by Similar Experience and Past Performance –Section II, Paragraph B. (b) and (e); and Section V, Paragraph A. 2.
- e) Ability to travel and meet scheduling requirements of hearings
- f) Approach for Scope of Work–Section II, Paragraph C.1; and Section V, Paragraph A. 4.
- g) Three professional references with current contact information. Section V, Paragraph A.3.
- h) Required items Section V, Paragraph A. 5 through 7
 - i) Conflict of Interest
 - ii) New Mexico Residency
 - iii) Signed Campaign Contribution Form
 - iv) Completed Forms and Other Supporting Material; and
 - v) Attachment Appendices.

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.

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

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

1. Letter of Transmittal

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

- a) identify the name, address, telephone number, and email of the submitting attorney name and law firm, if applicable;
- b) identify the name, title and telephone number and email address of the person proposed to perform work under any contract that may result from the offer;
- c) identify the name, title, telephone number and email address of the person authorized by the offeror to negotiate the contract and contractually obligate the offeror, if different than (a);
- d) identify the names, telephone numbers and email of person to be contacted for clarification of the RFP, if different than (a) above;
- e) explicitly indicate by an affirmative statement acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- g) be signed by the person authorized to contractually obligate the offeror;

- h) provide the State of New Mexico or other state CRS Tax Identification Number; and
 - i) affirm that offer will acknowledge receipt of any and all amendments to this RFP by email response.
- 2. Table of Contents
 - 3. Mandatory Specifications

V. MANDATORY SPECIFICATIONS

Award of the contract shall be made to the offeror whose proposal is most advantageous to the Department. Award will be based on the evaluation criteria listed below in Section VI as set forth by the State. Please note that regardless of the overall score, a serious deficiency in anyone criterion may be grounds for rejection of the RFP.

Failure to respond to Mandatory Specifications will result in the disqualification of the proposal as non-responsive.

A. MANDATORY SPECIFICATIONS

Offerors should respond in a thorough narrative with supporting materials to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points according to the rating factors in Section VI. All of the following listed items in this section must be provided and addressed as requested.

- 1. Professional Qualifications
 - a. Documents demonstrating licensure in New Mexico. If not licensed in New Mexico, provide license from another state or provide a written narrative as to the reasons why the Secretary should consider alternate licensure or other factors.
 - b. An updated vita or detailed resume substantiating at least five years of practical relevant hearing officer or judicial experience, and a brief summary of cases for which you presided as a hearing officer or judge.
 - c. A narrative and any supporting credentials or references regarding fluency level in speaking Spanish and understanding oral comments provided in Spanish.
 - d. Affirmative statement that travel and over night travel is required and understood, and that there will be no problem with meeting this requirement.

- e. Brief narrative summarizing previous experience handling controversial matters and/or environmental permitting or adjudication, and a short summary of a case with year handled.

2. Qualifications as Demonstrated by Similar Experience and Past Performance

Provide narrative regarding offeror's current and past professional relevant five (5) year's experience as a hearing officer or judge, and a discussion of past performance. Include a brief summary of similar and/or relevant cases. Attach any other documents that you feel also support this requirement.

3. References

Proposals must include identification of three (3) references including legal professionals or other persons familiar with an offeror's expertise and experience as a hearing officer or judge. Those listed as a reference must also be able to also provide information regarding capabilities of the offeror to prepare legally defensible motions, findings of fact, conclusions of law, or written decisions. At least one reference must be able to confirm an offeror's fluency in speaking and understanding oral public comments provided in Spanish. An offeror may provide up to one additional reference to address the Spanish fluency requirement.

The following information about each reference must be provided:

- a. Name, address, telephone numbers (office and cell), email address of person or contact at a firm providing reference;
- b. Case name or case summary or context that reference has direct knowledge of offeror's experience;

References will be checked. The Agency and its Procurement Manager will not attempt to obtain correct contact numbers or e-mails if they are found to be incorrect during our check.

4. Techniques and Methods Used to Complete Scope of Work

Offerors must include a narrative description of how they will complete the Scope of Work as detailed in Section II.C.1 (a) through (m). Responsive proposals shall contain a detailed description of the techniques and methods used based on experience that will be used to successfully hold a public hearing and complete the permitting process.

5. Conflict of Interest

In a narrative, provide an affirmative statement and reasons why offeror has no conflicts of interest in performing the work under a contract. All offerors must also identify any potential conflicts of interest. Offerors must also include a list and short explanation of matters in which he/she has or is involved with the Department or against other state agencies.

6. New Mexico Residency

New Mexico Residency is preferred but not required, as long as the successful offeror can be present each day of scheduled hearings. Residents of New Mexico will receive more points during RFP evaluation scoring than non-residents. Provide address of location where work will be completed.

7. Completed Forms

A proposal will be deemed non-responsive and will be dropped from further evaluation if it does not include the following completed forms.

These forms only need to be submitted in the **original copy** of your proposal. Please place these forms in a separate sealed envelope with the name of your firm and the contents of the envelope clearly labeled and insert at the back of your original copy.

- a) NMED “Campaign Contribution Disclosure Form” completed, dated, and signed in blue ink. (Appendix B)
- b) NMED “Conflict of Interest Certification” form completed, dated, and signed in blue ink. (Appendix F)
- c) Pay Equity Initiative Forms (Appendix G)
- d) Written Affirmative Response Stating Agreement with Agency Terms and Conditions
- e) Offeror's Additional Terms and Conditions, if any

8. Writing Sample

The Offeror must also provide a copy of or a relevant illustrative written excerpt from findings of fact conclusions of law prepared as a hearing officer or as a judge from a controversial and/or environmental permitting or adjudication case. Example should not exceed 15 pages.

9. Other Supporting Material

As deemed necessary, by the offeror

VI. PROPOSAL EVALUATION

A. EVALUATION POINT SUMMARY

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

B. RFP POINT ALLOCATION

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

| Technical Evaluation | POINTS |
|---|---------------|
| 1) Compliance with RFP format instructions, succinctness, clarity, quality and completeness of Response | 75 |
| 2) Offeror’s professional qualifications | 120 |
| 3) Spanish fluency (speaking and understanding comments provided in Spanish at hearings) | 80 |
| 4) Experience Demonstration – relevant 5 years of hearing officer or judicial experience. (Up to 5 points added for each additional 5 years of experience as a hearing officer or judge - up to 25 years) | 125 |
| 5) Offerors’s reference checks | 25 |
| 6) Residency and ability to travel and stay overnight for duration of hearing | 100 |
| 7) Preferred experience demonstration handling controversial or environmental permitting and/or adjudication (extra points awarded if appropriate demonstration provided) | 75 |
| 8) RFP Scope of Work – adequacy of narrative and supporting information to demonstrate ability to successfully complete Scope of Work | 50 |
| 9) Conflict of Interest (Compliance with Mandatory Specifications Section V, Paragraph A.5) | 100 |
| 10) Writing sample or excerpt from findings of fact, conclusion of law, or brief. | 50 |
| TOTAL MAXIMUM POINTS | 850 |

1. Quality and Completeness and Compliance with the RFP. (75 points)

Compliance with RFP instructions – quality and completeness of the RFP
(Format, completeness, copies of all required signed forms)

2. Offeror’s Professional Qualifications **(120 points)**

Points will be awarded based on the offeror’s overall hearing officer or judicial legal experience.

3. Spanish Fluency **(80 points)**

Demonstration in the RFP must address an offeror’s level of Spanish fluency by the use of an affirmative statement, reference and reference check, supporting credential, or other relevant information.

4. Offeror’s Demonstration of Relevant Experience **(125 points)**

Points will be awarded based on the offeror’s current and past professional relevant 5 year’s experience as a hearing officer or judge and for quality and completeness of narrative summary of similar and/or relevant cases.

Five additional points will be awarded for each five years of additional hearing officer or judicial experience up to a maximum additional 25 points.

Total possible maximum score **(150 points)**

5. References and Reference Checks **(100 points)**

References will be checked to establish the offeror’s professionalism, adjudicatory capabilities, quality of legal work.

6. Residency and Ability to Travel and Stay Overnight for Hearing **(75 points)**

Offerors who live and work in New Mexico will be awarded the maximum number of points. Those no living in New Mexico will have 15 points deducted.

7. Preferred Experience Demonstration Handling Controversial or Environmental Permitting and/or Adjudication **(50 points)**

Up to 50 additional points will be added to the evaluation score if an offeror provides an adequate narrative to demonstrate relevant experience in handling controversial legal hearings, trials or adjudication matters.

8. Scope of Work **(100 points)**

Points will be awarded based on the detailed description of the offeror’s legal and practical understanding the Scope of work and the detailed description of the approach that will be used to complete a successful Solid Waste permitting hearing process.

9. Conflict of Interest **(50 points)**

Points will be awarded based strength and completeness of narrative in the RFP addressing this requirement.

10. Writing Sample **(50 points)**

Score will be based on relevance, quality, and adequacy of demonstration of ability of offeror to prepare high quality legal documents such as briefs, findings of fact conclusion of law.

C. EVALUATION PROCESS

1. Each Offeror's proposal will be reviewed for compliance with the mandatory requirements as stipulated within the RFP Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section III, Paragraph B.6.
3. The Evaluation Committee may use other sources of information to perform their evaluation, as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section VI 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.
5. 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, 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. Costs will also be included in the final score adjustments.
6. The responsive Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section VI and the oral presentations, will be recommended for a contract award as specified in Section III, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDICES

APPENDIX A

Acknowledgement of Receipt Form

REQUESTS FOR PROPOSALS

New Mexico Environment Department
Professional Attorney Services – Hearing Officer
FY11

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **2/23/2011**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

Randy Herrera, Procurement Manager
New Mexico Environment Department
Administrative Services Division, Purchasing & Contracts Bureau
1190 St. Francis Dr., Room S-4051
PO Box 5469
Santa Fe, NM 87505-5469
randy.herrera@state.nm.us

APPENDIX B CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Title (Position)

Date

—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

Title (Position)

Date

APPENDIX C SAMPLE CONTRACT TERMS AND CONDITONS

PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ENVIRONMENT DEPARTMENT**, hereinafter referred to as the "Agency," and _____, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA").

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. SOLID WASTE PERMITTING INFORMATION

Applicants for solid waste facility permits (landfills, large transfer stations, infectious waste treatment and transformation facilities) may be issued a permit only after adequate public notice, as required in 20.9.3(a) and after a public hearing as required by NMSA 1978, Section 74-9-24 A of the Solid Waste Act, 20.9.3.16, Solid Waste Rules, and 20.1.4 Permit Procedures Environment Department.

The Solid Waste Bureau is the first bureau in the New Mexico Environment Department to implement Environmental Justice requirements in our Solid Waste Rules. As the first bureau to implement these procedures, our process must involve rigorous public notice and community outreach efforts, be transparent, open, and allow for multiple opportunities for the public to express their views, concerns, and issues in a safe, controlled, and unintimidating hearing forum.

Administrative permit hearings are held in the community nearest to the facility either to allow public comment in support of the application or to voice concerns and potential impacts to quality of life, health, and environment in the surrounding area. Solid waste permit hearings may last from one day with stipulations to introduce pre-filed written testimony in the administrative record, or if controversial, as long as two weeks with testimony and public comment taken Monday through Saturday from 8:30 am to 10:00 pm with lunch and dinner breaks, or as determined by the hearing officer. At times there may be 100 or more persons present at the hearing during peak evening hours or on a Saturday, with fluctuations of between 30-50 persons in the audience. Respectful crowd control is necessary, and efficient management of the hearing is paramount. The contractor will be required to stay overnight in area hotels, and the NMED will reimburse the contractor for expenses in accordance with the State's Per Diem policy, or as specified in an executed contract.

Many community members or interested parties providing public comment are primarily Spanish speaking. NMED arranges for provision of interpreter services with headsets; however, based on previous experiences, NMED staff has found it extremely beneficial

to have a bi-lingual hearing officer in communities with many Hispanic residents.

It is anticipated that hearing officer services will be needed starting in mid-May 2011, for a tentatively scheduled landfill permit hearing in southern New Mexico, that potentially could last at least one week or more.

B. MINIMUM PROFESSIONAL QUALIFICATIONS AND REQUIREMENTS

The minimum professional qualifications to complete the Scope of Work and to be the successful offeror for this Request for Proposal (RFP) are:

- a) Be licensed to practice law in New Mexico, unless otherwise approved by the Secretary;
- b) An offeror must have at least 5 years experience as a hearing officer and/or judge;
- c) Must be able to fluently speak Spanish and understand oral public comments provided in Spanish;
- d) Must be able to travel, and stay overnight during the duration of public hearings; and
- e) Preferred experience includes a demonstration of previous experience handling controversial matters and /or environmental permitting or adjudication.
- f) Shall have no conflict of interest.

C. SCOPE OF WORK

A successful offeror will provide professional, timely, high quality legal services to the Agency to facilitate public participation and assist the Secretary of the Department to successfully complete solid waste permit hearings and the permitting process. The successful contractor shall adequately demonstrate the ability to meet or exceed all scope of work tasks specified below.

1. The successful offeror will be required to demonstrate experience and abilities to:
 - a) arrange for and conduct pre-hearing telephone conferences or meetings for involved parties and consideration of motions;
 - b) make rulings on evidence, procedural issues, and other motions;
 - c) conduct hearings in or near the potentially affected community;
 - d) travel and stay overnight potentially multiple evenings for up to a week at a time;
 - e) ensure that proper hearing notice is given;
 - f) make certain that the hearing is conducted in a orderly, respectful and fair manner consistent with applicable statutes and rules;
 - g) take oral public comments and testimony at the hearing or in writing;
 - h) provide rulings on evidence, rules of law, or regulation procedural issues and consider and rule on other motions;
 - i) assure that a proper record is made;
 - j) write a high quality hearing officer's report including a summary of the record, recommended findings of fact, conclusions of law, and a

- recommended decision or if properly delegated, a final decision;
- k) consult with and advise the Secretary of the Environment;
- l) assuring notice of the decision is given to all the parties;
- m) defend the final action in the District Court, Court of Appeals or Supreme Court as requested, including consultation, brief writing and oral argument; and
- n) other duties as assigned by the Secretary consistent with the role of a hearing officer.

D. Performance Measures.

See Contract Attachment 1

2. Compensation.

- A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of As negotiated _____ per hour, for Scope of Work items A through F and at the rate of _____ per Scope of Work on item G (Testimony) (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed _____ excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling _____ 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 \$_____ per fiscal year and total four year amount of \$_____. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.
- a) 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.
- B. 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 **June 30, 2012** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). 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.

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

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

22. Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report it.

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any

ID Number: **00-000000-000**

By: _____
Taxation and Revenue Department

Date: _____

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

By: _____
DFA Contracts Review Bureau

Date: _____

Contract Attachment 1

New Mexico Environment Department **FY11 Performance Measures**

- Goal:** Verify the number of inspected solid waste facilities that are in substantial compliance with the Solid Waste Management Regulations.
- Objective:** Verify that 90% of inspected solid waste facilities that are in substantial compliance with the Solid Waste Management Regulations.
- Activities:** Rigorous permitting review and public notice and hearing processes are necessary to ensure that facilities are designed, constructed, operated, monitored, and permitted in a manner to protect public health, quality of life, and surface and ground waters of New Mexico for the maximum permit term of 20 years. An effective Hearing Officer is integral to obtaining public input and fair access to the permitting process, and weighing testimony, public comments to define the issues, preparing findings of fact, conclusions of law, and making recommendations for permit conditions to the decision maker.
- Solid Waste Bureau staff regularly inspects facilities that have the greatest potential for harm to the environment and human health – permitted, active landfills, transfer stations, and hospitals. The Bureau inspects for 57 critical requirements at landfills, infectious waste treatment facilities, and transfer stations. Enforcement Officers cannot successfully complete inspections and appropriately gauge violations and substantive compliance of permitted facilities without referring to the approved permit and any permit conditions required by the Secretary as a result of public input. Substantial compliance means a facility has not violated a critical requirement. Facilities that are in violation first receive technical assistance to ensure they come into compliance and continue to operate in accordance with the Solid Waste Management Regulations. Those who do not come into compliance may face enforcement actions.

**APPENDIX D
PROFESSIONAL ATTORNEY SERVICES CONTRACT
PROPOSAL EVALUATION FORM**

NAME OF OFFEROR: _____

NAME OF REVIEWER: _____ **DATE REVIEWED:** _____

| Technical Evaluation | MAXIMUM SCORE | RFP SCORE | REVIEW COMMENTS |
|---|-----------------------------|------------------|------------------------|
| 1) Compliance with RFP format instructions, succinctness, clarity, quality and completeness of Response | 75 | | |
| 2) Offeror’s professional qualifications | 120 | | |
| 3) Spanish fluency (speaking and understanding comments provided in Spanish at hearings) | 80 | | |
| 4) Experience Demonstration – relevant 5 years of hearing officer or judicial experience. (Up to 5 points added for each additional 5 years of experience as a hearing officer or judge - up to 25 years) | 125 25 | | |
| 5) Offerors’s reference checks | 100 | | |
| 6) Residency and ability to travel and stay overnight for duration of hearing | 75 | | |
| 7) Preferred experience demonstration handling controversial or environmental permitting and/or adjudication (extra points awarded if appropriate demonstration provided) | 50 | | |
| 8) RFP Scope of Work – adequacy of narrative and supporting information to demonstrate ability to successfully complete Scope of Work | 100 | | |
| 9) Conflict of Interest (Compliance with Mandatory Specifications Section V, Paragraph A. 5.) | 50 | | |
| 10) Writing sample or excerpt from findings of fact, conclusion of law, or brief. | 50 | | |
| TOTAL SCORE | 850 | | |

APPENDIX E

PROFESSIONAL ENGINEERING SERVICES CONTRACT

RECOMMENDATION FORM

RANKED FROM HIGHEST RECOMMENDED OFFEROR TO LOWEST OFFEROR

1) _____

2) _____

3) _____

4) _____

5) _____

6) _____

APPENDIX F

New Mexico Environment Department

CONFLICT OF INTEREST CERTIFICATION

(Must be included with Proposal)

This Affirmation shall include both organizational and personal conflicts of interest.

I affirm that I (or my firm) _____ have no conflict of interest in performing the Scope of Work as specified in the Request for Proposals, and that I have identified any potential conflicts of interest in the RFO as required in Section V. Paragraph A.5.

(Signature of Offeror or Offeror's Authorized Agent)

Date

(Printed or Typed Name and Title)

(Company Name, if applicable)

(Mailing Address)

(City, State, ZIP Code)

Conflict of Interest Form



APPENDIX G

New Mexico Pay Equity Initiative

Executive Order Number 2009-049
December 18, 2009

IMPLEMENTATION GUIDANCE

I. SCOPE

This guidance applies to all solicitations issued or contracts awarded by an Executive Branch agency of the State of New Mexico on or after July 1, 2010.

II. DEFINITIONS

The following definitions apply to the language contained in the Executive Order and this Implementation Guidance.

“Contractor” (also “State Contractor”) means an employer contracting with any Executive Branch agency of the State of New Mexico, which employer has ten (10) or more employees of record (full or part time) OR which employer has eight (8) or more employees of record (full or part time) in the same job classification.

“Job Classification” means an arrangement of tasks in an establishment or industry into a limited series of jobs or occupations, rated in terms of skill, responsibility, experience, training, and similar considerations, usually for wage setting purposes. This term, or job class, refers to a single cluster of jobs of approximately equal “worth.”

“Job Title” means a specific designation of a position within an organization, normally associated with a job description that details the tasks and responsibilities that go with it.

“New Mexico Employee” (also “Employee”) means a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks.

“Pay Band” means the range of pay rates, from minimum to maximum.

“PE10-249 form” means the reporting form to be used by contractors that meet or exceed the minimum size thresholds for reporting but have less than 250 New Mexico employees.

“PE250 form” means the reporting form to be used by contractors that have 250 or more New Mexico employees.

“Solicitation” means an Invitation to Bid or a Request for Proposals.

“Solicited” means sought through the use of an Invitation to Bid or a Request for Proposals.

“State Contract” (also “Contract”) means any agreement for the procurement of items of tangible personal property, services (including professional services) or construction. For purposes of this Executive Order guidance, “state contract” includes any contract resulting from an Invitation to Bid, Request for Proposals or a Price Agreement – regardless how that Price Agreement was developed. It also includes any Purchase Order, or combination of Purchase Orders, exceeding \$20,000 (or combination of professional services agreements which exceed \$50,000) in any calendar year.

III. OCTOBER 1, 2010 AND BEYOND SOLICITATION REQUIREMENTS

All solicitations made available to the public through any means on or after October 1, 2010 must contain the following language:

“If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) with their bid or proposal for evaluation purposes.

“For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

“Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

“Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.”

IV. OCTOBER 1, 2010 AND BEYOND CONTRACT REQUIREMENTS

All contracts awarded resulting from a solicitation issued on or after October 1, 2010,
or

in the form of a price agreement awarded on or after October 1, 2010, resulting from an allowable method other than a solicitation

or

in the form of a Purchase Order, or combination of Purchase Orders, issued on or after October 1, 2010, exceeding \$20,000 or (combination of professional services agreements that exceed \$50,000) in any calendar year, must contain the following language:

“Employee Pay Equity Reporting

“Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

“For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form-annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

“Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

“Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report it.

“Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.”

V. SUBMITTAL OF REPORTS

Until further notice, vendors shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined. The mailing address is: PO Box 6850, Santa Fe, NM, 87502-6850.

VI. AUDIT

All information provided in PE10-249 and PE250 forms or after October 1, 2010 (unless submitted in conjunction with a solicitation issued prior to October 1, 2010) is subject to audit by the State of New Mexico. Information provided prior to that date shall be considered for informational purposes only and not subject to audit.

VII. EXCEPTIONS

Contractors with fewer than ten (10) employees are exempt, unless they have at least eight employees in the same job classification.

Contractors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

Out-of-state contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.

VIII. EFFECTIVE DATE

This Implementation Guidance shall be effective June 7, 2010.

APPENDIX G-1

**If exempt as specified on page 51 above Note Not Applicable on Each Form
Pay Equity Reporting Form PE10-249**

| | |
|---------------------------------|--|
| Company name: | |
| Mailing address line 1: | |
| Mailing address line 2: | |
| City, state, zip code: | |
| Phone: | |
| E-mail address: | |
| FEIN number: | |
| EAN number: | |
| SHARE vendor number: | |
| Reporting calendar year: | |

| Job Category | No. Females | No. Males | Gap (Absolute %) |
|-------------------------------|-------------|-----------|------------------|
| 1 - Officers and Managers | | | N/A |
| 2 - Professionals | | | N/A |
| 3 - Technicians | | | N/A |
| 4 - Sales Workers | | | N/A |
| 5 - Office and Admin. Support | | | N/A |
| 6 - Craft Workers (Skilled) | | | N/A |
| 7 - Operatives (Semi-Skilled) | | | N/A |
| 8 - Laborers (Unskilled) | | | N/A |
| 9 - Service Workers | | | N/A |

| | |
|--|--|
| Total # Job Categories With No Employees | |
| Total # Female Only Job Categories | |
| Total # Male Only Job Categories | |
| Total # Females (all categories) | |
| Total # Full Time Females | |
| Total # Part Time Females | |
| Total # Males (all categories) | |
| Total # Full Time Males | |
| Total # Part Time Males | |
| Total # Employees | |
| Female % Workforce | |
| Male % Workforce | |

Document must be signed by the principal executive of the company:

| | | |
|-------------------------|-----------|------|
| | | |
| Name and title, printed | Signature | Date |

Pay Equity Report PE10-249 Worksheet

Company name:
Mailing address line 1:
Mailing address line 2:
City, state, zip code:
Phone:
E-mail address:
FEIN number:
EAN number:
SHARE vendor number:
Reporting calendar year:

| |
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| |

| Job Category | No. Females | Female Grand Total Comp. | Female Grand Total Hours | Female Avg | No. Males | Male Grand Total Comp. | Male Grand Total Hours | Male Avg | Gap (Absolute \$) | Gap (Absolute %) |
|-------------------------------|-------------|--------------------------|--------------------------|------------|-----------|------------------------|------------------------|----------|-------------------|------------------|
| 1 - Officers and Managers | | | | N/A | | | | N/A | N/A | N/A |
| 2 - Professionals | | | | N/A | | | | N/A | N/A | N/A |
| 3 - Technicians | | | | N/A | | | | N/A | N/A | N/A |
| 4 - Sales Workers | | | | N/A | | | | N/A | N/A | N/A |
| 5 - Office and Admin. Support | | | | N/A | | | | N/A | N/A | N/A |
| 6 - Craft Workers (Skilled) | | | | N/A | | | | N/A | N/A | N/A |
| 7 - Operatives (Semi-Skilled) | | | | N/A | | | | N/A | N/A | N/A |
| 8 - Laborers (Unskilled) | | | | N/A | | | | N/A | N/A | N/A |
| 9 - Service Workers | | | | N/A | | | | N/A | N/A | N/A |

| | |
|--|-----|
| Total # Job Categories With No Employees | 9 |
| Total # Female Only Job Categories | 0 |
| Total # Male Only Job Categories | 0 |
| Total # Females (all categories) | 0 |
| Total # Full Time Females | |
| Total # Part Time Females | |
| Total # Males (all categories) | 0 |
| Total # Full Time Males | |
| Total # Part Time Males | |
| Total # Employees | 0 |
| % of Total for Females | N/A |
| % of Total for Males | N/A |

Table continued next page Executive Order Number 2009-049

APPENDIX G-2

New Mexico Pay Equity Initiative

Executive Order Number 2009-049

December 18, 2009

The Reporting Template below is for information only at this time. The State of New Mexico will provide a spreadsheet template with formulas to be used for automatic calculation of gender pay gaps by December 1, 2010, and for automatic generation of required reports, including the pay band breakdowns in the form below. Appropriate instructions and explanations will be included. The Percentage Pay Gap should reflect the difference between the average pay for all men in the category compared to the average pay for all women in the category. *This will be positive number. Specify to 2 decimal places. E.g. 12.38% **Optional prior to December 18, 2009.

| Pay Equity Report PE10-249 Pivot Table | | | Data | | |
|---|-----------------|----------------------|---------------------|---------------------------------------|---------------------------|
| Job Category Number | Gender (m or f) | Full/Part (ft or pt) | Number of Employees | Sum of Total Annual Compensation (\$) | Sum of Total Annual Hours |
| 1 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 1 Total | | | | | |
| 2 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 2 Total | | | | | |
| 3 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 3 Total | | | | | |
| 4 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 4 Total | | | | | |
| 5 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 5 Total | | | | | |
| 6 | f | ft pt | | | |
| | f Total | | | | |
| | m | ft pt | | | |
| | m Total | | | | |
| 6 Total | | | | | |

| | | | |
|---------------------|---------|----------|--|
| 7 | f | ft pt | |
| | f Total | | |
| | m | ft pt | |
| | m Total | | |
| 7 Total | | | |
| 8 | f | ft pt | |
| | f Total | | |
| | m | ft pt | |
| | m Total | | |
| 8 Total | | | |
| 9 | f | ft pt | |
| | f Total | | |
| | m | ft pt | |
| | m Total | | |
| 9 Total | | | |
| Grand Total: | | | |

New Mexico Pay Equity Initiative

| Job Category | # of Employees Total | # of Men / % of Men | # of Women / % of Women | Percentage Pay Gap Between Salaries of Men and Women |
|---------------------------|----------------------|---------------------|-------------------------|--|
| Officials and Managers | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Professionals | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Technicians | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Sales Workers | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Office & Admin Support | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Craft Workers (Skilled) | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Operatives (Semi-skilled) | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Laborers (Unskilled) | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Service Workers | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |
| Average of All Employees | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #1** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #2** | _____ | __/__ % | __/__ % | __/__ %* |
| Sub-Band #3** | _____ | __/__ % | __/__ % | __/__ %* |

Pay Equity Report PE10-249 Data Entry Form

| | | |
|---|--------------------------------|--|
| Job Category numbers to use: 1 Office & Managers 2 Professionals 3 Technicians 4 Sales Workers 5 Office & Admin Support 6 Craft Workers (Skilled) 7 Operatives (Semi-skilled) 8 Laborers (unskilled) 9 Services Workers | Company Name: | |
| | Mailing address line 1: | |
| | Mailing address line 2: | |
| | City, state, zip code: | |
| | Phone: | |
| | E-mail address: | |
| | FEIN number: | |
| | EAN number: | |
| | SHARE vendor number: | |
| Reporting calendar year: | | |

| Emp. ID (Name or Number) | Job Category Number | Gender (m or f) | Full/Part (ft or pt) | Total Annual Compensation (\$) | Total Annual Hours |
|--------------------------|---------------------|-----------------|----------------------|--------------------------------|--------------------|
| | 1 | m | ft | - | - |
| | 2 | m | ft | - | - |
| | 3 | m | ft | - | - |
| | 4 | m | ft | - | - |
| | 5 | m | ft | - | - |
| | 6 | m | ft | - | - |
| | 7 | m | ft | - | - |
| | 8 | m | ft | - | - |
| | 9 | m | ft | - | - |
| | 1 | m | pt | - | - |
| | 2 | m | pt | - | - |
| | 3 | m | pt | - | - |
| | 4 | m | pt | - | - |
| | 5 | m | pt | - | - |
| | 6 | m | pt | - | - |
| | 7 | m | pt | - | - |
| | 8 | m | pt | - | - |
| | 9 | m | pt | - | - |
| | 1 | f | ft | - | - |
| | 2 | f | ft | - | - |
| | 3 | f | ft | - | - |
| | 4 | f | ft | - | - |
| | 5 | f | ft | - | - |
| | 6 | f | ft | - | - |
| | 7 | f | ft | - | - |
| | 8 | f | ft | - | - |
| | 9 | f | ft | - | - |

| Emp. ID (Name or Number) | Job Category Number | Gender (m or f) | Full/Part (ft or pt) | Total Annual Compensation (\$) | Total Annual Hours |
|---------------------------------|----------------------------|------------------------|-----------------------------|---------------------------------------|---------------------------|
| | 1 | f | pt | - | - |
| | 2 | f | pt | - | - |
| | 3 | f | pt | - | - |
| | 4 | f | pt | - | - |
| | 5 | f | pt | - | - |
| | 6 | f | pt | - | - |
| | 7 | f | pt | - | - |
| | 8 | f | pt | - | - |
| | 9 | f | pt | - | - |