

**STATE OF NEW MEXICO**  
**OFFICE OF NATURAL RESOURCES TRUSTEE**



**REQUEST FOR PROPOSALS**

**#12-668-00-00001**

**FOR**

**NATURAL RESOURCE DAMAGE  
ASSESSMENT AND RESTORATION**

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## I. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico's Office of Natural Resources Trustee (ONRT) is requesting proposals for professional consulting services for natural resource damage assessment and restoration (NRDAR) activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and other applicable statutes.

The purpose of this Request For Proposals (RFP) is to select a qualified offeror, with documented extensive and successful experience, to provide NRDAR support services for the defined scope of work under a time-and-materials contract to the ONRT. The ONRT will assign individual projects/tasks under this contract on an as needed basis.

### B. SUMMARY SCOPE OF WORK

The services to be performed under this contract include those activities that support the ONRT with the identification, planning and implementation of natural resource damage assessment and restoration. This scope of work includes but is not limited to the following tasks: case management, natural resource injury and damage determination, restoration project identification, evaluation, and implementation, public outreach support, settlement negotiations and litigation.

The initial contract is anticipated to begin in **May 2012** or as soon as possible thereafter, and shall terminate one (1) year thereafter.

### C. SCOPE OF PROCUREMENT

The ONRT reserves the option of renewing the initial contract on an annual basis for three (3) additional years or any portion thereof for the purpose of providing NRDAR support services to the ONRT. In no case will the contract, including all renewals thereof, exceed a total of four years in duration.

### D. PROCUREMENT MANAGER

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

Elysia Martinez, Procurement Manager  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE, Albuquerque, NM 87113  
Telephone: 505-243-8087  
Fax Number: 505-243-6644  
E-mail: elysia.martinez@state.nm.us

All deliveries via express carrier should be addressed as follows:

Elysia Martinez  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE,  
Albuquerque, NM 87113

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

E. DEFINITION OF TERMINOLOGY

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

"Agency" means the New Mexico Office of Natural Resources Trustee (ONRT).

"Close of Business" means **3:00 PM Mountain Standard or Mountain Daylight Time**, whichever is in effect on the date given.

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

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

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

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

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

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

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Agency 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.

"NMED" means the New Mexico Environment Department.

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

"ONRT" means the Office of Natural Resources Trustee.

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

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

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

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

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

## F. BACKGROUND INFORMATION

Agency mission: To act on the behalf of the public to restore, replace or acquire the equivalent of natural resources within the state or belonging to, managed by, controlled by or appertaining to the state, which are injured, destroyed or lost due to release of hazardous substances or oil into the environment; natural resources include air, surface waters, ground waters, biological resources and geological resources.

The Agency implements the State's Natural Resource Damage Assessment and Restoration Program with the goal of restoration, replacement and compensation for injured natural resources and loss of resource services.

The agency is composed of three staff members and has offices located at 4910-A Alameda Blvd. NE, Albuquerque, NM 87113. ONRT is administratively attached to the NMED.

G. PROCUREMENT LIBRARY

The Procurement Manager has established a Procurement Library. Offerors wanting to review the material contained within the Procurement Library must contact the Procurement Manager or her designee and schedule an appointment. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library.

As a service to the potential offerors, the Procurement Manager will make copies at a cost of \$0.10 per page. Payment in the form of a check must be made at the time of copying. Checks must be made out to the Office of Natural Resources Trustee.

Other than offeror-reproduced copies, materials cannot be removed from the library.

The library includes the information listed below:

- Procurement Regulations, 1NMAC 5.2. A copy may be obtained from the following web site: [www.state.nm.us/spd](http://www.state.nm.us/spd)

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	ONRT	12/13/11
2.	Distribution List Response/ Acknowledgement of Receipt Due	Potential Offerors	12/27/11
3.	Deadline to Submit Additional Written Questions	Potential Offerors	01/04/12
4.	Response to Written Questions/RFP Amendments	ONRT	01/17/12
5.	Submission of Proposal <b>No later than 3:00 pm M.S.T.</b>	Offeror	01/26/12
6.	Proposal Evaluation	Evaluation Committee	01/31/12- 02/24/12*
7.	Selection of Finalist(s)	Evaluation Committee	02/28/12*
8.	Best and Final Offers from Finalists (If Necessary)	Offeror	03/06/12*
9.	Oral Presentations by Finalists (If Necessary)	Offeror 03/14/12*	03/13/12-
10.	Finalize Contract	ONRT, Offeror	03/19/12- 04/06/12*
11.	Tentative Award/Contract Award	ONRT	04/11/12*
12.	Protest Deadline <b>No later than 3:00 pm M.S.T.</b>	Offeror	04/26/12*

**\*Tentative**

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by ONRT on December 13, 2011.

2. Distribution List Response Due

Potential offerors shall return, by facsimile or by registered or certified mail, the "Acknowledgement of Receipt Form" that accompanies this document, (See Appendix A), to have their organization placed on the procurement distribution list. The form shall be signed by an authorized representative of the organization, dated and returned to the Procurement Manager (see Section I, Paragraph D) by the close of business on December 27, 2011.

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

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

3. Deadline to Submit Additional Written Questions

Potential offerors may submit additional written questions as to the intent or clarity of this RFP until the close of business on January 4, 2012. All written questions must be addressed to the Procurement Manager (see Section I.D.).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on January 17, 2012 to all potential offerors whose organization name appears on 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 **five (5) business** 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 3:00 PM MOUNTAIN STANDARD TIME ON JANUARY 26, 2012. Proposals received after this deadline will not be accepted.** The date and time will be recorded on each proposal. Proposals must be addressed and delivered

to the Procurement Manager at the address listed in Section I, Paragraph D.

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Natural Resource Damage Assessment and Restoration Services Request for Proposals. Proposals submitted by facsimile or e-mail 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 January 31, 2012 and February 24, 2012. 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.

7. Selection of Finalist(s)

The Evaluation Committee will select and the Procurement Manager will notify the finalist offerors on/by February 28, 2012. Only finalists will be invited to participate in the subsequent steps of the procurement.

8. Best and Final Offers From Finalists

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. If it is determined by the evaluation committee to seek best and final offers they will be due by March 6, 2012. It is to the Agency's discretion to determine whether or not Finalists will be asked to submit a Best and Final Offer.

9. Oral Presentations by Finalists

At the discretion of the Agency, finalist offerors may be required to present their proposals in an oral presentation to the Evaluation Committee. If the Evaluation Committee elects to conduct oral presentations they shall be completed on March 13, 2012 thru March 14, 2012 at a location provided by the Procurement Manager. Finalist offerors may be asked to provide their Best and Final Offer at the Oral Presentations.

10. Finalize Contract

The contract will be finalized with the most advantageous offeror between March 19, 2012 and April 6, 2012. These dates are subject to change at the discretion of the Agency, NMED, and/or DFA. 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.

11. Contract Award

After review of the Evaluation Committee Report, the recommendation of Agency management and the signed contract, the Agency anticipates awarding the contract by April 11, 2012 or soon thereafter. This date is subject to change at the discretion of ONRT, NMED, and DFA.

The contract shall be awarded to the offeror or offerors 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.

The award is subject to appropriate State approvals.

12. 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 as of the close of business on **April 26, 2012**. This date is subject to change. 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 hand delivered or mailed to the Protest Manager below:

Raymond Herrera, Purchasing Department  
New Mexico Environment Department  
P.O Box 5469, Santa Fe, NM 87502  
Telephone: 505-827-2615  
Fax Number: 505-827-2413

**Protests received after the date and time specified above will not be accepted.**

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the New Mexico State Purchasing Division 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 V of this RFP.

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors

The majority of work that may result from this procurement must be performed by the prime contractor and their in-house staff. The agency is seeking a prime contractor with in-house NRDAR experience. Offerors are asked not to include the use of Subcontractors as part of their proposal. Any use of subcontractors must be approved by the Agency. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used. [see section IV, 2<sup>nd</sup> paragraph]

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

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, 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 Agency shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by DFA.

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 as set forth in Appendix B, "Sample Contract Terms and Conditions". The Agency reserves the right to negotiate with a successful offerors provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offerors proposal will be incorporated into the contract.

Should an offeror object to any of the Agency's terms and conditions, that offeror must propose specific alternative language that would be acceptable to the Agency. 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 effect of each proposed change followed by the specific proposed alternate wording.

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

Pursuant to Section 13-1-118, NMSA 1978 and 2.40.2, NMAC 1.4.1, all professional services contracts which may involve the aggregate expenditure of more than \$200,000 shall be reviewed and approved by the Department of Finance and Administration and the Attorney General prior to execution by the Department.

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 representative 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, 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.

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

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 Agency, the version maintained by the Agency shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix C, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not.

28. Suspension and Debarment Requirement

The offeror shall certify, by signing the agreement attached hereto as Appendix E that to the best of its knowledge and belief that the offeror and/or its Principals are not or have not been debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal department or agency.

29. Employee Pay Equity Reporting

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 10 employees are exempt from the reporting requirements and must state this in the proposal unless 8 or more individuals are in the same job classification; Offeror must complete and submit PE10-249 Forms. 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 PE10-249 form to include: PE10-249 Reporting Form, PE10-249 Worksheet, PE10-249 Pivot Table, PE10-249 Data Entry Form with the proposal. If Offeror has (250) or more employees, Offeror must complete and submit PE250 form with the proposal. All successful Offerors will be required to agree to paragraph 22 of the State of New Mexico Environment Department contract, attached to this RFP as Appendix C. It is suggested that Potential Offerors read paragraph 22 of the contract 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](http://www.generalservices.state.nm.us/spd/pay_e.html) for more information.

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

#### B. NUMBER OF COPIES

Offerors shall deliver one (1) original and three (3) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time specified for receipt of proposals.

#### C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.). Sections III. C. 1. below, items a) through c) shall be placed within a binder (Titled Binder 1) with tabs delineating each section letter and title. Items d) through g), should be placed within a separate or second binder (Titled Binder 2) with tabs delineating each section letter and the title of each supporting document. Electronic versions of proposals will be considered non-responsive and rejected on that basis.

##### 1. Proposal Organization

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

- a) Letter of Transmittal (Binder 1)
- b) Table of Contents (Binder 1)
- c) Response to Mandatory Specifications, Section IV. B. (Binder 1)
- d) Completed Campaign Contribution Disclosure Form (Binder 2)
- e) Completed Cost Response Form (Binder 2)
- f) Response to Agency Terms and Conditions (Binder 2)
- g) Offeror's Additional Terms and Conditions (Binder 2)
- h) Supporting Documents and Other Supporting Material (Binder 2)

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder 2 with the cost response form and fee schedule (Appendix D).

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

2. Letter of Transmittal

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

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

3. Table of Contents

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

4. Response to Mandatory Specifications

Any proposal that does not adequately address these requirements may be deemed non-responsive and rejected on that basis. See Section IV.B for details on mandatory requirements.

5. Cost Response

The offeror's cost calculations should be detailed in the Cost Response Form located in Appendix D (also see Section IV.B.5).

6. Response to Agency's Terms and Conditions and Offeror's Terms and Conditions

If the offeror fully agrees with the Agency's terms and conditions (see Sections II.C.15 to II.C.17), this should be clearly stated in this section. If an offeror wishes to respond to any of the terms or conditions or wishes to list additional terms and conditions, please do so in this section of the proposal.

7. Other Supporting Material

Offerors may attach other materials that they feel may improve the quality of their response. (Binder 2)

## IV. SPECIFICATIONS

The failure of an offeror to meet a mandatory specification will result in disqualification of the proposal.

Regardless of the type of procurement, the level and type of available in-house resources is a critical component of the preparation of the financial portion of the offeror's proposal. It is imperative that both the level and type of available in-house resources be clearly defined so that the offerors can prepare cost proposals that supplement the in-house capabilities. The offeror must have in-house resources.

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

### A. INFORMATION

#### 1. Agency Resources

The Agency will provide conference room resources as needed for use on this contract.

#### 2. Work Performance

For the purpose of preparing proposals, offerors are to assume that work will be performed at a variety of locations within and outside the State of New Mexico. Support work such as data analysis and report generation will be performed at the contractor's facilities.

#### 3. Level of Effort and Deliverables

For the purpose of preparing proposals, offerors are to assume that the work required in the first year of the contract may be equivalent to \$200,000. This is not a guarantee, and the actual work required may ultimately yield more or less than this amount. Due to the State of New Mexico budgeting process, there can be no pre-determination concerning work required for subsequent years.

The contractor will work on an as-needed basis, with no limitations on the number of trips to on-site locations. Trips to on-site locations must be negotiated and approved by the Agency prior to such trips being taken. The contractor will be reimbursed for time and materials based on approved work plans and fee schedule. The contractor shall be required to develop work plan(s) on a site-by-site basis. The work plan will incorporate staff rates from the signed contract.

The contract deliverables will be determined by the Agency on a case-by-case basis. At the Project Manager's discretion, periodic oral and/or written status reports may be required. These status reports may include a discussion of project progress, problems encountered and recommended solutions, identification of

policy or management questions, and requested work plan adjustments.

4. Time Frame

The contract is anticipated to begin in **May 2012**.

B. MANDATORY SPECIFICATIONS

1. Corporate Experience

Offerors must submit a statement of relevant corporate project experience documenting at least 5 years of continuous experience in support of NRDAR Trustees. The documentation must thoroughly describe how the offeror has supplied expertise for similar contracts for Trustees and work related to NRDAR under CERCLA.

Offerors must include in their proposal documentation a description of the extent of their experience and expertise as a natural resource damage assessment and restoration contractor to state, federal and tribal trustees.

Offerors must identify all potential responsible parties or responsible parties under state or federal law who have a site or operations in New Mexico for whom they have provided work.

Offerors should indicate in table format the number of years of corporate experience and describe the corporate experience in each of the following:

- a) NRDAR case strategy
- b) Cooperative assessment process
- c) Economic determination
- d) Litigation support
- e) NRDAR case management
- f) NRDAR restoration scaling and planning
- g) Preliminary assessment
- h) Public meeting support
- i) Quality assurance
- j) Habitat/resource equivalency analysis
- k) Resource injury and damage assessment

Offerors must include Supporting Documents comprised of **three (3)** of the following types of documents prepared for NRDAR projects: habitat/resource equivalency analysis, groundwater economic valuation analysis, assessment plan or restoration plan.

Offerors must describe their corporate capabilities with regard to administrative processes or procedures regarding document production, word processing, support staff for key staff and quality assurance procedures.

2. Corporate References

Proposals must include three (3) trustee client references from trustee clients who received similar services. The minimum information that must be provided about each reference is:

- a) Name of trustee reference and affiliation
- b) Address of trustee
- c) Name of contact person
- d) Telephone number of contact person
- e) Type of services provided and dates services were provided

3. Offeror Staff Experience

Offerors must submit resumes (4 pages maximum per individual) of all proposed in-house senior and mid-level professional staff members who will be performing services under the contract. Additional pages may be added for publications. Junior level professional staff experience summaries must be limited to a quarter page. Experience narratives for all staff shall describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as certifications or other professional credential that clearly shows how they meet and/or exceed the Agency's minimum experience requirements as follows:

- a) Proposed senior professional staff members must have a minimum of five (5) years of experience with NRDAR projects and mid-level professional staff members must have a minimum of three (3) years of experience with NRDAR projects. Senior and mid-level professional staff must have a degree in the appropriate field. Junior level professional staff must have a degree in the appropriate field of expertise and must have a minimum of one (1) year experience in that field (i.e. ecology, geology, hydrology, etc).
- b) Staff members in the RFP response will be bound by the contract. Any changes to proposed staff must be approved by the Agency. Offerors must provide a table that identifies the professional senior and mid-level in-house staff with expertise and years of experience in the following fields (show total cumulative years of experience for each field):
  - Aquatic ecology
  - Cooperative assessment process
  - Environmental toxicology
  - Geochemistry
  - Geology/soil science
  - Hydrology/Hydrogeology

- Litigation support
- NRDAR case management and strategy
- NRDAR restoration planning
- Preliminary assessment
- Public meeting support
- Resource/environmental economics
- Habitat/resource equivalency analysis
- Resource injury and assessment
- Restoration alternative scaling
- Wildlife biology/ecology

4. Proposed Staff References

Two external trustee client references (preferably trustees) must be provided for each proposed senior level staff member and two external client references (preferably trustees) must be provided for each mid-level staff member. The minimum information that must be provided about each reference is:

Name of trustee affiliation services were provided for:

- a) Address of trustee
- b) Name of contact person
- c) Telephone number of contact person
- d) Type of services provided and dates services were provided

5. Cost

Offerors must provide labor categories appropriate to implement the scope of work. Offerors must propose, on the Cost Response Form (Appendix D), a weighted average hourly rate for each labor category by using the fully loaded hourly rate for each individual in each category, and estimating the relative amounts of time that each individual would work on the Agency contract.

The firm, fixed, fully-loaded hourly rates will include labor, fringe benefits, fees (profit) and any overhead costs for contractor personnel. New Mexico gross receipts taxes are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice. The Agency shall reimburse the Awarded contractor for travel per the State of New Mexico per-diem rates (DFA rule 95-1).

## V. EVALUATION

### A. EVALUATION POINT TABLE/SUMMARY

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

	FACTOR	POINTS AVAILABLE
1.	Corporate Experience	300
2.	Corporate References	100
3.	Proposed Staff Experience	300
4.	Proposed Staff References	100
5.	Cost	<u>200</u>
	TOTAL	1,000

### B. EVALUATION FACTORS

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

1. Corporate Experience (300 points)

The corporate experience of the offeror will be evaluated based upon documented experience on NRDAR projects and engagements.

2. Corporate References (100 points)

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

3. Staff Experience (300 points)

Points for staff experience will be awarded based upon an evaluation of each staff member's experience as it relates to their NRDAR experience and the needs of this contract.

4. Individual References (100 points)

Points for individual references will be awarded based upon an evaluation of the individual's work performed for previous clients receiving similar services to those proposed for the staff member for this contract.

5. Cost (200 points)

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

$$\frac{\text{Lowest Responsive Offerors Average Hourly Rate}^*}{\text{This Offeror's Average Hourly Rate}^*} \times 200 = \text{Award Points}$$

\* This average includes the Hourly Rates for all of the Labor Categories listed on the Cost Response Form.

C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II.B.6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II.C.18.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsive offerors with the highest scores above 500 points may be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award as specified in Section II.B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

“APPENDIX A”

ACKNOWLEDGEMENT OF RECEIPT FORM

REQUESTS FOR PROPOSALS

#12-668-00-00001

PROFESSIONAL SERVICES FOR NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on December 27, 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.

Elysia Martinez  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE, Albuquerque, NM 87113  
Phone Number: 505-243-8087  
Fax Number: 505-243-6644  
E-Mail: [elysia.martinez@state.nm.us](mailto:elysia.martinez@state.nm.us)

“APPENDIX B”

SAMPLE CONTRACT TERMS AND CONDITIONS

STATE OF NEW MEXICO  
OFFICE OF THE NATURAL RESOURCES TRUSTEE

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

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

The receipt of the deliverables contemplated under this Agreement shall assist the Agency in obtaining its goal(s) as set forth in its Strategic Plan on page(s)\_\_\_\_\_.

(or reference an Attachment 1, see below)

2. Compensation.

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

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

( OR CHOICE – MULTI-YEAR – A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.

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

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on DATE unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with 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. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public

officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

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

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

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

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

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

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

### 13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

The Procurement Code, 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 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://insurenemexico.state.nm.us/>.

22. Employee Pay Equity Reporting

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

but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

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

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

26. Authority.

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

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

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

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

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

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

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

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

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

Attachment 1

Scope of Work

Performance Measures

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

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

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

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

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

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

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

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

“APPENDIX C”

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is

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

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_  
(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

“APPENDIX D”

COST RESPONSE FORM  
Labor Categories

Personnel by category	Hourly rate	Relative labor allocation percentage within each category	Weighted hourly rate for category	Hourly rate range
<b>Manager</b>				
<b>Program manager</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Project manager</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Technical</b>				
<b>Senior level technical</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Mid-level technical</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Junior level technical</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Administrative</b>				
<b>Other</b>			\$	\$ - \$
Staff name(s)	\$	%		
<b>Clerical</b>			\$	\$ - \$
Staff name(s)	\$	%		

\*The following provides a description of the minimum responsibilities associated with the Manager labor category:

**Program Manager:** The Program Manager is responsible for oversight of the Agency contract to ensure that projects stay on task, on budget and accomplish objectives. The Program Manager provides the Agency NRDAR strategy. The Program Manager communicates with the Agency on programmatic and strategic issues.

**Project Manager:** The Project Manger is responsible for oversight of a specific project(s) to ensure that project(s) stay on task, on budget and accomplish objectives. The Project Manager provides the Agency NRDAR strategy for the project(s). The Project Manager would communicate with the Agency on project specific issues and strategy.

**Annual Escalation:** Offerors are asked to submit a percentage that will be considered their proposed annual escalation rate. This rate may be negotiated on an annual basis and is subject to approval.

“APPENDIX E”

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED  
DEBARMENT AND OTHER RESPONSIBILITY MATTERS**

The entering of a contract between ONRT and the successful Offeror pursuant to this RFP is a “covered transaction,” as defined by 45 C.F.R. Part 76. ONRT’s contract with the successor Offeror shall contain a provision relating to debarment, suspension, and responsibility substantially in the form contained in Article 39 of Attachment D. All Offerors must provide as a part of their proposals a certification to ONRT in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Offeror non-responsible. Furthermore, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

*Although ONRT may review the veracity of the certification through the use of the federal Excluded Parties Listing System or by other means, the certification provided by the Offeror in paragraph (a), below, is a material representation of fact upon which ONRT will rely when making a contract award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to ONRT, ONRT may terminate the contract resulting from this request for proposals for default.*

*The certification provided by the Offeror in paragraph (a), below, will be considered in connection with a determination of the Offeror's responsibility. A certification that any of the items in paragraph (a), below, exists may result in rejection of the Offeror's proposal for non-responsibility and the withholding of an award under this RFP. If the Offeror's certification indicates that that any of the items in paragraph (a), below, exists, the Offeror shall provide with its proposal a full written explanation of the specific basis for, and circumstances connected to, the item; the Offeror's failure to provide such explanation will result in rejection of the Offeror's proposal. If the Offeror's certification indicates that that any of the items in paragraph (a), below, exists, ONRT, in its sole discretion, may request, that the U.S. Department of Health and Human Services grant an exception under 45 C.F.R. §§ 76.120 and 76.305 if ONRT believes that the procurement schedule so permits and an exception is applicable and warranted under the circumstances. In no event will ONRT award a contract to an Offeror if the requested exception is not granted for the Offeror.*

(a)(1) By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals-

- (A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency;
- (B) Have  have not , within a three-year period preceding the date of the Offeror's

proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

- (C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this certification;
- (D) Have  have not , within a three-year period preceding the date of Offeror's proposal, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and

(ii) "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. § 76.995 and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with Federal funds, who: is in a position to handle Federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(iii) For the purposes of this certification, the terms used in the certification, such as *covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person* have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76.

(iv) Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

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

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