

ISSUED BY:

The New Mexico Environment Department



REQUEST FOR PROPOSALS

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

RFP No. 13-667-00-00001

**Hazardous Waste Bureau
2905 Rodeo Park Drive East Bldg. 1
Santa Fe, NM 87505-6303**

F. David Martin, Secretary

ISSUE DATE: 8/22/2012

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

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

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

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

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

II. SCOPE OF WORK

I. SUMMARY SITE HISTORY AND ASSESSMENT

The Agency is mandated by statute to regulate facilities and other entities that may in the course of their operations or activities impact the environment or the general public in an adverse manner. One of the areas of responsibility under statute and through authorization by the U.S. Environmental Protection Agency (EPA) is the regulation of hazardous waste generation, treatment, storage or disposal. The Agency implements the New Mexico Hazardous Waste Act and those authorized portions of the Resource Conservation Recovery Act (RCRA) of the United States through its Hazardous Waste Bureau (HWB), located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. The HWB issues permits, oversees corrective action, conducts inspections, and enforces statutory and regulatory requirements related to hazardous wastes.

B. SCOPE OF WORK

The Agency seeks proposals from firms with RCRA Subtitle C permitting, technical, and regulatory expertise to assist in the review and/or development of documents that support permit application/modification requests or are submitted to meet regulatory requirements of RCRA Subtitle C. The scope of work shall consist of (1) reviews of permit applications, (2) reviews of permit modification requests to existing RCRA Subtitle C permits, (3) production of administrative and technical guidance, (4) attendance at public meetings, (5) expert testimony at public hearings,

(6) evaluation of human health and ecological risk assessments and preparation of risk-related guidance documents, (7) evaluation of other RCRA Subtitle C-related technical documents or activities (such as toxicity assessments, statistical analyses, engineering assessments, evaluations of laboratory analyses or hydrologic evaluations), and (8) provide translation and interpretation services for public hearings and public notices.

The review(s) must compare the contents of any permit application, permit modification request, or corrective action document to the relevant permitting requirements, enforceable document and technical standards in the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC (incorporating 40 CFR §§260 through 279); other applicable RCRA requirements and guidance; and other applicable standards and guidance. Other technical documents will be reviewed for regulatory and technical adequacy to conform to Hazardous Waste Regulations, requirements in the RCRA permit issued to applicants, or other applicable state, federal, or local statutory or regulatory requirements. Technical documents submitted for review could include, but would not be limited to: hydrogeologic reports; hazardous waste determinations; waste characterization/confirmation analytical results;; sampling, analysis and statistical programs; risk assessments, environmental monitoring reports (*e.g.*, air, soil, groundwater); corrective action documents; engineering designs and reports; long-term impact on public health, safety and the environment.

1. Summary

The scope of work shall consist of providing timely, high quality professional services for permit technical and regulatory support for under the Resource Conservation and Recovery Act. Services will include reviewing permits, providing technical guidance, evaluating human and ecological risk assessments, along with general administrative support.

2. Minimum Professional Qualifications and Requirements

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

- a) Demonstrate corporate knowledge and work under the Federal Resource Conservation and Recovery Act: Subtitle C regulations and guidance as outlined in this RFP.
- b) Demonstrate staff knowledge and experience under the Federal Resource Conservation and Recovery Act: Subtitle C regulations and guidance as outlined in this RFP.

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

C. COST DEVELOPMENT INFORMATION

The following operational information shall be used for development of costs for this proposal.

The contractor(s) will work on an as-needed basis, therefore, trips to the on-site locations must be negotiated and approved by the Agency prior to such trips being taken. The contractor(s) will be reimbursed for time and materials based on approved work plans and fee schedule. For the purpose of preparing proposals, offerors are to assume that the work required in each year of the contract may be equivalent to \$250,000. This is not a guarantee, and the actual work required may ultimately yield more or less than this amount. Due to the State of New Mexico budgeting process, there can be no pre-determination concerning work required for subsequent years.

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

For the purpose of preparing proposals, offerors are to assume that all on-site work will be performed at the following location using contractor-supplied equipment. Other supporting work such as data analysis and report generation will be performed at the contractor's facilities. Any meetings that may be necessary with the Agency are assumed to be at the following location:

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

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

Cathy Herrera, Procurement Manager
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East Bldg. 1
Santa Fe, NM 87505-6303
Phone # (505) 476-6019 Fax # (505) 476-6030
Email: cathy.herrera1@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:

Dave Cobrain
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East Bldg. 1
Santa Fe, NM 87505
Phone # (505) 476-6055 Fax # (505) 476-6030
e-mail: dave.cobrain@state.nm.us

Offerors may contact ONLY the Procurement 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 website at <http://www.nmenv.state.nm.us/NMED/RFP> . If a potential Offeror is unable to download a copy of the RFP from the website, they may contact the Procurement Manager at (505) 476-6019 to arrange to pick up a hard copy or via email at cathy.herrera1@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 5:00 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 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 with the NMED.

“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.

"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.

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

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.

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 their 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, NMAC 1.4.1. A copy may be obtained from the following web site address: <http://www.generalservices.state.nm.us/spd>

- New Mexico Procurement Code 13-1-28 through 13-1-199 NMSA 1978
A copy may be obtained from the following web site address:
<http://www.generalservices.state.nm.us/spd/pcode.html>
- New Mexico Hazardous Waste Act 74-4-1 through 14
- New Mexico Hazardous Waste Management Regulations 20.4.1 NMAC
- New Mexico Hazardous Waste Fee Regulations 20.4.2 NMAC
- New Mexico Hazardous Waste Regulations 20.4.3 NMAC
- 40 Code of Federal Regulations Parts 260 through 279

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	8/22/2012
2.	Pre-Proposal Conference	Agency/Potential Offerors	9/5/2012
3.	Distribution List Response	Potential Offerors	9/5/2012
4.	Deadline to Submit Questions No later than 4:00 PM MST	Potential Offerors	9/21/2012
5.	Response to Written Questions/RFP Amendments	Agency	10/4/2012
6.	Submission of Proposal No later than 4:00 PM MST	Offeror	12/6/2012
7.	Proposal Evaluation	Evaluation Committee	12/12/2012
8.	Selection of Finalists	Evaluation Committee	12/28/2012
9.	Best and Final Offers from Finalists (if needed)	Offeror	1/18/2013
10.	Oral Presentation by Finalists (if needed)	Offeror	

11.	Negotiation – Fees and Services (if needed)	Agency, Offeror	
12.	Finalize Contract (subject to change)	Agency, Offeror	Approximately 02/11/2013
13.	EPA Region 6 Review/Approval (if needed)	US EPA	
14.	Contract Award	State Auditor	Approximately 03/05/2013
15.	Protest Deadline No later than 4:00 PM MST	Offerors	Approximately 03/19/2013

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

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

2. Pre-Proposal Conference

A pre-proposal conference will be held on Wednesday, September 5, 2012 at 9:00 a.m. Mountain Standard Time at the offices of the HWB, located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. Potential offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager. The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential offerors that attended the pre-proposal conference.

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

3. Distribution List Response 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 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 9/5/2012.

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

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

4. Deadline 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 9/21/2012. All written questions must be submitted via e-mail to the Procurement Manager (see Section II.D).

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on 10/4/2012 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.

6. 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 12/6/2012. 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.D.

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

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. 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.

8. 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. 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.

9. 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 1/18/2013. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

10. Oral Presentation by Finalists (if needed)

Finalist Offerors may be required to present their proposals to the Evaluation Committee (if needed, date to be determined). 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.

11. Negotiation - Fees for Services

Because this RFP is for professional services, some 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.

12. Finalize Contract

The contract will be finalized between 2/11 and 3/5/2013, pending final approvals by contract reviewers, 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.

13. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Department and the signed contract, the Agency will award the contract around 3/5/2013. 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. The contract shall begin on April 1, 2013 or as soon as possible thereafter and continue for four (4) years from the date of the contract award. In no case will the contract(s), including all renewals thereof, exceed a total of four (4) years in duration.

14. 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 March 19, 2013. 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:

Ben Naranjo, 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 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

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used. Additionally, the successful Offeror is required to apply the six Affirmative Action Steps for soliciting subcontract proposals from minority business enterprises, women's business enterprises, and labor surplus area firms (40 CFR Parts 31.36(e)(2) & 35.6580), should subcontractors be used. Use of subcontractors will require prior written approval from the Agency

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 One-hundred and Twenty (120) days after the due date for receipt of proposals or One-hundred and Twenty (120) 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 B, 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 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 Appendix G, PE10-249 Forms. See Implementation Guidance Appendix F, 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, PE10-249 Data Entry Form with the proposal. If Offeror has (250) or more employees Offeror must complete and submit Appendix H, PE250 form with the proposal. The forms are attached to this RFP as Appendix F, Appendix G and Appendix H. 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.

Additional Pay Equity Reporting Information:

If Offeror has 10 or more employees OR eight 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 calendar year, or are extended beyond one calendar year, Offeror must also agree to complete and submit the required form annually within 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 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 90 calendar days of that subcontractor meeting or exceeding the size requirement.

A. For the purposes of complying with Section 4, Pay Equity Reporting Information:

1. “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.”
2. “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.
3. “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.
4. “PE250 form” means the reporting form to be used by contractors that have 250 or more New Mexico employees.

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

B. Report Submittal: Until further notice, successful Offeror shall submit the required form(s) to the State Purchasing Division of the General Services Department, and to the Procurement Manager. The mailing address for the State Purchasing Division of the General Services Department is: PO Box 6850, Santa Fe, NM, 87502-6850.

C. The successful Offeror 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.

D. Exceptions to the Pay Equity Reporting Requirement:

1. Offerors with fewer than 10 employees are exempt, unless they have at least eight employees in the same job classification.

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

E. Offerors who are subject to the Pay Equity Reporting Requirement shall complete and sign the applicable pay equity form (PE 10-249 or PE250) and submit the form with their proposal. Offerors who fall within an exception to the Pay Equity Reporting Requirement shall include a statement in their transmittal letter that indicates they are exempt and cites the specific exception they fall under.

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 final consideration.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original proposal and four (4) identical copies of their proposal (Binder 1) to the location specified in Section II, Paragraph D, page 7 on or before the closing date and time for receipt of proposals. All proposals shall be signed in blue ink.

In addition to the proposals, the offeror shall also deliver two (2) copies of the cost proposal (Binder 2), and one (1) copy of supporting technical documentation (Binder 3) to the location specified in Section II, Paragraph D on or before the closing date and time for receipt of proposals.

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, maps, etc.) and placed within binders with tabs delineating each section. The certifications and documentation required in must be completed and included as an attachment to the original copy of the RFP. There is no page limitation, however, the proposal should be clear and concise, and still provide the reviewers with information that address the items listed below. The proposal must be structured to follow, in order, the headings outlined in Section IV. D below.

Electronic versions of proposals will be considered nonresponsive and rejected on that basis.

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 (Binder 1)
- b) Table of Contents (Binder 1)
- c) Summary of Corporate Experience (Binder 1)
- d) Corporate References (Binder 1)
- e) Staff Experience (Binder 1)
- f) Staff References (Binder 1)
- g) Sample Project Work Plans (Binder 1)
- h) Conflict of Interest (Binder 1)
- i) Residency (Binder 1)
- j) Completed Summary of Proposed Rates Form (Binder 2)
- k) Signed Campaign Contribution Form (Binder 3)
- l) Completed Forms and Other Supporting Material (Binder 3)

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder 2 along with the Summary of Proposed Rates Form and Fee Schedule.

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 Binder 3.

1. Letter of Transmittal

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

- i) identify the name, telephone number, of the submitting organization;
- ii) identify the name, telephone number, and title of the person authorized by the organization to contractually obligate the organization;
- iii) identify the name, title, telephone number and email address of the person authorized to negotiate the contract;
- iv) identify the names, telephone numbers and email of person to be contacted for clarification of the RFP, if different than (b) above;
- v) explicitly indicate by an affirmative statement acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- vi) be signed by the person authorized to contractually obligate the organization;
- vii) provide the State of New Mexico or other state CRS Tax Identification Number;
- viii) acknowledge receipt of any and all amendments to this RFP by email response.

2. Table of Contents

The table of contents should be all items listed in Section IV.D and must include page numbers.

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 any one criterion may be grounds for rejection.

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 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.

1. Summary of Corporate Experience

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

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

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

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

Offerors must also include in their proposals, if they exist, copies of the most recent year's independently audited financial statements, as well as those for the preceding three (3) years. These should include the audit opinion, the balance sheet, statements of income, retained earnings, and cash flows, and the notes to the financial statements. If independently audited financial statements do not exist for the offeror's firm, the offeror shall state the reason and instead submit sufficient information to enable the Evaluation Committee to determine the financial stability of the offeror. The financial history shall be included in the cost proposal binder.

2. Corporate References

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

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

3. Staff Experience

Each offerors must submit resumes of all proposed key professional staff members who are proposed to perform services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as certifications or other professional credentials that clearly shows how they meet and/or exceed the Agency's minimum experience requirements as follows:

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

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

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

4. Staff References

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

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

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

5. Sample Project Work Plans

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

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

6. Conflict of Interest

In a narrative, provide reasons why the professional Offeror has no conflict of interest as specified in Section II. Scope of Work (B) (6) on page five (5) of this RFP.

7. Residency

Provide address of office where work will be completed.

8. Completed Forms and Other Supporting Material

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

9. Cost

The Offeror must propose a justified fixed hourly rate per service category on the Summary of Proposed Rates Form in Appendix B for the scope of work outlined in Section II.C above. The cost responses shall be based on the offeror's attached fee schedules. The fixed cost shall include all fringe benefits, overhead, travel, per diem, as well as subcontractor personnel, if appropriate. New Mexico gross receipts taxes are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice.

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

The service categories are as follows:

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

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's proposals.

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

B. POINT ALLOCATION

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

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

a) Corporate Experience

The corporate experience of the offeror including all subcontractors will be evaluated based upon documented experience on similar projects and engagements.

b) Corporate References

The corporate references of the offeror will be evaluated based upon the offeror's work for previous clients receiving similar services to those proposed by the offeror for this contract.

c) Staff Experience

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

d) Staff References

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

e) Sample Project Work Plans

Points will be awarded for this evaluation factor based upon the quality and thoroughness of the project plan.

f) Cost

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

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

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.7.
3. The Evaluation Committee may use other sources of information to perform their evaluation, as specified in Section III, Paragraph C.18.
3. 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 will be selected as finalist Offerors based upon the proposals submitted.
4. Finalist Offerors may be required to present their proposals to the Evaluation Committee. The factors by which the oral presentation will be evaluated are: quality and clarity of the presentation, knowledge and experience of key staff, ability to answer technical questions, and demonstrated understanding of the elements of the scope of work detailed in Section II.B. Within the scoring criteria framework, as detailed in Section VI, 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.
5. The responsive Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V 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.
6. New Mexico Resident Business and Resident Veteran Business Preference:
 - a) An additional five percent (5%) of the total possible points will be awarded to resident businesses. To be eligible for the additional five percent (5%) of the total possible points, the applicant must submit their certificate issued by the New Mexico Taxation and Revenue Department certifying their business is a valid resident business in the State of New Mexico.
 - b) A resident veteran business with annual revenues of one million dollars (\$1,000,000) or less will be awarded ten percent (10%) lower than the bid actually submitted; A resident veteran business with annual revenues of more than one million dollars (\$1,000,000) but less than five million dollars

(\$5,000,000) will be awarded eight percent (8%) lower than the bid actually submitted subject to the limitations provided in this section;

A resident veteran business with annual revenues of five million dollars (\$5,000,000) will be awarded seven percent (7%) lower than the bid actually submitted subject to the limitations provided in this section.

- i. When a public body makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional: (1) five percent of the total weight of all the factors used in evaluating the proposals to a resident business; (2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of one million dollars (\$1,000,000) or less; (3) eight percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of more than one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000); and (4) seven percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of five million dollars (\$5,000,000) or more subject to the limitation provided in this section.
- ii. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional of the equivalent of: (1) five percent of the total possible points to a resident business; (2) ten percent of the total possible points to a resident veteran business that has annual revenues of one million dollars (\$1,000,000) or less; (3) eight percent of the total possible points to a resident veteran business that has annual revenues of more than one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000) subject to the limitation provided in Subsection G of this section; and (4) seven percent of the total possible points to a resident veteran business that has annual revenues of five million dollars (\$5,000,000) or more subject to the limitation provided in this section.
- iii. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident businesses, the preference provided pursuant to Subsection B, C, D or E of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract that will be performed by each business as specified in the joint bid or proposal.
- iv. The preference pursuant to Paragraphs (3) and (4) of Subsection B of this section, Paragraphs (3) and (4) of Subsection C of this section, Paragraphs (3) and (4) of Subsection D of this section and Paragraphs (3) and (4) of Subsection E of this section shall be limited, in any calendar year, to an aggregate of ten million dollars (\$10,000,000) in purchases by public bodies from all resident veteran businesses receiving preferences pursuant to the provisions of those paragraphs.

- v. A public body shall not award a business both a resident business preference and a resident veteran business preference.

“Resident Business” means a business that has a valid resident business certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978 but does not include a resident veteran business.

You may access the New Mexico Taxation website at the following links for further information regarding the NM Resident Business Preference

<http://www.tax.newmexico.gov/Pages/TRD-Homepage.aspx>

<http://www.tax.newmexico.gov/Businesses/Pages/InStatePreferenceCertification.aspx>

APPENDICES

APPENDIX A

Acknowledgement of Receipt Form

REQUESTS FOR PROPOSALS

New Mexico Environment Department Professional Engineering Services FY13

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 C.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on 9/5/2012. 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.

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

APPENDIX B

CERTIFICATIONS & DOCUMENTATION

Summary of Proposed Rates Form

Certification of Independent Price Determination

Disclosure Requirements/Conflict of Interest Certification

Campaign Contribution Disclosure Form

US EPA Certification Regarding Debarment, Suspension, and Other Responsibility Matters

US EPA Certification Regarding Lobbying

Certification Regarding Drug-Free Workplace Requirements

Contractor References

SUMMARY OF PROPOSED RATES

The Offeror listed below submits the following firm, fixed hourly rates to complete the requirements as outlined in this RFP for the State of New Mexico.

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

Offeror Name: _____

New Mexico Environment Department

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(Must be included with Bid or Proposal)

HWB PERMIT TECHNICAL AND REGULATORY SUPPORT

In accordance with the United States Environmental Protection Agency Code of Federal Regulations, Title 40, Section 35.6550 (b) (3) and Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 of the State of New Mexico, the undersigned contractor certifies that no collusion as defined by Federal and State antitrust laws, occurred during the preparation of the bid or proposal submitted herewith.

(Signature of Authorized Officer)

(Date)

(Printed or Typed Name and Title)

(Company Name)

(Company Address)

(City, State, ZIP Code)

Independent Price Agreement

New Mexico Environment Department

DISCLOSURE REQUIREMENTS/CONFLICT OF INTEREST CERTIFICATION

(Must be included with Bid or Proposal)

HWB PERMIT TECHNICAL AND REGULATORY SUPPORT

In accordance with the United States Environmental Protection Agency Code of Federal Regulations, Title 40, Section 35.6550 (b) (1) and (2), the undersigned contractor certifies that it will notify the New Mexico Environment Department of any actual, apparent, or potential conflict of interest regarding any individual working on a contract assignment or having access to information regarding the contract. Contractor will be required to disclose all information pertaining to any financial and/or business relationships with identified potentially responsible party(ies) where investigative drilling work is planned or undertaken and will be required to notify NMED of any conflicts of interest. This notification shall include both organizational and personal conflicts of interest.

(Signature of Authorized Officer)

(Date)

(Printed or Typed Name and Title)

(Company Name)

(Mailing Address)

(City, State, ZIP Code)

Disclosure Requirements/Conflict of Interest

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- 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)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this 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) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

_____ I am unable to certify to the above statements. My explanation is attached.

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, A Disclosure Form to Report Lobbying,@ in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

_____ I am unable to certify the above statements. My explanation is attached.

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-

0046

(See reverse for public burden disclosure)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known:</i> Congressional District, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, <i>if applicable:</i> _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print _____ Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989.

- A. The undersigned contractor certifies that it will provide a drug free workplace by:
 - 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractors workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 2. Establishing a drug-free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the contractors policy of maintaining a drug-free workplace;
 - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 3. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a);
 - 4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contractor, the employee will:
 - (1) abide by the terms of the statement; and
 - (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
 - 5. Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
 - (1) taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health law enforcement or other appropriate agency;
 - 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. Place of Performance: The contractor shall insert in the space provided below the site(s) for the performance of work done in connection with the specific project: (street address, city, county, state, zip code)

An subcontractor who is an individual certifies that, as a condition of the contractor, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the contractor.

This assurance is given in connection with any and all financial assistance from the Department of Energy after the date this form is signed. This includes payments after such date for financial assistance approved before such date. The contractor recognizes and agrees that any such assistance will be extended in reliance on the representations and agreements made in this assurance, and the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the contractor, its successors, transferees, and assignees, and on the authorized official (or individual contractor, as appropriate) whose signature appears below.

Organization Name

Award Number

Name and Title of Authorized Representative

Signature

Date 45

CONTRACTOR REFERENCES

HWB PERMIT TECHNICAL AND REGULATORY SUPPORT

Offeror is required to fill in contact information for three references of those who are familiar with the Offeror's performance.

Reference Number 1

Name of contact: _____ Telephone Number: _____

Title: _____

Firm: _____

Address of Firm: _____

Address) City _____ State _____ Zip _____ (Mailing

Project last completed for Firm: _____

Date of last project: _____

Reference Number 2

Name of contact: _____ Telephone Number: _____

Title: _____

Firm: _____

Address of Firm: _____

City _____ State _____ Zip _____ (Mailing Address)

Project last completed for Firm: _____

Date of last project: _____

Reference Number 3

Name of contact: _____ Telephone Number: _____

Title: _____

Firm: _____

Address of Firm: _____

Address) City _____ State _____ Zip _____ (Mailing

Project last completed for Firm: _____

Date of last project: _____

APPENDIX C

CONTRACT TERMS AND CONDITIONS

NAME OF AGENCY
PROFESSIONAL SERVICES CONTRACT # _____

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

B. Performance Measures. [OPTION TO USE]

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 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 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: [NAME]
New Mexico Environment Department
[Bureau]
[Division / Section]
Harold Runnels Building, N2300
1190 St. Francis Drive
Santa Fe, New Mexico 87505

Phone # (505) 827-XXXX Fax (505) 827-XXXX
e-mail: rfp.nmed@state.nm.us

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: _____
F. David Martin, Cabinet Secretary
New Mexico Environment Department

By: _____ Date: _____
Ryan Flynn, General Counsel – Certifying legal sufficiency
New Mexico Environment Department

By: _____ Date: _____
[Contractor]

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

ID Number: **00-000000-00-0**

By: _____ Date: _____
Taxation and Revenue Department

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

By: _____ Date: _____
DFA Contracts Review Bureau

Attachment 1

I. 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].¹

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

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*).

¹ 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.

² 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.